



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA026592016

THE IMMIGRATION ACTS

**Heard at Field House
On 10 May 2017**

**Decision & Reasons Promulgated
On 26 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**H D
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chakmakjian, Counsel instructed by Lambeth Law Centre

For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Afghanistan whose date of birth was considered by the respondent and found by the First-tier Tribunal to be 1 January 2001 (such was not in dispute before me). The appellant claimed that he arrived in the United Kingdom on 16 September 2015 and

claimed asylum. That application was refused, although he was granted leave to remain as an unaccompanied asylum seeking child. In a decision and reasons promulgated on 16 January 2017, following a hearing on 12 December 2016, Judge of the First-tier Tribunal J McMahon dismissed the appellant's appeal on all grounds.

2. The appellant appealed to the Upper Tribunal on the following grounds:
 - Ground 1(a) The First-tier Tribunal erred in law in rejecting material facts based on his own perceptions of implausibility;
 - Ground 1(b) The failure to make findings as to whether the appellant was in contact with his family at the date of the hearing and failure to consider material evidence;
 - Ground 2 The First-tier Tribunal Judge unlawfully focused on peripheral, immaterial matters;
 - Ground 3 The First-tier Tribunal Judge materially erred in failing to give reasons for rejecting evidence;
 - Ground 4 The First-tier Tribunal Judge failed to consider and/or determine the appeal based on the MPSG ground and the humanitarian protection claim on the grounds of an internal armed conflict in Afghanistan.
3. The Upper Tribunal Judge granting permission noted that, although the First-tier Tribunal Judge did not consider in terms the return of the appellant to Kabul as an unaccompanied minor, the judge did make findings on the presumed contact he may or may not have with his family in Nangahar Province. Nevertheless it was considered arguable that the judge should have considered whether and to what extent it was reasonable to reach the implied conclusion that he would not be returning to Kabul as an unaccompanied minor and that it was also arguable that the judge may have fallen into error in reaching conclusions as to the plausibility of the appellant's evidence and failed to take into account his age when considering his evidence that the Taliban came every 10-15 days.

Error of Law Discussion

4. Mr Chakmakjian summarised his grounds in two broad themes. His first was a challenge to the judge's findings and credibility which encompassed grounds 1(a), 2 and 3 above. The second was in relation to the alleged lack of findings, particularly in relation to reception in Kabul, encompassing grounds 1(b) and 4 above.
5. Mr Chakmakjian submitted that it was not clear what objective evidence the judge was relying on for his substantive conclusion that the absence of direct contact by the Taliban with the appellant was a matter of adverse credibility. It was submitted that there was nothing inconsistent with the

appellant's account that the approach was made to his family and Mr Chakmakjian relied on the original skeleton argument before the First-tier Tribunal, at paragraph 18, relying on the country of origin information that the Taliban rely on family and clan loyalty and normally recruit fighters within their tribe; it was asserted therefore that recruitment through the family was a common practice.

6. In a careful and closely reasoned decision, the judge set out all of the background country information and information on behalf of the appellant and reached his conclusions on that evidence. The judge set out that the appellant's account was that at the time of leaving Afghanistan he was at risk of being taken by the Taliban who intended that he should fight for them which may have involved acting as a suicide bomber. The judge noted (at paragraph [35]) written submissions to the effect that it was common Taliban practice to recruit through family members. The judge took into consideration that the appellant was not able to point to any personal knowledge of such a threat and that there was nothing in the appellant's account to show that the appellant had had any direct contact with them. The judge went on to consider all of the claimed circumstances including that in interview the appellant stated that he had never had any contact with the Taliban before his father died, that the Taliban had never visited his mosque and that it was his evidence at the appeal hearing that he had no knowledge of other children in the village having been recruited. It was the judge's assessment that the appellant never personally saw the Taliban visit the family home. The judge went on to consider that there was evidence in the background country information which identified the practice of the Taliban recruiting young people to fight as suicide bombers. The judge properly directed himself at [38] that whilst he accepted that child recruitment exists as a Taliban practice in Afghanistan, he had to determine whether this particular appellant experienced such a risk, by examining whether there was a reasonable degree of likelihood that the Taliban wanted to recruit him.
7. The judge then went on to consider the timeline of events and concluded that if the appellant's father had died this had happened some years before the appellant left Afghanistan which the judge found to have been in the middle of 2015 when the judge concluded the appellant was 14. The judge went on to find that the appellant must have been aged no more than between 5 and 8 at the time his father had died.
8. The judge proceeded to set out in some detail the relevant jurisprudence in relation to dealing with a claim made by a child including **AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)**. The judge also took into consideration the Joint Presidential Guidance Note No.2 of 2010: Child, vulnerable adult and sensitive appellant guidance on dealing with children and set out the specific issues to be aware of. The judge reminded himself that the standard of proof is low and that any benefit of the doubt should be applied liberally in favour of the appellant given that he is a child.

9. The judge continued: “but I feel I am bound also to take into account that:” and the judge took into consideration that the appellant had no personal experience of the Taliban nor had he been approached by them; that his father’s death must have taken place roughly six or seven years before the appellant left Afghanistan and there was no direct action taken against the appellant during that approximate eight year period; that the appellant’s mother had told him the Taliban would visit the home every ten to fifteen days; and that the supporting detail provided by the appellant was sparse and that it was unlikely that the appellant’s family would not have put in place some method of contacting the appellant although it was the appellant’s account that he had had no contact with her.
10. Mr Chakmakjian sought in some detail to criticise the judge’s considerations in particular at paragraph [48]. Those criticisms are without proper foundation. Although it was submitted repeatedly that the judge did not provide any objective evidence for his criticism of the failure of the Taliban to contact the appellant directly, this was a fact that the judge was entitled to take into consideration in the round. Mr Chakmakjian, although he relied on the skeleton argument before the First-tier Tribunal in relation to the importance of family loyalty for the Taliban, did not point to anything specifically which would support a finding that such recruitment only takes place through the family. The judge quite properly considered this evidence (about family loyalty and the Taliban) before him (although in my view the judge perhaps gave more weight to this evidence than it was due as the skeleton argument purports to state that the passage confirms that recruitment through the family is a common practice whereas the passage relied on merely states that the Taliban rely on family and clan loyalty and that they normally recruit fighters within their own tribe. It is an overstatement to claim that this passage is authority for recruitment through the family being a common practice).
11. There was absolutely no error in the judge taking into consideration in the round, both the fact that the appellant was not approached by the Taliban directly and the fact that, despite the fact that it was claimed that his father died approximately eight years before he left Afghanistan, he himself was not approached in the interim period.
12. Again significant criticism was made by Mr Chakmakjian of the findings at [48(iii)] where the judge took into consideration that the appellant claimed the Taliban would visit the family home every ten to fifteen days to persuade his mother to allow her son to join them so they can make him a suicide bomber and that the appellant at interview stated that all he knew was that the Taliban wanted him to join them and be a suicide bomber. It is unclear how the judge can be criticised for this.
13. Paragraph [48(iii)] must be considered in the entirety of the Tribunal’s findings. The judge was not saying in this paragraph that he was specifically criticising the appellant for a lack of detail as to time and

dates, as suggested by Mr Chakmakjian at the hearing. Rather this must be seen in the context of the judge's consideration that the appellant was not personally approached and that no action was taken by the Taliban for approximately eight years, despite the fact that they allegedly visited his mother at their home every ten to fifteen days.

14. The judge at [48(iv)] again made allowance for the appellant's age but considered that his knowledge was very limited as to how long it had been since he had last seen his father and that he did not know in which area of Afghanistan his village or province was situated. He also did not know where he had been taken to upon leaving Afghanistan and stated that his uncle did not explain about the risk of harm from the Taliban or where they were going to. He said that his uncle had not given him any contact details. Mr Chakmakjian submitted this approach was flawed particularly in light of the appellant's stated difficulties with dates and timings. Mr Chakmakjian pointed to the fact that the appellant had stated, as recorded in paragraph [22], that he did not know about years and dates and could not say about time. However it was incumbent on the judge to reach an assessment on that evidence. The judge properly took into account the appellant's very young age and his vulnerabilities but correctly reminded himself that despite giving this latitude "there still remains some level of burden on the appellant to demonstrate the basis of an objective fear of persecution". The judge also took into consideration that the appellant's claim was consistent with the country information but reminded himself that he was bound to take into account all the evidence. There was no error in that approach. The matter of what weight clearly attached to the evidence was a matter for the judge and there was no error in his finding, in the round, that there was a lack of supporting detail in the appellant's account even taking into account his age.
15. It was also open to the judge to find, at [50(ii)], that there was no approach directly to the appellant despite living in Afghanistan for six to seven years after the death of his father and despite the fact that the Taliban were visiting the family every ten to fifteen days (which puts into context the judge's consideration at [48(iii)] as discussed above). The judge went on to find that it was most unlikely that the Taliban would have been visiting the family every ten to fifteen days in these circumstances but did not take any direct action against him. It was not the case that the judge rejected the appellant's evidence because he stated it was every ten to fifteen days that the Taliban approached his family.
16. The Court of Appeal in **HK v SSHD [2006] EWCA Civ 1037** reiterated the principle that plausibility should be assessed in respect of country information and not on the decision maker's own perception of reasonability and that inherent probability can be a dangerous or even a wholly inappropriate factor to rely on in some asylum cases and that much of the evidence would be referable to societies with customs and circumstances which are very different from those of the members of the fact-finding Tribunal.

17. The factors relied on by the First-tier Tribunal Judge were not relied on in isolation but considered in light of the background country information (even though as noted above I am of the view that this was on occasion overstated). In addition, the respondent's refusal letter, at paragraph 20, pointed to background information that forced recruitment is only used by the Taliban in exceptional cases. It was not the case that the judge rejected the appellant's evidence simply because he found it implausible, but rather considering all the factors in the round the appellant's account of events was not credible and in particular taking into consideration the lack of supporting detail. Mr Chakmakjian did not point to any evidence before the judge which might have supported a finding that it is usual practice for the Taliban to visit the family home on a regular basis but to fail to take any action to actually recruit a child for approximately eight years.
18. It was also submitted that the First-tier Tribunal Judge erred in focusing on immaterial matters by focusing on the appellant's journey to the United Kingdom. This was in reference to the judge's findings including at [48(v)], in relation to the alleged lack of contact between the appellant and his family which the judge did not accept. The judge found it most unlikely that on the appellant's account the family members would have gone to considerable effort and expense of arranging for the appellant's departure out of Afghanistan without even an attempt to set in place some method of reassurance that the appellant had reached a place of safety. The judge also found in the preceding paragraph that the appellant did not know about the route or where he was going. However it is an overstatement to suggest, as the appellant's representatives did, that the judge found the appellant's core account not credible because of peripheral matters such as his journey. The judge was considering the appellant's journey and his claimed lack of family contact in the context of all the evidence (and it is not disputed that the judge had a copy of a Red Cross email before him which indicated he was looking for his family) including what the judge found to be a claim generally lacking in detail and in the context of the judge's consideration that despite a reduced standard of proof given the appellant's age there still remains some level of burden on the appellant which he had not discharged. It was not the case that the judge focused solely on the lack of detail in relation to the travel route but rather took into consideration the lack of detail generally provided by the appellant in all aspects of his claim. I can see no merit in the challenge to those findings, which were made with great care and which were properly open to the judge.
19. Equally, it was open to the judge to consider as he did at [48(v)] that it was unlikely that the appellant's family members would have gone to considerable effort and expense for arranging his departure without giving some method of reassurance that he was in a place of safety. **EU (Afghanistan) v SSHD [2013] EWCA Civ 32** noted that family members may be unlikely to cooperate with the Secretary of State for the return of their child in relation to family tracing. Whilst this clearly does not create an absolute principle that contact details are given to all children who are

sent to Afghanistan it is not the case that the judge was simply applying his own consideration of what was unlikely or not. The judge explored fully all the evidence and it was entirely open to the First-tier Tribunal to not be satisfied, as the judge was not at [50(iii)] that the family made no arrangements for contact.

20. In relation to the judge's findings on return to Afghanistan it was argued that the judge may have fallen into error in not making findings in relation to returning the appellant. However considering the judge's findings in their entirety the judge is saying that he does not accept that the appellant is not in contact with his family. This is implicit both in his findings that it was unlikely that the family made no arrangements for contact once the appellant arrived and also that he was satisfied, at [51] that the appellant could resume living with his mother and sister and brother and that his uncle lives in the same locality and has provided support which would continue. It is implicit in the findings in their entirety that the judge was satisfied that the appellant was not credible, as the judge concluded that the appellant "has not given a reliable account".
21. Although the respondent in the refusal letter found that the appellant could safely relocate to Kabul and took into consideration **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163** in deeming it reasonable for the appellant to relocate to Kabul with his family, there was no error in the judge finding that in fact what the respondent had failed to do was to find that there was no risk to the appellant or his family in returning to their home area. Whilst Mr Chakmakjian criticised the judge's claimed lack of findings in relation to the appellant's father, the judge quite clearly found that the appellant had provided an unreliable account. There were no positive findings made in his favour. These were perfectly adequate and proper findings. They cannot said to be perverse. The appeal mounts to nothing more than a quarrel with the findings of fact made and the conclusion drawn. **Notice of Decision**
22. The decision of the First-tier Tribunal does not contain a material error of law such that it should be set aside and shall stand. The appellant's appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

I direct that the appellant be granted anonymity throughout these proceedings, unless and until the Tribunal or court directs otherwise. No report of these proceedings shall directly or indirectly identify the appellant. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 24 May 2017

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 24 May 2017

Deputy Upper Tribunal Judge Hutchinson