



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

Appeal Number: PA/03032/2017

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Centre**

**On 2<sup>nd</sup> March 2018**

**Decision & Reasons  
Promulgated**

**On 19<sup>th</sup> March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**M J K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M J Azmi (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Hawden-Beal, promulgated on 5<sup>th</sup> May 2017, following a hearing at Birmingham on 25<sup>th</sup> April 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently

applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Afghanistan, who was born on [ ] 2000. He claimed asylum on the basis of the fear of persecution from the Taliban and because his father worked for an NGO and from his villagers who will kill him because they believed that he is a Christian. The Respondent Secretary of State refused the Appellant's application because, although accepting that the Appellant was an Afghan national whose father worked for Shelter International, she did not accept the age given by the Appellant and deemed him to be aged just over 16 years, rather than 17. She also did not accept that the Appellant's father had been receiving threatening letters from the Taliban because the father could not say when these letters started coming to him. He did not see them. He did not know how his father got them. The Appellant's account also was that his father had been killed by the Taliban and that after that his father came back to the village for a week on his way to Kandahar, and was then kidnapped by the Taliban. The Appellant maintained that he knew it was the Taliban that were sending the letters because his uncle told him that his father had been taken (paragraph 4 of the determination).

### **The Judge's Findings**

3. The judge rejected the Appellant's appeal for the following reasons.
4. First, she did not accept that the Appellant's father had been targeted for working for a Christian NGO given that
  - "... his father had been doing his job for over sixteen years and did it when the Taliban was at the height of its power and there is no evidence before me to indicate that the Taliban bothered with him and the family then ..." (paragraph 30).
5. Second, the Appellant's family had never hidden what the father's job was "and have never hidden from the Taliban or anyone else" (paragraph 30).
6. Third, that "the Appellant is speculating when he claims that the letters came from the Taliban, given that his evidence is based upon a stamp which he claims was at the top of the one and only letter he saw" (paragraph 31).
7. Fourth, the Appellant was also speculating when he stated that the Taliban killed his grandfather because there was no evidence of such a link.
8. Fifth, the claim that the Taliban killed his grandfather,
  - "... is undermined by the fact that the letter he saw clearly says that his father and his family will be killed if he did not give up his job. Why

would the Taliban kill the grandfather without knowing if the father had given up his job as ordered?" (paragraph 31).

9. Finally, the judge found that it was "also curious as to why there is nothing from the father to confirm all of this" (paragraph 34).
10. The appeal was dismissed.

### **Grounds of Application**

11. The grounds of application state, inter alia, that the Appellant was a minor and that the judge failed to have regard for his age, his understanding, and made no allowances for the limited information given to him, at such a young age.
12. On 14<sup>th</sup> September 2017, the Upper Tribunal granted permission on the basis that there was arguably an error in the suggestion that the Appellant had simply speculated on crucial matters (see paragraphs 31 to 33), without the judge applying the lower standard of proof in the context of an asylum account provided by a minor, so as to show that the Appellant was given the correct benefit of the doubt, in such circumstances.
13. On 28<sup>th</sup> September 2017 a Rule 24 response was entered by the Respondent Secretary of State to the effect that the findings were entirely open to the judge from paragraph 30 onwards and that this was no more than an attempt to relitigate matters already determined.

### **Submissions**

14. At the hearing before me on 2<sup>nd</sup> March 2018, Mr Azmi, appearing as Counsel on behalf of the Appellant, made the following submissions.
15. First, Mr Azmi submitted that at paragraph 2(iv) the Appellant had made it clear that he could not say more about the reasons for why his father was released from kidnapping because his father did not want to talk about this. Moreover, at paragraph 34 of the determination, the judge, when dealing with the evidence of George Taubman, the international director for Shelter Now International a German based NGO, had stated that, "he did not even know that the Appellant's father had been missing, which you would have supposed would have been remarked upon even if it had been for any length of time". However, Mr Azmi submitted, that in reliance upon the Grounds of Appeal at sub-paragraph 4, the Appellant had not been able to give any timescale for the period his father went missing. If this had indeed been for a short period of time, then it was quite plausible that George would not have been aware of this. If George had not known about his father disappearing in these circumstances then this would not have been an adverse effect in in the assessment of the Appellant's credibility.

16. Second, and in any event, whether the Appellant was aged 16 years and 9 months, as the judge determined, or younger as the Appellant maintained, did not matter materially because the Appellant was still a minor.
17. Third, in these circumstances, the judge was wrong to criticise the Appellant (at paragraph 32) as to why he did not say who the family members were that had informed him that his father was alright. This was because, not only was the Appellant a minor child, but there was no evidence that he had even been asked about this information, and if this was so, then this was speculation on the part of the judge. The judge had made no allowance for the Appellant's age.
18. Fourth, the Tribunal determination of **KS (benefit of the doubt) [2014] UKUT 00552** makes it clear that "a child sensitive application of the lower standard of proof will still need to be given to persons if they are recounting irrelevant events that took place at a time when they were minors or were even younger minors" (paragraph 99). That was the position here. Mr Azmi submitted he would put it no higher than this. He would, however, maintain that a child sensitive approach was required, and there was no evidence of this by the judge in this determination. The Appellant was recounting events relating to letters sent (see paragraph 31) much later than when they took place. The judge was wrong to criticise the Appellant for identifying a letter as emanating from the Taliban when he had only seen one such letter with an alleged Taliban stamp on it. The judge stated that, "there is no mention of ever seeing a Taliban stamp before then" (paragraph 31). However, the judge failed to consider the Appellant's answers in the interview to questions 88 to 91 (at D17) where the Appellant sets out an explanation that his family were hiding the letters from him, but his grandfather read out the last one to his father which talked of the threat and the family were speaking about it. Moreover, in his statement, the Appellant states that no-one else but the Taliban would deliver a letter like this. In fact the judge was directed to objective evidence dealing with threats from the Taliban in the form of letters (at paragraph 23). The threat from the Taliban was a key feature of the Appellant's claim right the way through.
19. Finally, the judge criticised the Appellant (at paragraph 31) for his statement that the Taliban killed his grandfather, and the judge stated that this did not make sense if the Taliban did not know whether at that time his father had already given up his employment as they were asking him to with the German NGO which had Christian credentials. However, there was no evidence whatsoever in this regard either way before the judge. Whether the grandfather was killed with or without such knowledge of knowing whether the Appellant's father had given up his job was not a matter that was ever fully explored and explained one way or the other. Mr Azmi also pointed out that there were letters from the Shelter Now International which had not been adequately factored into the assessment of the well-founded fear of persecution which the Appellant acclaimed.

20. For his part, Mr Mills submitted that he would have to accept that it was expressly argued before the judge that the Appellant was indeed a child. He would also have to accept that the Appellant's assessment of credibility would have to be approached from on that basis. However, the judge was entitled to treat the Appellant as being 16 years and 9 months old, and not as 15 years of age (as claimed by the Appellant).
21. Moreover, the case of **KS [2014] UKUT 00552** did not state that there was any rule of law that minors must be treated liberally with respect to the application of the benefit of the doubt. However, he would have to accept that there had to be a child sensitive approach.
22. Second, the judge did take into account the Appellant's age because at the end of the determination the judge observes that,

“... with respect to the Appellant having travelled through Bulgaria in June 2016, before coming to the UK, that, ‘I acknowledge that the Appellant should seek asylum in the first safe country but equally I bear in mind the fact that he was a minor at the time and under the control of others’” (paragraph 37).
23. Third, insofar as the credibility points were raised by Mr Azmi, it was significant that these are not about the ability of a minor child to recollect, and this was clear from what the judge sets out at paragraphs 34 to 35, when he is looking at the failure of the Appellant's father to confirm the matters referred to by the Appellant. If the story was about the father working for a foreign NGO, being kidnapped, and the grandfather then being killed, and the Appellant then being sent out of the country to seek sanctuary, this was something that did not entirely relate to the Appellant's ability to recollect events. The judge refers (at paragraph 34) to the NGO letter from Shelter Now International, but this is lacking in full detail and there is nothing in this letter about the Appellant's father having been kidnapped. Such issues are entirely unrelated to the age of the Appellant.
24. In reply, Mr Azmi submitted that it was not the case that the judge had adopted a child sensitive approach to the Appellant, because there is no evidence of this from the outset of the determination. Insofar as is a reference to the Appellant being a minor at paragraph 37, this is only in the context of his failure to apply for asylum, when he travelled through Bulgaria in June 2016, and the judge at that point gives him the benefit of the doubt by saying that he was a minor and he was in the control of others. That is not to say, however, that the judge was cognisant of the Appellant being a child when he was giving evidence in relation to the matters for which he was found to be lacking in credibility with respect to the nature of his claim.

### **Error of Law**

25. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such

that I should set aside the decision and remake the decision. My reasons are as follows.

26. First, it is the case that the Appellant's father did work for a *bona fide* Christian charity by the name of Shelter Now International, based in Germany. Their evidence, regardless of what the Appellant was able to recollect or not, is significant. First, there is the email from George Taubman, the international director, dated 3<sup>rd</sup> January 2017. This makes it quite clear that "it is very dangerous for Afghans to work for a foreign NGO and many times employees/staff of foreign NGOs have been kidnapped and killed". He makes it quite clear that every time his staff members are travelling "their lives will be threatened if they were stopped by the Taliban or ISIS. Our staff members are often in danger". In addition, he draws specific attention to the Appellant's father and observes that, Mr Mohammad Munib and his family "could be targeted" by the "Islamic extremists" where the Appellant's father now lived because it is "in an area outside of Kabul that is not very safe and it has been infiltrated by the Taliban". Mr Mills was right to concede that the veracity of these statements cannot be impugned and they must be taken at face value. If so, they do point to a level of risk that has to be the starting point in relation to a consideration of the claim of this minor Appellant. There is also thereafter a letter dated 4<sup>th</sup> April 2017 from George Taubman again (see page 4 of the Appellant's bundle) and this confirms that the Appellant's father is known to have converted to Christianity and that this would place him at very considerable risk, even from the Afghani government. Importantly he goes on to say, "it is dangerous for our local staff to work with a Christian humanitarian organisation and there are many examples of workers of similar organisations having been killed".
27. Second, there is the credibility of the Appellant himself. As Mr Azmi made clear it was well recorded in the determination (at paragraph 21) that he began by emphasising the fact that the Appellant was a child, and that this should be borne in mind, and "he pointed out that the Appellant was not told everything that had happened to his family because of his age". He goes on to say that the Appellant only saw the letter from the Taliban when his grandfather spoke to his father about it and that, "he described a stamp and Mr Azmi submitted that his age could have explained why he thought that the letter came from the Taliban" (paragraph 21).
28. In circumstances where the overwhelming threat in that area is from the Taliban it is not unreasonable for the Appellant, as a child, to have assumed and to have believed that the letter came from the Taliban. But even more importantly during his interview (at questions 88 to 91) he had explained that the family were hiding the letters from him and that his grandfather had read out the last one to his father and talked about the threat to the family.
29. In this respect, not only is it the case that the Appellant's evidence stood to be treated as being credible, but there is no evidence that a child sensitive approach was taken from the outset to the consideration of his

evidence. Insofar as there is a reference at paragraph 37 to the Appellant being a minor “at the time and under the control of others” this is not in relation to the evaluation of his evidence, but only with respect to the fact that he could not himself have claimed asylum in Bulgaria, when an adult may have done so.

30. Finally, the criticism of the Appellant’s evidence on the basis that his grandfather could not have been killed, without the Taliban first ascertaining whether his father had given up the employment with a Christian charity, is a criticism that is arguably without foundation. There was no evidence to this effect either way, as Mr Azmi submitted. In any event, had a child sensitive approach been taken a criticism may well have been avoided altogether.
31. For all these reasons, the determination has been rendered unsafe because of a material error of law.

### **Re-Making the Decision**

32. I have remade the decision on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am allowing this appeal to the limited extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Hawden-Beal, under Practice Statement 7.2(a).
33. An anonymity order is made

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. 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

Deputy Upper Tribunal Judge Juss

17<sup>th</sup> March 2018