



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

Appeal Number: PA/03917/2017

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 6 March 2018**

**Decision & Reasons  
Promulgated  
On 27 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

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

Appellant

**and**

**MNA**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr K Hibbs, Senior Home Office Presenting Officer  
For the Respondent: Ms A Imamovic, instructed by Migrant Legal Project  
(Cardiff)

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the respondent (MNA). A failure to comply with this direction could lead to Contempt of Court proceedings.
2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

## **Background**

3. The appellant is a citizen of Afghanistan who was born on 22 June 2001. He arrived in the United Kingdom on 17 June 2016. The appellant claimed that he had been targeted by the Taliban for recruitment while living in Laghman province and that subsequently, when his family moved to Jalalabad and Kabul, he had been propositioned by men. He claimed that he had no close family in Afghanistan. His father had been killed when he was young and his mother and one brother had, he believed, been killed in a bomb blast near Kabul. His other brother lived in the UK.
4. On 6 April 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR.
5. The appellant appealed to the First-tier Tribunal. Judge Asjad accepted the appellant's evidence as credible, including that he had no close family in Afghanistan to provide support to him, and that as a returning child he belonged to a particular social group and was at risk on return applying AA (unattended children) Afghanistan CG [2012] UKUT 0016 (IAC) and LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 0005. The judge allowed the appellant's claim under the Refugee Convention.

## **The Appeal to the Upper Tribunal**

6. The Secretary of State sought permission to appeal to the Upper Tribunal on essentially two grounds. First, the judge had failed to give adequate reasoning why the appellant had no family support in Afghanistan if he were returned there. In particular, in reaching her adverse finding, the judge had failed to resolve a discrepancy in the evidence between the appellant and his brother as to whether the family had any land in Afghanistan which, the appellant claimed, had been sold to allow him to travel to the UK. Secondly, the judge had been wrong to apply the decision in LQ which had subsequently been "clarified" in a number of Court of Appeal cases.
7. On 20 September 2017, the First-tier Tribunal (Judge Martins) granted the Secretary of State permission to appeal.
8. On 15 October 2017, the appellant filed a rule 24 notice seeking to uphold the judge's decision.

## **Discussion**

9. On behalf of the Secretary of State, Mr Hibbs at the outset indicated that he had nothing to add or wished to say additional to the grounds.
10. Ms Imamovic, who represented the appellant, relied upon a skeleton argument (prepared by previous Counsel) and her rule 24 notice.
11. Ms Imamovic submitted that the judge had been entitled to find that the appellant had no family in Afghanistan and was, as a returning child, as a

consequence at risk applying LQ. She submitted that the judge had made a clear positive credibility finding accepting the appellant's account, first, that the Taliban attempted to recruit him when he lived in Lakhman province and that he had been propositioned by men following a move to Jalalabad and Kabul and was, in effect, a victim of sexual abuse.

12. Ms Imamovic submitted that the judge was entitled also to accept the appellant's account that he had no family in Afghanistan and only a brother in the UK. The judge was entitled to reach that finding even though there was a discrepancy between the appellant's account (namely that with the help of his landlord he had sold land in Afghanistan to pay an agent) and that of his brother (at his brother's interview) that the family had no land. Ms Imamovic pointed out that the appellant's brother had come to the UK eight years before the appellant and he might, therefore, be unaware of land subsequently acquired by the family. Ms Imamovic submitted there was no material error by the judge.
13. In his brief reply, Mr Hibbs acknowledged that the judge had believed the appellant. In relation to the land, he submitted that it might be that either the appellant or his brother was not telling the truth. In any event, Mr Hibbs did not seek to expand upon the grounds of appeal. He acknowledged that, if the appellant's account was accepted, then he would be returning as an unaccompanied minor with a history of attempted recruitment and a potential victim of sexual abuse. Mr Hibbs did not seek to argue that, in those circumstances, the judge was not entitled to find that the appellant was at risk for a Convention reason.
14. The judge's determination is relatively short. It will be helpful if I set out the central parts of her determination and her reasoning.
15. At para 4, the judge set out the appellant's claim as follows:
  - "4. The Appellant was born and raised in a village in the Lakhman province of Afghanistan. His father died when he was young and he lived in Afghanistan with his mother and younger brother. He attended school from the age of 7 to 4 years and then worked for about 18 months. He was approached at least twice by the Taliban who asked him to join. His family were threatened and so his family moved to the Ninghar province. He worked for a while and was approached by men who propositioned him and so the family left that area as well. They moved to Kabul and one day his mother and brother did not return from work and the Appellant believes that they were killed in a bomb blast near Kabul. He continued to work and was again propositioned by men. His landlord helped him to sell his land in Afghanistan and he used an agent to leave. He fears that he will be forced to join the Taliban if he returns to Afghanistan and he has no one to live with. His brother is in the UK and has applied for British citizenship".

16. Then at para 6, the judge turned to consider the appellant's claim and some aspects of the Secretary of State's reasoning that had led her not to believe the appellant:

"6. The Appellant's account begins with events in the Laghman province where he states that on two occasions, he was approached by the Taliban and asked to join them. It is clear from the reasons for refusal letter at paragraphs 19-21 that it is accepted that the Taliban did have a presence in the Laghman province at the time and were targeting young and vulnerable people for recruitment. The Appellant and his family moved to another area because of this and this does not appear to have been disputed by the Respondent. The next aspect of the Appellant's claim is based on the untoward attention he received in both the Ninghahar province and Kabul where he was propositioned by men. The Respondent simply notes that the Appellant was able to run away and so concludes that he has failed to establish that he was personally targeted by men in Jalabad and Kabul. However, that conclusion does not take into account the fact that the Appellant was credible about the reasons why he left the Laghman province and the reasoning does not explain why the mere fact that the Appellant ran away leads to the conclusion that he was not approached in the way that he claims. Since coming to the UK, the Appellant has been receiving treatment and therapy for abuse that he suffered in Afghanistan and in assessing the credibility of this aspect his claim, I have considered letters and reports from a number of professionals involved in the Appellant's claim".

17. Then, having set out the guidance in dealing with medical reports in JL (medical report – credibility) China [2013] UKUT 145 (IAC), the judge continued at paras 8-11 to consider the expert evidence concerning the appellant's mental health as follows:

"8. There is a report from Dr Lucy Arnsby-Wilson a Chartered Clinical Psychologist to whom the Appellant was referred for psychotherapy and counselling assessment for stress, sleep problems, grief counselling and PTSD. This referral was made on the 20<sup>th</sup> of October 2016. At the time that the assessment was made, the Appellant was noted to be at moderate risk of self-harm. Her assessment began with a consultation with the Appellant's foster carers who believed that the Appellant had been sexually abused in Kabul. Dr Arnsby-Wilson then met the Appellant with the assistance from a Pashto interpreter whom he specifically requested as he had disclosed events on a different occasion before this interpreter and did not want to repeat this to others. I note from the account that the Appellant gave to Dr Arnsby-Wilson, that he was consistent in the events that led him to leave their village and then eventually end up in Kabul. He recounted learning that there had been a bomb blast and believing that his mother and brother had been killed as they did not return. He indicated that he lived on his own but became increasingly vulnerable to men. He went on to describe vivid nightmares of men holding him down. In a later session with the

Appellant, he admitted that he had been sexually abused and mentioned 'they also made their friends come too' but Dr Arnsby-Wilson was unable to ask further questions as it was 'clearly very distressing for him'.

9. During some of the relaxation session, Dr Arnsby-Wilson observed that the Appellant was visibly tired due to a lack of sleep and had fallen asleep during the session with 'considerable spasms/twitching which she noted was 'commonly seen in young people experiencing the effects of a trauma'. Dr Arnsby-Wilson opined that the Appellant was suffering with severe post-traumatic stress which was in accordance with his presentation, reports from his foster family and other information and symptoms that he presented during the assessment.
  10. The observations that were noted by Dr Arnsby-Wilson were echoed in letters from the Appellant's Social Worker, as well as Rebecca Francis from the 'Gloucestershire Action for Refugees and Asylum Seekers' and his foster carers. There was also corroborative evidence from the Appellant's head teacher in which it was noted that the Appellant fell asleep in lessons and suffered headaches requiring medication. Again, this supported what Dr Arnsby-Wilson has said in her report.
  11. Taking account of Dr Arnsby-Wilson's report along with the letters and testimony from the other professionals involved in the Appellant's care I find that they are compatible with his account of having been propositioned and potentially sexually abused by men whilst living in Afghanistan. I take into account that the Respondent relies heavily on the fact that the Appellant's brother is in the UK and the suggestion is that the Appellant has simply migrated to the UK to join him which is why his brother did not attend to give evidence. But I find that the evidence given by his foster carers explained his brother's absence at court. Sheena Raxster explained that the Appellant refused to tell his brother about what had happened to him in Afghanistan and at one point asked her to intervene and stop him from doing so. The explanation for his brother's absence was once again consistent with events in Afghanistan. The fact that the Appellant's brother is in the UK - does not on its own lead to the conclusion that his account is not credible".
18. Then, at paras 12-13, the judge made her findings in relation to the appellant's risk on return to Afghanistan as follows:
12. "The lower standard of proof applies and in the Appellant's case, taking account of his age, his mental illness as well as physical difficulties which were clearly identified in the evidence of all the professionals - he has established a consistent and credible account of events in Afghanistan which as noted earlier were to a degree consistent with objective information. Indeed even the cases of **AA and LQ** identify the risk that vulnerable children who have no familial support in Afghanistan are exposed to. The headnote in **AA (Afghanistan) and the case of LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT** states that

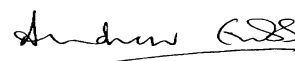
[2] ... the background evidence demonstrates that unattached children returned to Afghanistan, depending upon their individual circumstances and the location to which they are returned, may be exposed to risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. Such risks will have to be taken into account when addressing the question of whether a return is in the child's best interests, a primary consideration when determining a claim to humanitarian protection.

13. Having found that the Appellant did receive propositions from men and was potentially (on the lower standard of proof) a victim of sexual abuse, I accept his evidence that he had no family support in Afghanistan when this took place. **LQ (Afghanistan)** found that age is an immutable characteristic so that Afghan minors can form a particular social group when considering whether a minor is entitled to refugee status. I take into account that questions were raised about how the Appellant was able to leave Afghanistan by selling land which according to his brother's interview they did not have – but that is one inconsistency that I am unable to resolve. As noted the Appellant has established his case on the lower standard of proof and accordingly he is entitled to refugee protection and so his appeal against the refusal of asylum is allowed”.
19. The Secretary of State does not challenge the judge's acceptance of the appellant's account apart from the one aspect of it, namely that he has no family in Afghanistan. There is, in my judgment, no proper basis upon which the judge's acceptance of the appellant's account in general can be challenged. In particular, the judge fully and appropriately took into account the expert evidence from Dr Arnsby-Wilson and her conclusion that the appellant was suffering from severe PTSD. There were letters of support from the appellant's social worker and others which supported the appellant's case and the veracity of his account.
20. The circumstances which the appellant relied upon were not inconsistent, and it is not suggested that they were, with the background evidence concerning the activities of the Taliban.
21. The only matter which did not sit wholly consistently with the appellant being a truthful witness was the discrepancy in his evidence and that of his brother when he claimed asylum some years before. The appellant claimed that he had sold family land to pay an agent but the appellant's brother said there was no family land. It was not incumbent upon the judge to resolve every issue raised by the evidence. As is clear from her reasoning in para 13, the judge did not resolve this apparent conflict and did not consider that it was of any significance in reaching her positive credibility finding. That was a view which, in my judgment, the judge was entitled to take. It did not relate to the core of the appellant's claim. As both representatives acknowledged before me, there could be a number of explanations, including a change of circumstances, for the difference in

the evidence bearing in mind that the appellant's brother came to the UK and was interviewed eight years before the appellant. In any event, the judge gave full and adequate reasons for accepting that the appellant was a witness of truth. She did so in full knowledge of the apparent inconsistency on the single issue of whether the appellant's family owned land in Afghanistan.

22. As Mr Hibbs frankly acknowledged, despite the Secretary of State's grounds of appeal, the judge accepted the appellant as a credible witness. That finding is not, in substance, challenged. It was, therefore, open to the judge to accept the appellant's account that he had no family left in Afghanistan.
23. For these reasons, the judge did not materially err in law in reaching her factual findings.
24. As I have already indicated, Mr Hibbs did not seek to press a case on behalf of the Secretary of State that if the appellant's account were accepted, nevertheless it was not properly open to the judge on the basis of cases such as AA and LQ to find that he would be at risk of persecution for a Convention reason as a returning child with no family and with his accepted history of attempted recruitment by the Taliban and a target of sexual abuse by men. Given the appellant's vulnerability, that he is a child and would have no family support on return to Afghanistan, the judge's finding that he would be at risk of persecution for a Convention reason is, in my judgment, unassailable.
25. For these reasons, I reject the Secretary of State's grounds of appeal. The First-tier Tribunal did not materially err in law in allowing the appellant's appeal on asylum grounds. That decision, therefore, stands.
26. Accordingly, the Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb  
Judge of the Upper Tribunal

23, March 2018