



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/02627/2019

THE IMMIGRATION ACT

**Heard at Field House
On 6th December 2019**

**Decision & Reasons
Promulgated
On 14th January 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**SJ
[Anonymity Direction Made]**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Fitzsimmons instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr D Clarke Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Carroll on the 28th August 2019 whereby the judge dismissed the appellant's appeal against the decision of the appellant to refuse the appellant's claims based on international protection and Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. The appellant is a minor. I consider it appropriate in the circumstances to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Plimmer on 28th October May 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-
 1. *It is arguable as contended in the grounds of appeal that the First-tier Tribunal ('FTT') failed to engage with the submissions (as detailed in the skeleton argument before it) that the appellant's responses during interview were not fairly addressed, in light of the appellant's age and mental health.*
 2. *The grounds of appeal are arguable and permission to appeal is granted*

Grounds of appeal

5. The grounds of appeal raise a number of matters. In the first instance challenge appears to be made to the manner in which the asylum interview was conducted with the appellant seeking to allege that the individual who interviewed the appellant did not have specific knowledge of the psychological, emotional and physical development and behaviour of children. It is submitted that before coming to a decision the respondent had failed to consider the appropriate approach in relation to minors given the age of the appellant and his maturity as required by paragraph 215 of the handbook.
6. The judge thereafter in assessing the credibility of the appellant's account had failed to take into account the procedural failures in relation to the appellant, who it is asserted was extremely young. The judge it is alleged has failed to consider the arguments and failed in particular to consider what if any weight should be given to the respondent's assertions of inconsistencies given the failings.
7. In effect the challenge was being made to the conduct of the interviews with the appellant and the approach of the judge to those interviews.
8. In seeking to develop the arguments reference was made to the policy document issued by the respondent titled Children's Asylum Claims version 3 and specific reference was made to the welfare form and to the conduct of interviews.
9. Within the decision the judge has noted that the appellant did not give evidence before him. The judge thereafter indicates that he takes full account of the appellant's age. Prior to that the judge has noted the report of Mr T Green, the psychologist. The judge has specifically noted the comments by the psychologist and the formal

diagnosis of post-traumatic stress disorder. The psychologist had suggested continued engagement of the appellant with the Child and Adolescent Mental Health Services team.

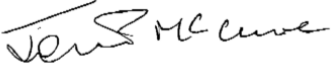
10. In considering the approach to be taken to the appellants evidence, which appeared in the interviews and in his statement the judge had clearly assessed and considered the appellant's age and the report by the psychologist.
11. Criticism is raised of the interview suggesting that the guidance in the policy notes had not been followed. The representative for the respondent suggested that the approach was effectively picking parts of the judgement to support a point, whilst ignoring others.
12. The examination of the appellant's account begins with a witness statement which had been submitted by the representatives. The judge examined inconsistencies within the witness statement. The first reference to the interview comes at a stage where it has been discussed whether the appellant had referred to the weapon he was being trained with as the machine or as a Kalashnikov. The primary issue with regard to that is that the representatives had written to the respondent to indicate that the appellant wanted to say he had been taught how to use a Kalashnikov. That is the solicitors writing to the respondent not an issue that was arising within the interview itself. In the witness statement the inconsistency was explained by reason of the fact that it was the Home Office interpreter who had use the term Kalashnikov.
13. The judge points out that this is not correct. The name of the weapon had arisen from the appellant's solicitors, ostensibly as a result of instructions that they had. The judge had accurately noted the source of the evidence and the reason for questioning whether the appellant was giving a consistent or credible account. It was a matter that the judge was entitled to take account of in assessing the credibility of the appellant's account.
14. Issue is taken with the fact that the judge had referred to parts of the Welfare Form for Unaccompanied Children. The issue related to whether or not the appellant had had contact with members of his family since leaving Afghanistan. In the welfare form the appellant had referred to his mother having remarried since he left Afghanistan. No issue had been taken with the document being in the Home Office bundle and no effort to seek to correct anything that was wrong within it. At the hearing the judge had sought clarification through counsel and the appellant had challenged that he had ever said that. However the judge went on to point out that the appellant's interview and what he had said to the psychologist were in any event not consistent. Whilst the solicitors had made detailed submissions with regard to matters challenged in the interview, no challenge should be made to the welfare form being included respondent's bundle or to what was said in the welfare form. What the appellant

said in his statement and what he said to his psychologist were in any event inconsistent and the judge was entitled to take that into account in assessing the credibility of the appellant.

15. The judge has gone on to make other points with regard to the appellant's credibility. These are clearly set out in paragraph 9 subparagraphs A to G. The judge has carefully examined the accounts given by the appellant both in interview, in his statement and to the psychologist. The judge has given valid reasons for finding that the accounts were inconsistent.
16. In assessing whether or not the account was credible the judge has taken account of the age of the appellant and taking account of the fact that the appellant as found by the psychologist was suffering from post-traumatic stress disorder. However even taking that into account the judge has given valid reasons for reaching the conclusions that he has.
17. Within the grounds of appeal it is claimed that the appellant in any event should be entitled because of the circumstances that exist in Afghanistan to protection by reason of the fact that he has an unaccompanied minor. Reference is made within the grounds to paragraph 48 of the case of AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC). The conclusion arising it is claimed from that is that there is a bleak picture of the children who returned to Afghanistan and do not have family that would care for them. The judge has noted that the appellant has referred to an uncle that assisted him to leave Afghanistan and who also has assisted the appellant's mother and brother to move to a safe place. The judge was satisfied that the appellant therefore had family members upon whom he can rely to care for him. The judge having concluded that the appellant had not lost contact with his family was satisfied that the appellant should not be considered as an unaccompanied minor returning to Afghanistan. The judge has given valid reasons for finding that there were family members that would be able to meet him and care for him.
18. As a final matter issues have been raised with regard to the fact that the appellant according to psychologist report should continue to receive support and that his mental health would deteriorate if returned to Afghanistan. In part however that is dependent upon the appellant being vulnerable to coercion, manipulation and bullying. Given that the judge has found that family members would be able to care for the appellant and that would provide him with accommodation and security, the judge has fully justified the conclusion that the appellant was not entitled to international protection or relief otherwise under the ECHR.
19. For the reasons for set out I find that there is no error of law in the decision and I uphold the decision to dismiss the appeal on all grounds.

20. Notice of Decision

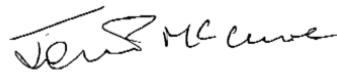
21. I dismiss the appeal on all grounds.

Signed 
Deputy Upper Tribunal Judge McClure

Date 13th January 2020

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings

A handwritten signature in black ink, appearing to read 'James McClure', written in a cursive style.

Signed

Date 13th January 2020

Deputy Upper Tribunal Judge McClure