



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10285/2017

THE IMMIGRATION ACTS

Heard at Field House
On 20 April 2018

Decision & Reasons Promulgated
On 10 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

[N O]

~~(ANONYMITY DIRECTION NOT MADE)~~

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Dakora, Legal Representative

For the Respondent: Mr P Nath, Senior Presenting Officer

DECISION AND REASONS

1. The appellant whose date of birth is [] 2001 appealed against a decision of the respondent dated 29 September 2017 refusing his claim for asylum and humanitarian protection in the United Kingdom.
2. First-tier Tribunal Judge M. R Oliver dismissed the appeal in a decision dated 14 December 2017. Permission to appeal was granted by First-tier Tribunal Judge Shimmin in a decision dated 15 January 2018. She found that it is arguable that the

Judge erred by his failure to adequately consider the appellant was a child when assessing his evidence and credibility. It is further arguable that the Judge misunderstood material evidence in respect of the contact between the appellant and his family with the Taliban. She also found that it is arguable that the Judge misapplied the country guidance and failed to take into account the objective evidence in relation to Afghanistan.

3. The First-tier Tribunal Judge in her decision made the following findings, which I summarise. The appellant's journey to the United Kingdom demonstrates the appellant's resourcefulness and resilience beyond his years. He brought with him on the journey very few possessions, but quite the most important must have been his family contact details. At his screening interview 6½ months after arriving in the United Kingdom he stated that he had a mobile phone. He made no mention of his phone or any contact with his family in his witness statement 13 months after that. He had his maternal uncle's number with him on his phone on arrival in the United Kingdom because he said that he had made a few phone calls to his maternal uncle and mother shortly after arrival. He claims that he lost the number then found it but then it stopped working. It is difficult to accept that the appellant would have come with such limited contact details with his extensive family. If he had retained contact with his family, his mother and maternal uncle would have been able to provide evidence to confirm his account of events in Afghanistan and Pakistan.
4. The appellant claimed to fear both the Taliban and the authorities in Afghanistan. The evidence he has given about his fear of the Taliban comes from his paternal uncle's history of his involvement with the Taliban and of his father's moment with the Taliban is inconsistent. He has stated that his father and uncles were with the Taliban from the beginning. He said that his father was still with them when the Taliban took him for training in the mountains. He has also said, however that his father refused to let the Taliban take the appellant for training and that was when he stopped being with the Taliban. The appellant has not satisfactorily explained the inconsistencies cited by the respondent concerning the death of his father. He was only a child when he left, and I do not accept that the Taliban would have means of interest in coming to know of his return.
5. The appellant's claimed fear of the authorities on return is predicated on the assumption that they knew of his father's previous involvement with the Taliban and would blame the child for the actions of the father. I have already alluded to the inconsistent role of his father in his account, but it is unclear how the authorities would have known of his father's previous involvement with the Taliban. When asked about this, the appellant replied that someone had probably reported his father do the authorities. It is not accepted that the appellant would be wanted for questioning on return as someone suspected of involvement with the Taliban.
6. The Judge rejected the appellant's claim that he has a genuine, well-founded fear of persecution on return to Afghanistan from either the Taliban or the Afghan

authorities. The appellant will be returned to Kabul and despite the worsening security situation highlighted in the expert and background reports, the Judge was satisfied that the position has not changed to the point where sufficiency of protection does not still exist. He cited the case of **AK (article 15 (c)) Afghanistan (CG) [2012] UKUT 00163**. I do not accept that a young man who has shown such a resourcefulness would have left without retaining some means of contacting his sister in Kabul where she lives with her husband. The husband is a Tailor and, although the infrastructure of Kabul is straining under the weight of its expansion with high employment, the appellant will be returning with family accommodation and enhance skills in the labour market.

7. Section 55 is no longer relevant because the appellant will be returned to Kabul as an adult. In any event his family are not in the United Kingdom with the exception of a brother with whom he is not in contact. He has developed certain skills and no doubt friendships in the United Kingdom but his private life here has always been developed in the knowledge that his stay has been temporary. He has no Article 8 claim which outweighs the public interest in the maintenance of a fair but firm immigration.
8. The grounds of appeal state the following which I summarise. The First-tier Tribunal Judge failed to treat the appellant as a child when assessing his credibility. The first-tier Tribunal Judge has misunderstood material evidence. The Judge has misapplied the relevant country guidance, failing to take into account the objective and supporting evidence. He has failed to give adequate reasons and failed to consider the appellant's best interest as a primary consideration.

Finding as to whether there is an Error of Law in the decision

9. The main complaint against the First-tier Tribunal Judge is that in his credibility findings the Judge did not take into account that the appellant was a child and should have considered his evidence accordingly. The Judge was entitled to find despite the appellant's age he demonstrated maturity and resourcefulness by travelling to the United Kingdom through several European countries which was beyond his 15 years of age which was the age that he entered the United Kingdom. There is no perversity and the conclusion that a 15-year-old who can travel by himself from Afghanistan to the United Kingdom was of sufficient maturity to be able to give consistent evidence.
10. The Judge did not take into account that the appellant was a child but nevertheless he was entitled to make adverse credibility findings. The judge found that he has given inconsistent evidence and two separate accounts of his father's death in his interview and in his witness statement. The Judge was entitled to find that the appellant's evidence about his father's death should be consistent given that it would be such an important event in his life.
This

11. The Judge did not find credible that the appellant at his screening interview 6½ months after arriving in the United Kingdom had stated that he had a mobile phone and yet made no mention of it or of any contact with his family in his witness statement 13 months after that. The evidence was that the appellant had his maternal uncle's number with him on his phone on arrival in the United Kingdom because he said that he had made a few phone calls to his maternal uncle and mother shortly after arrival in this country. The Judge did not believe the appellant's evidence that he lost the number, then found it but then it stopped working. The Judge was entitled to find that this evidence was not credible and found it difficult to accept that the appellant would have come with such limited contact details with his extensive family. There is no perversity in this reasoning given that the appellant was 15 years old when he came to this country and retaining his relatives telephone numbers would be very important for him.
12. The Judge found that the appellant had been inconsistent and gave two separate accounts of his father's death in his interview and his witness statement. These are clearly inconsistent accounts which the Judge was entitled to take into account notwithstanding that the appellant was 15 when he left the country. The Judge found that the appellant claims that he fears the Taliban as well as the authorities in Afghanistan.
13. The Judge found that notwithstanding the inconsistencies, that given that the appellant was only a child when he left Afghanistan and was entitled not to accept that the Taliban would have the means or interest in coming to know of his return to Afghanistan. This is a reasoned conclusion that the appellant's connection to the Taliban was through his father and uncle and the Taliban would have no interest with appellant on his return. The reason for refusal letter set out at paragraph 16 of the decision states that the objective evidence concerning the recruitment of child soldiers by the Taliban and with his father's profile within the group that he did not allow the appellant to join the Taliban. This evidence was accepted by the Judge.
14. The Judge did not accept for good reasons that the authorities would have found out about the appellant's father's previous involvement with the Taliban given the appellant's evidence that his father stopped the appellant being taken for training. The Judge did not accept that he would be questioned by the authorities on return to Afghanistan about his involvement with the Taliban. The Judge was also entitled to find that the appellant's claimed father's past involvement with the Taliban would not put him at risk. This was a valid conclusion based on the evidence before the Judge.
15. There is no indication that the Judge has misunderstood the evidence before him. He set out the appellant's case from paragraph 12-15 and it is clear from the decision that there is no error in his understanding of the facts of the appeal.
16. The Judge said that the appellant can be return to Kabul as he has a sister living there with her husband. He considered the 2012 country guidance case and stated that as a

young man who has shown such resourcefulness could relocate to Kabul and find a job due to his enhance skills in the labour market.

17. After this decision a new country guidance case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) has been promulgated which states in the headnote which I set out below.

“A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.

Internal relocation to Kabul

Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.

However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person’s age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.

A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh”.

18. Given the new guidance in the country guidance case on Afghanistan, I find that a differently constituted Tribunal would not come to a different conclusion based on the evidence in this appeal. The appellant is now a single adult male in good health and can relocate to Kabul safely even if he did not have anyone to support him. He does however have a sister living in Kabul with her husband. I do not accept the appellant’s argument that his sister lives with her husband and therefore will not be in a position to assist the appellant. No background evidence was provided which states that family members do not support each other in Afghanistan. In the appellant’s circumstances, based on the findings of the Judge it would not be unreasonable or unduly harsh for the appellant to internally relocate to Kabul.
19. I find that the first-tier Tribunal Judge has not made a material error of law in his decision. He was entitled to reach the conclusions that he did on the evidence before him. I find that the appellant’s appeal is no more than a quarrel with the First-tier Tribunal Judge’s findings and conclusion.

20. I therefore dismiss the appellant's appeal and uphold the decision of First-tier Tribunal Judge.

Notice of Decision

The appellant's appeal is dismissed

No anonymity direction is made.

Signed by

Dated this 3rd day of May 2018

A Deputy Upper Tribunal Judge
Ms S Chana