



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

Appeal Number: PA/13545/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

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

**Decision & Reasons  
Promulgated**

**On 26<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MASTER H E  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Gaffer, Counsel

For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Afghanistan born on [ ] 1999. The Appellant's application for asylum was refused by a Notice of Refusal dated 22<sup>nd</sup> November 2016. That decision was appealed and came before Judge of the First-tier Tribunal Khawar sitting at Taylor House on 10<sup>th</sup> January 2017. In a decision and reasons promulgated on 13<sup>th</sup> February 2017 the Appellant's appeal was dismissed on asylum and human rights grounds and the Appellant was found not to be in need of humanitarian protection.

2. The appeal from that decision following a grant of permission to appeal by Upper Tribunal Judge McWilliam dated 31<sup>st</sup> July 2017 came before me to determine whether or not there was a material error of law on 22<sup>nd</sup> September 2017. At that hearing the Appellant appeared by his instructed Counsel Mr Butterworth and the Secretary of State by her Home Office Presenting Officer Mr Nath. At a preliminary issue Mr Butterworth produced to the Tribunal a letter dated 22<sup>nd</sup> November 2016 from the UK Visa and Immigration Asylum Operations Department Croydon which purported to grant refugee status to the Appellant. This was the first time that Mr Nath had had sight of this document. It was agreed that if the document was correct then the proceedings before Judge Khawar in January were a nullity. It was relevant and of interest to note that both the Notice of Refusal and the grant of refugee status were issued on the same day and had the same reference number. Mr Nath sought an adjournment so as to determine the exact status of the Appellant. He acknowledged that in the event that the Appellant had been granted refugee status then the correct process would be for him to apply to withdraw the appeal. He did point out that there were other possible scenarios.
3. In such circumstances I made directions. These in essence were:
  - (i) that the Appellant's appeal stood adjourned;
  - (ii) that the Secretary of State must advise the Tribunal as to whether or not the Appellant has or has not been granted refugee status and in the event that the Appellant had not been granted refugee status then the Secretary of State must set out in writing the reasons why their letter of 22<sup>nd</sup> November 2016 was written;
  - (iii) that in the event it was conceded that the decision of the First-tier Tribunal Judge was a nullity that the Secretary of State would forthwith withdraw the Notice of Refusal and the decision of the First-tier Tribunal Judge would be set aside;
  - (iv) that in the event that it was contended by the Secretary of State that the Notice of Refusal was valid and remained in force the matter would be relisted before me and that Mr Nath would attend the restored hearing.
4. It is on that basis the matter comes back before me. It is conceded firstly that Mr Nath is not in attendance and secondly that no further steps have been taken by the Secretary of State. None of this is the fault of Ms Everett.
5. I am gratefully assisted by the contribution made at this stage by Mr Gaffer on behalf of the Appellant. He has conceded that there was an error in interpretation and that what was issued was a grant of leave on account of the Appellant being an unaccompanied minor, and that it was an error to indicate or construe that he had been granted refugee status. In terms of legitimate expectation it is accepted that the Appellant is

aware that he has been refused. On that basis despite the fact that no specific documentation has been provided to the Tribunal in accordance with my directions nor that Mr Nath is present it is agreed that the matter should proceed today without further adjournment as an error of law hearing. The Secretary of State is now represented by Ms Everett and the Appellant by Mr Gaffer. A previous anonymity direction had been made and no application is made to vary that order and it will remain in place.

### **Submissions/Discussions**

6. Mr Gaffer relies on the Grounds of Appeal. He submits the First-tier Tribunal Judge has failed to address the issues set out in *AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)* and that individuals could not be returned to certain dangerous districts in Afghanistan which are under Taliban control. He specifically relies thereon on paragraph 244 which states:

“In relation to Ghazni, however, we note that it is accepted that there are significant numbers of districts in that province under Taliban control (although not the city itself) and we do not exclude that, for most civilians in such districts that is a factor that may make it unreasonable for them to relocate there, although that is not to say that a person with a history of family support for the Taliban, would have difficulties; much will depend on the particular circumstances of the case. Outside Taliban control districts, however, we do not find that internal relocation would in general be unreasonable.”

7. He submits that the judge was under a duty to consider whether the Appellant’s province and district was under effective Taliban control and thus whether it was unreasonable for the Appellant to return there. He submits that paragraph 44 of the decision does not address this pointing out that the judge does note that the Appellant comes from Ghazni but she does not consider at any stage whether in line with country evidence as required by *AK* that the Taliban have effective control of the area and that she fails to do so despite noting that the Appellant alleges that his family are not safe in their village in Afghanistan due to Taliban influence in the area. He submits therefore that there has been failure of anxious scrutiny and that there is consequently a material error of law that makes the decision unsafe.
8. Secondly Mr Gaffer submits that there has been inadequate consideration by the judge as to whether internal relocation was safe or reasonable. He notes that the First-tier Tribunal Judge found at paragraph 55 that internal relocation to Kabul would be available and that the Appellant has family members who would be able to assist him if he returned. He submits that the judge has failed to make findings and that there is a lack of evidence that the Appellant’s extended family would be willing and able to provide genuine support to the Appellant in practice.
9. Finally he turns to the finding that the judge held that the Appellant was not at risk of being kidnapped and that his account was incredible in this

regard. On the other hand he notes the judge appeared to accept that the Appellant's brother-in-law was wealthy. He considers that the judge has at paragraph 50 made only limited findings relating to the oral evidence of Mr A and submits that it is hard to see what the judge was actually saying and that it is difficult to see what other evidence the Appellant could have produced.

10. In response Ms Everett points out that the judge found the Appellant's testimony not to be credible and he gave cogent reasons for this which are mainly unchallenged. She notes that the judge rejected the Appellant's account in its entirety. So far as the issue of return is concerned as addressed by the judge in paragraph 55 Ms Everett submits that the judge looked at the issues in the alternative and accepted the position as set out within the reasons of refusal letter. The issue of the Appellant coming from a family of wealth was that the judge accepted that money would be available and that the case had not been made out that the Appellant was at risk of kidnapping. She submits that the judge has done sufficient.
11. In brief response Mr Gaffer submits that the credibility findings at paragraph 50 (regarding the issue of ransom) infect the remainder of the credibility findings and the judge had failed to give due and proper consideration to paragraph 244 of AK.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings on Error of Law**

14. The starting point in this decision are the judge's findings on credibility. The judge made adverse findings of credibility. She has given cogent reasons. I accept that a proper approach to credibility requires an assessment of the evidence and of the general claim and that in asylum claims relevant factors will be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. I further accept that it is theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. In this case the judge has carried out a detailed and analytic approach culminating in her conclusion at paragraph 54 whereby she concludes that the Appellant has failed to submit satisfactory evidence to establish even to the standard of a reasonable degree of probability that his factual account is true.
15. I note the challenges made by Mr Gaffer. I am not satisfied that they show material errors of law. The judge has looked at the factual situation of this particular case, and analysed deeply the issues of risk of kidnapping and a risk of return. Ultimately the finding of adverse credibility is well reasoned and one that the judge, who heard the evidence, was entitled to reach. In such circumstances it is hard to see that the submissions of Mr Gaffer amount to little more than disagreement with the decision of the First-tier Tribunal Judge. Consequently I find that the decision discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

## **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and the anonymity order will remain in place.

Signed

Date 23 February 2018

Deputy Upper Tribunal Judge D N Harris

## **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris