



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

Appeal Number: PA/04521/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 1 November 2019**

**Decision & Reasons Promulgated
On 7 November 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**H K A
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M J Azmi of Counsel, instructed by the Central England
Law Centre

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge French promulgated on 31 July 2019, in which the Appellant's appeal against the decision to refuse his protection and human rights claims dated 2 May 2019 was dismissed.
2. The Appellant is a national of Afghanistan, born on 1 January 1999, who arrived in the United Kingdom and claimed asylum, whilst a minor, in

2016. Prior to determination of his protection claim, there was a positive conclusive grounds decision that the Appellant had been a victim of modern slavery for a period of 7 to 8 months in Turkey, where he was compelled to work in a factory; during his travel from Afghanistan, ultimately to the United Kingdom.

3. The Respondent refused the application the basis that the Appellant's claim to be at risk on return from the Taliban, having been wanted by them at the age of 12 or 13, was inconsistent and not credible. It was not accepted that the Appellant was of any interest to the Taliban, he was from a government-controlled area, he had family in Afghanistan and the option of internally relocating. In relation to human rights, the Appellant had not established family life in the United Kingdom and would not face any significant obstacles to reintegration on his return to Afghanistan. The Appellant did not meet the high threshold for a grant of leave to remain on medical grounds. There were no exceptional circumstances identified to warrant a grant of leave to remain and the Appellant was no longer an unaccompanied asylum seeking child, but an adult.
4. Judge French dismissed the appeal in a decision promulgated on 31 July 2019 on all grounds. The Appellant's account was found to include major inconsistencies and was implausible and it appears that the First-tier Tribunal found as damaging the Appellant's credibility his failure to claim asylum in the 5 to 6 month period that he was in France before coming to the United Kingdom. In relation to human rights, the Appellant's return to Afghanistan would not be a disproportionate interference with his right to respect for private life, he spoke a language commonly spoken in Afghanistan and had family there, contrary to not having established a private life in the United Kingdom.

The appeal

5. The Appellant appeals on two main grounds. First, that the First-tier Tribunal materially erred in law in failing to take into account the Appellant's age at the time of events which he claims occurred in Afghanistan, when he was around 12 or 13 years of age and that he was still a minor, who had been the victim of modern slavery on his journey from Afghanistan to the United Kingdom; such that this should not form the basis of any adverse credibility findings about passage through safe third countries. The Appellant was not educated in Afghanistan and claims to have mental health problems, which were detailed and letter from his GP dated 12 July 2019. The First-tier Tribunal referred briefly to the medical evidence, but failed to make any allowance for the Appellant's age, history or mental health when reaching adverse credibility findings and ultimately dismissing the Appellant's asylum claim. Further, the First-tier Tribunal fails to identify the major inconsistencies in the Appellant's claim that were relied upon and the findings made on plausibility failed to have any reference to context or the objective evidence.

6. Secondly, in relation to internal relocation, the decision of the First-tier Tribunal extends to one line only and failed to give any consideration to the Appellant's particular circumstances. Linked to this issue, when considering whether there would be any significant obstacles to the Appellant's reintegration in Afghanistan, the First-tier Tribunal materially erred in law in failing to have any regard to the Appellant's personal circumstances, traumatic experiences during his journey, his mental health and the impact of all of the circumstances on his ability to reintegrate.
7. At the appeal hearing, Mr Tarlow on behalf of the Respondent did not oppose a finding that there was a material error of law in the decision of the First-tier Tribunal for the reasons identified by Mr Azmi, set out above.

Findings and reasons

8. As properly and appropriately accepted by Mr Tarlow behalf of the Respondent, I find a material error of law by the First-tier Tribunal in its assessment of the Appellant's credibility, as well as its assessment of the prospects of internal relocation and whether there are any very significant obstacles to reintegration in Afghanistan.
9. The decision of the First-tier Tribunal is relatively brief given the nature of the issues raised in the appeal, with findings extending to only five paragraphs. The first of those paragraphs deals essentially with the submissions made on behalf of the Appellant, including the issue of whether inconsistencies in the Appellant's account were due to his youth and/or mental health problems. The Appellant's age is not expressly dealt with by the First-tier Tribunal at all, there being no recognition of the Appellant's age or background when considering the credibility of his claim or whether inconsistencies were accounted for by his age at the time that events occurred and at the time of his claim for asylum when he was still a minor. In relation to mental health, the First-tier Tribunal simply state that there has been no formal diagnosis of a mental health condition nor care from a mental health specialist, without any express consideration or rejection of the evidence in the letter from the Appellant's GP. Although there may be reasons why that evidence carried little weight, it was simply not dealt with nor any findings made on it at all. Both age and mental health are matters which should expressly be considered in the assessment of the Appellant's credibility in accordance with the Joint Presidential Guidance Note to of 2010 and Practice Direction, First Tier and Upper Tribunal, "Child, Vulnerable Adult and Sensitive Witnesses"; however this is not referred to at all by the First-tier Tribunal.
10. Although in the reasons for refusal letter, the Respondent did not make any adverse credibility findings against the Appellant on the basis that he had failed to claim asylum in a safe third country prior to his arrival in the United Kingdom, in paragraph 6 of the decision of the First-tier Tribunal,

there appears to be such a finding against the Appellant for failing to claim asylum in Bulgaria, Hungary or France. Aside from being contrary to the Respondent's position, the First-tier Tribunal failed to make a proper assessment of whether there was a "reasonable opportunity" to make asylum claim in a third country and if so, the weight to be attached to such failure, as required in accordance with the decision in KA (Afghanistan) v Secretary of State for the Home Department [2019] EWCA Civ 914.

11. In paragraph 7 of the decision, the First-tier Tribunal found that there were major inconsistencies in the various accounts provided by the Appellant, however not a single inconsistency is identified within the body of the decision. Further, the decision fails to record the Appellant's evidence or account even in summary. The remainder of the paragraph relies on much of the Appellant's claim being implausible, with only two examples being given, first that the Taliban would have searched for the Appellant in his uncle's house and would have killed him rather than given a warning to his mother, and secondly that it was implausible that the Appellant would not have had the opportunity to claim asylum in France. The reason for the first finding on plausibility is expanded upon in paragraph 9 of the decision but without reference to the background evidence.
12. In relation to human rights, the First-tier Tribunal found that the Appellant had not established a private life in the United Kingdom, that he failed to meet the requirements of paragraph 276ADE of the Immigration Rules and that he would not be deprived of a family life if he went back to Afghanistan, where he had family, where he spoke the language and had spent the majority of his life. In circumstances where the Appellant had been in the United Kingdom with the support of social services from his entry as a minor in 2016, there is a lack of reasons from the First-tier Tribunal to support the finding that he had not established any private life at all for the purposes of Article 8 of the European Convention on Human Rights. Further, there is little more than a bare assessment of the Appellant's circumstances, with no reference to his age or mental health as to his ability to reintegrate in Afghanistan; and no detailed assessment of the option of internal relocation.
13. For all of these reasons, the grounds of appeal identified by the Appellant establish material errors of law by the First-tier Tribunal such that it is necessary to set aside the decision. Given the nature of the errors which focus on credibility findings, it is appropriate to remit the appeal to the First-tier Tribunal for a de novo hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remitted to the First-tier Tribunal (Birmingham hearing centre) to be heard de novo before a Judge except Judge French.

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
2019



Date 4th November

Upper Tribunal Judge Jackson