



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13334/2017

THE IMMIGRATION ACTS

Heard at Field House
On 23 May 2018

Decision & Reasons Promulgated
On 8 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

FA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Childs, Counsel instructed by J D Spicer Zeb Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Talbot dismissing his appeal against the refusal of the respondent to grant him asylum in the United Kingdom.
2. The appellant is a citizen of Afghanistan whose stated date of birth is 5 July 2001. He claimed asylum on 17 September 2015. His application was refused by the respondent on 8 December 2017. However, as the appellant was a minor, he was granted leave to remain in the UK until 5 January 2019.

3. The appellant claimed to be from a village in the province of Nangarhar in Afghanistan, where he lived with his parents and two younger brothers. There was a lot of Taliban activity in the area and about four months prior to leaving the country, the family home was hit by a stray rocket in a battle between the Taliban and Afghan forces. The appellant was in the house at the time with his parents and one of his brothers. They were all injured in the explosion and taken to hospital but his parents and brother passed away. The appellant was treated in hospital for injuries to his skull and his arm. He was operated on twice for the injuries to his arm, and his head needed six stitches. After leaving hospital, he went to his paternal grandfather's house to further recover.
4. After the incident, a letter from the Taliban was passed to the appellant's grandfather by his paternal uncle (who was a member of the Taliban), requesting that he should hand the appellant over to the Taliban so that he could avenge the death of his parents. Two months later his grandfather was given a second letter with a similar message. His grandfather did not act on this, which resulted in arguments between his grandfather and his paternal uncle. Because of his concerns about the appellant's safety, his grandfather made arrangements with an agent for him to leave the country.
5. Whilst in the UK he called his maternal uncle who lives here and he then moved in with him. He remained living with his maternal uncle until about one and a half months prior to the hearing before the First-tier Tribunal on 22 January 2018, when he was moved into semi-independent accommodation through social services.
6. Since coming to the UK, the appellant has had no contact with any family members in Afghanistan. His parents and one of his brothers were killed in the explosion. His other younger brother disappeared from the family house about a month before the incident. He has not been able to contact his grandfather. The only other family member that he is aware of in Afghanistan is his paternal uncle who is with the Taliban and who wanted the appellant to join the Taliban.
7. The appellant claimed that he would not be safe if he was returned to Afghanistan. He would be at risk from the Taliban and the state could not protect him. Also he would have no family support or accommodation. His paternal uncle would take him to the Taliban. His grandfather is elderly and the appellant has had no news about him and does not even know even if he is still alive.
8. In assessing credibility, the judge took into account Section 8, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. He reminded himself that allowance must be made for the fact that the appellant was still a minor.
9. The judge held that the appellant's account of his life in Afghanistan was a little sparse in terms of detail but was generally consistent. He was satisfied to the standard of proof required that the appellant was injured in an attack on his family home in Nangarhar province, which was struck by a rocket or a bomb. The judge said such an incident could not be considered at all implausible in a part of the country with a

history of active conflict between the Taliban and government forces. He noted that the appellant has never claimed that his house was deliberately targeted by either side.

10. The judge considered the appellant's claim that he had been unable to contact his grandfather since leaving Afghanistan. The judge had regard to the country guidance in **HK (Afghanistan) [2010] CG UKUT 378**. The judge did not accept the appellant's evidence regarding contact with his family. He said that having left Afghanistan in dramatic circumstances with the help of his grandfather, he would expect his grandfather to have made some arrangement for the appellant to pass a message to him when he was in a safe place. The judge did not also find it credible that the appellant would not have made every effort to contact his grandfather after his arrival in a safe country. If he did not have a telephone number or other such means of communication, he would have expected him to take early measures for assistance in contacting him. The appellant had indicated that he had first raised the matter with his social worker some twenty days ago and was currently awaiting his enquiries with the Red Cross. The judge did not find it plausible that the appellant would have waited over two years before raising this matter.
11. The judge also found it surprising that the appellant's maternal uncle, with whom he lived from his arrival in the UK until some one and a half months ago, did not attend the Tribunal hearing and did not even provide a witness statement. The appellant had said that his uncle was not aware of the Tribunal hearing. The judge did not believe this and found it damaging to the appellant's credibility that he did not provide any evidence from his uncle, who was likely to have had at least indirect knowledge of the appellant's family circumstances, given that they concerned his own sister's family.
12. In the light of the evidence the judge was not satisfied that the appellant had given a reliable account of his family circumstances in Afghanistan including his claim that his parents and one of his brothers were killed in the attack and his paternal uncle is a member of the Taliban.
13. In regard to the appellant's evidence that a demand was made by the Taliban for him to join them, and his claim that he had personally not seen the letters from the Taliban, and therefore was unable to produce any corroborative evidence either in the form of a letter from themselves or in a statement from the grandfather, the judge considered the country guidance in **HK (Afghanistan)**. It was acknowledged by the Tribunal that forced recruitment of young men aged 14 to 18 does occur but it quoted from a source that "*not all children are coerced and age, location and family patterns are all factors to be considered*". The judge was not satisfied that the appellant had given a true account of his family circumstances and was not on the limited evidence before him even to the lower standard of proof required, that his claim of attempted false recruitment by the Taliban could be relied on.
14. With regards to the appellant's claim that on return he would be at risk of forced recruitment by the Taliban, the judge again had regard to **HK (Afghanistan)**. He also had regard to more recent information contained in the Home Office Country Policy Note of December 2016. In the light of these reports the judge concluded that there

was no reason for him to depart from the country guidance on this issue in **HK (Afghanistan)**. On the basis of the specific evidence given by the appellant and on his findings on it, the judge was not satisfied that there would be a real risk to this appellant of forced recruitment by the Taliban.

15. In regard to the more general risks facing a returnee to Afghanistan, the judge bore in mind that the appellant was still a minor. The judge had regard to what **HK (Afghanistan)** said on this issue.
16. The judge accepted the security situation in Afghanistan and its associated risks was highly fluid and he therefore carefully considered the more recent country evidence that was before him which included the Home Office Country Policy and Information Notes dated December 2016 and August 2017. Having considered the more up to date materials before him the judge was not satisfied that the country situation had deteriorated sufficiently since the promulgation of **AK**, that this appellant would be entitled to international protection under Article 15(c) of the Qualification Directive or indeed under Articles 2 or 3 of the ECHR or that there were any specific factors relating to this appellant to justify coming to a different conclusion. The judge said that in drawing this conclusion he had taken into account the appellant's age and the fact that he does not reach his majority until 5 July 2019.
17. Ms Childs relied on the three grounds. Firstly, she argued that the judge made inconsistent findings as to whether the appellant's parents and brother were killed in the rocket strike on their home. Secondly, the judge failed to give adequate and proper reasons for disbelieving the appellant's evidence that there was an attempt to forcibly recruit. Thirdly, the judge failed to apply the benefit of the doubt to the appellant who is still a minor.
18. Ms Childs submitted that the judge accepted that the appellant's family home was struck by a bomb. The judge's finding that the family members were not killed required more to be said than what was said at paragraph 21, which was that the appellant has not given a reliable account of his family circumstances including his claim that his parents and one of his brothers were killed in the attack. Ms Childs said the judge needed to explain why he preferred one scenario over another. It was incumbent on the judge to explain why he did not accept that the appellant's parents were killed, given the high level of fighting in Nangarhar. She said the judge found that the appellant's account was generally consistent, so it was inconsistent as to why he made two contrasting findings.
19. Ms Childs said that the judge gave inadequate reasons on whether the appellant would be forcibly recruited or returned to Afghanistan. Firstly, the judge relied on the appellant's evidence as to why he had not tried to contact his grandfather earlier or why his uncle in the UK had not come to court and the fact that the appellant had only recently tried to locate his grandfather through the Red Cross but did not say why this evidence was not plausible. The appellant said his grandfather was old when he left.

20. As to why the appellant did not ask his uncle to come to the hearing, Ms Childs said the uncle was not in Afghanistan at the time of the incident. This should not lead to a finding that the Taliban would not try to forcibly recruit him given the objective evidence on this matter.
21. Ms Childs relied on the appellant's evidence that the Taliban had tried to recruit him by letter. She relied on the objective evidence and the COI Report, paragraph 5.1.1, which states that failure to be recruited can lead to a risk of being killed. She said the grandfather did not want the appellant to be recruited but the uncle did because the uncle was a member of the Taliban. The grandfather managed to get him out because the appellant was at risk of being killed. Ms Childs said the appellant's account was consistent with the COI Report. Gaps in a child's knowledge need to be considered because of his age. She said the judge did not give adequate reasons for making findings that went against the COI Report.
22. Ms Childs said there is no requirement for corroborative evidence in a case such as this. The appellant has done everything he can; he claimed asylum at the first opportunity, gave oral evidence and provided background information which supports his claim. If the information he gave was false, it was because he was a child and this needed to be considered as well.
23. Ms Childs said the appellant should have been given the benefit of the doubt because he was a child. Paragraph 339 was raised in the skeleton argument but this was not considered at all by the judge. In the case of KS the Tribunal held that when looking at an application by a minor, the Asylum Policy Guidance should also be considered.
24. Ms Everett argued that there were no errors of law in the judge's decision. She submitted that the judge gave cogent reasons at paragraphs 19 and 20 for not accepting the appellant's evidence regarding contact with his grandfather. It was a legitimate inference made by the judge that the uncle in the UK did not attend the hearing. There was nothing perverse about this decision. The judge was dealing with what contact the appellant had with family in Afghanistan. He did not find that the situation was as claimed by the appellant. The judge accepted that the house was bombed, that did not mean that the judge had to accept that his parents and brother were deceased.
25. With regard to forcible recruitment, Ms Everett accepted that there is no requirement for corroboration but the judge did not accept the appellant's claim about his family circumstances and did not accept that he had lost contact with his grandfather. The judge looked at the objective evidence on forced recruitment. Whilst he accepted that the Taliban do indulge in forced recruitment and use all sorts of incentives and coercive strategies, the judge did not accept that the appellant was at real risk that he would be forcibly recruited by the Taliban.
26. Ms Everett submitted that the judge at paragraphs 17 and 26 directed himself correctly in respect of the appellant's age.

Findings

27. I find that the judge did not make inconsistent findings on whether the appellant's parents and brother were killed in a rocket strike on his family home. The judge found that the attack on the family home in Nangarhar province by a rocket or bomb was plausible in a part of a country with a history of active conflict between the Taliban and government forces. It was because of the plausibility of this incident that the judge accepted that the appellant was injured in the attack. The judge was not required to accept that because the house was bombed his parents and brother were deceased.
28. The judge found that the appellant's account of his life in Afghanistan was a little sparse in terms of detail. In the absence of detailed evidence, the judge looked for other evidence which might assist him in assessing the credibility of the appellant's claim. The appellant said in the evidence that he was in the house at the time with his parents and one of his brothers when a stray rocket hit the family home. They were all injured in the explosion and taken to the hospital but his parents and brother passed away. There was no evidence produced by the appellant from the hospital to confirm that his parents and brother passed away. The only other evidence the judge could look at was what contact, if any, the appellant has had with his grandfather since his arrival in the United Kingdom. The evidence on this was again very sparse. The appellant had not made any contact with him for the two years he had been in the UK until some twenty days ago when he had raised the matter with his social worker and was awaiting enquiries with the Red Cross. I find that it was open to the judge in the light of the appellant's actions to find that the appellant had not given a reliable account of his family circumstances.
29. The judge also looked to the evidence about having stayed with his maternal uncle when he first arrived in the United Kingdom until some one and a half months ago. Again, the judge's finding on this matter was open to him. The appellant was a minor when he arrived in the UK and continues to be a minor. He had stayed with the maternal uncle for two years and yet the maternal uncle was not aware of the Tribunal hearing. It was open to the judge not to believe this evidence and find it damaging to the appellant's credibility that he did not provide any evidence from his uncle who was likely to have had at least indirect knowledge of the appellant's family circumstances, given that they concerned his own sister's family. I find no error of law in the judge's findings.
30. In regard to the issue of forced recruitment if he returned to Afghanistan, I find that the judge considered all the objective evidence on the matter. The judge relied particularly on **HK (Afghanistan)** which acknowledged that forcible recruitment by the Taliban cannot be discounted as a risk, particularly in areas of high militant activity or militant control. **HK (Afghanistan)** also said that not all children are coerced and age, location and family patterns are all factors to be considered. It was in the light of this decision that the judge considered that the appellant's family circumstances become relevant. As the judge found that the appellant had not given reliable evidence about his family circumstances, the judge's finding that his claim of attempted forced recruitment by the Taliban cannot be relied on was a finding open to the judge.

31. I was not persuaded by Ms Childs' argument that the judge failed to give the appellant the benefit of the doubt. Throughout the determination the judge was mindful of the appellant's age. At paragraph 6 the judge noted that the appellant was a minor and took into account the guidance given by the Court of Appeal in **AM (Afghanistan) [2017] EWCA Civ 1123** with regard to evidence given by children or young persons or other forms of vulnerable witnesses. The judge noted that a responsible adult was present in the courtroom, namely his key worker from Barnet Social Services. The judge said he was satisfied that the conduct of the hearing was fair and took due account of the appellant's age. At paragraph 17 the judge reminded himself that allowance must be made for the fact that the appellant was still a minor. At paragraph 26 the judge said he had taken into account the appellant's age in reaching his conclusions.
32. In the light of the evidence that was before the judge, I find that his decision does not disclose an error of law. The judge's decision dismissing the appellant's appeal shall stand.

Notice of Decision

The appeal is dismissed

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: 8 June 2018

Deputy Upper Tribunal Judge Eshun