



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08778/2016**

**Number:**

**THE IMMIGRATION ACTS**

**Heard at Stoke  
On July 14, 2017**

**Decision and  
Promulgated  
On July 17, 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR WARIS SADAT  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

Appellant  
Staffordshire

Miss Gibbons, Counsel, instructed by

and Stoke-on-Trent CAB

Respondent  
Officer)

Mr Bates (Senior Home Office Presenting

**DECISION AND REASONS**

1. I do not make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
2. The appellant entered the United Kingdom from Afghanistan on January 13, 2015 concealed in a lorry and claimed asylum as an unaccompanied minor on February 9, 2016. The respondent refused his application on August 5, 2016 under paragraph 336 HC 395.
3. The appellant appealed against that decision on August 17, 2016 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appellant's appeal came before former Judge of the First-tier Tribunal Somal (hereinafter called the "Judge") on March 3, 2017 and in a decision promulgated on March 16, 2017 he dismissed the appellant's appeal on all grounds.
5. The appellant appealed that decision on March 30, 2017 but Judge of the First-tier Tribunal Grant refused permission to appeal on April 10, 2017. Permission was renewed to the Upper Tribunal and on May 8, 2017 Upper Tribunal Judge Plimmer found there was an arguable error of law.
6. The matter came before me on the above date.
7. Miss Gibbons relied on her grounds of appeal and submitted the Judge had failed to give any weight to the evidence of the expert, Mr Foxley, and in doing so he erred. The negative findings made by the Judge in paragraph [60] of his decision had been addressed by the expert witness in his report. In particular, the expert had argued weight should be given to the appellant's age, the fact he had been brought up in a sheltered environment and the risks facing a young male on return. Miss Gibbons further submitted that the appellant was a minor when brought to the United Kingdom and the Judge had erred to make an adverse section 8 finding against the appellant. The Judge had also failed to attach weight to the fact neither the Home Office nor the Red Cross had been able to trace his family. On the issue of relocation to Kabul the expert stated that the appellant would be at risk due to the over-stretched infra-structure and the regular attacks carried out by the Taliban. He would face a dearth of resources and would have a lack of mental and emotional support in Kabul. She submitted the Judge erred and the decision should be set aside and reheard.
8. Mr Bates invited me to find there had been no error in law an error in law and to remit the matter to the First-tier Tribunal because ultimately the Judge was the person tasked with assessing the evidence and making credibility findings. It was clear from the Judge's decision that the Judge was aware of the report but for the

reasons given in the decision he concluded the appellant lacked credibility and the findings made were all open to him. Even if those reasons about return to his home area were not adequately reasoned he could return to Kabul. It was not suggested in the grounds of appeal that Kabul was not available to him and all findings made were open to him.

## **FINDINGS**

9. The appellant arrived in this country as an unaccompanied minor and applied for asylum. The respondent refused his application and his appeal was heard by the Judge who found his claim lacked credibility and found he could either return to his home area or Kabul.
10. The grounds of appeal in the main take issue with the lack of weight given to the expert report of Mr Foxley.
11. Mr Foxley's report was contained in the appellant's bundle between pages 7 and 19 although the substantive part of his report is contained between pages 7 and 17. Pages 7 to 14 detail background material and pages 14 to 17 contained his assessment of the appellant's claim. Mr Foxley was asked to consider whether it was plausible:
  - a. He knew little about the surrounding area.
  - b. He would not use the Afghan calendar.
  - c. His girlfriend's parents would have allowed their daughter to visit his home as claimed.
  - d. Whether he would have been ignorant of the consequences of sexual relations.
  - e. He would be able to meet her as claimed.
  - f. Her pregnancy would be brought to the attention of the Afghan authorities.
12. In considering the appellant's account the Judge recorded in some detail the appellant's various versions of events as set out in his screening and substantive interviews, his statement and oral evidence. The Judge then set out from paragraph [49] of his decision the opinion of the expert witness and his views are contained between paragraphs [49] and [56].
13. From paragraph [56] onwards the Judge then assessed that evidence. He clearly had regard to Mr Foxley's report because in paragraph [59] the Judge accepted part of his evidence and concluded the appellant was an Afghan national. However, on the core issue of whether his claim was credible the Judge rejected this and made that finding based on inconsistencies in the appellant's

account. These are detailed in paragraphs [60] to [61]. Whilst there was no specific reference to the expert report I am satisfied there is no error on this issue because the Judge identified inconsistencies in the account and he rejected the events occurred. The finding made in paragraph [62] was again open to him.

14. This was not a case whereby expert evidence was a deciding factor. The Judge clearly considered the account presented and having identified inconsistencies rejected the whole claim. Whether the events were plausible was of no significance because the Judge had rejected the claim due to inconsistencies as against simply saying events did or did not occur.
15. The Judge considered how he gave fingerprints on three separated occasions and although he was a minor the Judge concluded he could have claimed asylum.
16. The Judge's conclusion was that he could either return home or relocate to Kabul. As regarding returning home the Judge rejected his claimed fear and whilst there were difficulties locating his family the reality was he was now an adult. It was, according to the Judge, safe for him to return to his home area or following case law it was safe to relocate to Kabul, if he so wished. The expert agreed he would be of little interest to the Taliban in Kabul.
17. All findings were open to the Judge. There is no error in law.

**DECISION**

18. The appeal is dismissed and the original decision shall stand.

Signed:

Dated



Deputy Upper Tribunal Judge Alis

**FEE AWARD  
TO THE RESPONDENT**

No fee award is made as I have dismissed the appeal.

Signed:

Dated:

A handwritten signature in black ink, appearing to read 'SPAL' with a flourish underneath.

Deputy Upper Tribunal Judge Alis