Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03622/2018

THE IMMIGRATION ACTS

Heard at Birmingham Justice Centre, Priory Courts	**Decision & Reasons Promulgated**
On 5th February 2020	**On 2nd March 2020**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Z A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Toora (Counsel)
For the Respondent: Mr C Howells (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Young-Harry, promulgated on 8th August 2019, following a hearing at Birmingham Priory Courts on 21st June 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Afghanistan, was born on 22nd May 1998, and is a male. He appealed against the decision of the Respondent, dated 1st March 2018. The decision refused the Appellant's claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that the Taliban in Afghanistan had a specific interest in him because his elder brother worked for the Afghan Government and the army. The Taliban therefore threatened him. They came to his home to search for him on two occasions. The Appellant's father told them he was not in. Eventually they abducted him. He was detained. He escaped. He returned back to his home, and from there he was able to flee and come to the United Kingdom and make his application for asylum and humanitarian protection.

The Judge's Findings

4. The judge did not accept the Appellant's claim to be a credible one for a whole range of reasons. These reasons are set out in the determination from paragraphs 12 to 33, together with a firm confusion on those reasons reached at paragraph 34.

5. The judge quite simply does not accept the Appellant's claim that, whereas the Appellant's argument was that the Taliban were interested in him despite the fact that his elder brother was left unmolested on grounds that he works for the Afghan Government, that they took no interest in his father either. The judge did not find it credible that the Taliban left his father equally unmolested as his elder brother. As the judge concluded, "This simply does not follow" (paragraph 12).

6. It was moreover held that the Appellant could not explain why his elder brother continued to work for the Government and the army despite the fact that threats were received and two visits were made to the family home (paragraph 13). Furthermore, the judge was concerned that on a number of occasions the Appellant changed his evidence, and had earlier claimed in a screening interview that his brother had been in the army for three-and-a-half years before his problems began. However, he then changed his evidence, when he found that this did not assist his claim, to stating that his problems began a few months after his brother joined the army (paragraph 14).

7. The judge went further on to say that as far as the Appellant's account of his abduction was concerned, this was not credible because he had stated that his mobile phone was left with him when he was abducted, because he kept his phone in his pocket, so that when he was taken away he still had the phone on him. It was also held that "The Appellant would have

me believe that it was normal for him to sleep with his mobile phone in his pocket; I do not accept this" (paragraph 15).

8. The judge went on to say that the Appellant even stated that there were other detainees at the camp and that they:-

> "also had their own phones with them, however their SIM cards were removed, as the Appellant's was when he arrived. I find this unusual. The Appellant could not explain why detainees would have phones with them at all, given their predicament" (paragraph 16).

9. There was additionally a finding by the Judge that the Appellant changed his account when, just two or three days at the camp following his detention, he claimed not to have been subject to supervision which allowed him to move freely and then eventually to escape (paragraph 18).

10. Once he had escaped he claimed to have run for a whole hour from the camp before he encountered a taxi , "yet no-one chased him", and the judge did not find it credible that his captors could not catch up with him (paragraph 19). It was not found as credible that no-one came looking for the Appellant (paragraph 20) after that. The expert report by Dr Giustozzi states that the Taliban did not ordinarily recruit people by force. They used subtle methods. They added people to their "blacklist", but they gave them at least one warning, and sometimes up to five warnings, and the factor was that the Appellant's name was not consistent with what Dr Giustozzi had stated (paragraph 22). For these reasons, the appeal was dismissed.

Grounds of Application

11. The grounds of application which are cumbersome and badly drafted, state that the judge made credibility findings on the basis of the account given by a 15 year old Appellant who had been kidnapped by the Taliban, and in circumstances where the judge ended up imposing his own views as to what may or may not have happened at a camp in Afghanistan, which was a misuse of his judicial authority.

12. On 14th October 2019 permission to appeal was granted on the basis that it was arguable that the operative reason of the judge was based upon her view of the plausibility or inherent likelihood of the Appellant's case. It was, however, trite that in asylum law that judges should be slow to impose their own cultural expectations on the actions of people in a very different context. The judge arguably did this in relation to whether the Afghan boy would be allowed to sleep with his mobile phone in his pocket at night, and as to whether detainees at a Taliban camp would be able to retain their mobile phones SIM-free (at paragraph 16). The judge also arguably imposed her own expectation on the Appellant's abductors and what his knowledge of them would be (at paragraph 27).

Submissions

13. At the hearing before me on 5th February 2020, Mr Toora, appearing on behalf of the Appellant handed up a skilfully drafted skeleton argument which he placed reliance upon.

14. In essence what the skeleton argument stated was that the Appellant was a 15 year old Afghan boy, and the judge's findings of fact in relation to this evidence were unwarranted because there were a host of authorities such as **SM [2005] UKAIT 00116**, which worked to the effect that the judge has to look at all the evidence in the round, and to try and grasp it as a whole, in order to see how that fitted together, rather than to look at it piecemeal.

15. There was also the case of **KS [2014] UKUT 00552**, where the Tribunal had held that the "benefit of the doubt" applied in asylum cases and should be given proper effect so that there is a "positive role for uncertainty". Insofar as it was suggested that the Appellant had told "lies", and that this impacted on the credibility of the Appellant, attention should be drawn to **MA (Somalia) [2010] UKSC 49**, where the Supreme Court had held that "So the significance of lies will vary from case to case. In some cases, the AIT may conclude that a lie is of no great consequence ….".

16. Mr Toora submitted that that was the position here. Secondly, he went on to argue that the judge placed a burden on a 15 year old boy to explain aspects of the claim that he would have had little knowledge about. For example, it was said that the Appellant had failed to explain why the Taliban should have a specific interest in him and not in the rest of his family (paragraph 12). Furthermore, the Tribunal had wrongly put the burden on the Appellant to explain why his brother continued to work for the Government and the army despite threats received in two visits to the family home by the Taliban (paragraph 13). In the same way, the judge failed to consider the lack of documentary evidence of his brother's employment with the army (at paragraph 18). The judge was also wrong in stating that "after only 48 hours following his kidnapping, his captors would no longer be closely supervising him" did not appear to be at all credible.

17. For his part, Mr Howells submitted that there was no Rule 24 response here. Although permission was granted on the basis that the judge had arguably erred by imposing her own "cultural expectations on the actions of people in a very different context" the fact was that the judge had made credibility findings from paragraph 12 onwards and there were also several material inconsistencies in the Appellant's own evidence, together with his changing his evidence dramatically, which formed a proper basis for the judge to conclude as she did. It was also incorrect to say that the judge had not taken into account the fact that the Appellant was a 15 year old child, because the judge at the outset (at paragraph 8) had highlighted this very fact. Finally, even if the Appellant was to be believed in every way, the judge had drawn attention to the case of **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118**, which confirmed that the

Appellant can safely return to Kabul. Therefore, internal relocation was available to the Appellant.

18. In reply, Mr Toora submitted that it was impossible to know why certain events took place as they did. For example, if the Taliban took SIM cards out of the telephones of the detainees, it was not possible to know whether they intended to use these SIM cards, and it was not possible to know what their own reasons were for this. The fact was that the Appellant was abducted. He was taken to a Taliban camp. He was able to escape in the manner that he has properly explained, and he was then able to return home from where he fled to the UK. Finally, the Appellant could not return to Kabul as was being suggested by the judge (at paragraph 34) because as his witness statement makes clear (at paragraph 12) he is known in Kabul and was without any relatives or material support. He has to rely on other people.

No Error of Law

19. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision and remake the decision. I come to this conclusion notwithstanding Mr Toora's welcome balanced skeleton argument before me and the submissions that he has made. My reasons are as follows.

20. First, although permission was granted on the basis that it was trite in asylum law that judges should not impose "their own cultural expectations on the actions of people in a very different context", I fail to see how that is the case here. The criticism in this regard is specifically in relation to the Appellant being allowed to keep his telephone with him (at paragraph 15). However, this has to be read in conjunction with the next statement, namely, that there were other detainees at the camp who "also had their own phones with them, however their SIM cards were removed, as the Appellant's was when he arrived".

21. The judge was entitled to conclude that this was indeed "unusual". It was unusual because the Appellant was dealing with a particularly brutal regime. It was open to the judge to conclude that it did not make sense why great effort should be taken to remove the SIM cards but then have the telephones themselves returned to their owners. However, the matter does not just rest there. The entirety of the Appellant's claim has to be looked at and the findings by the judge have to be placed in that context.

22. In this regard, what the judge concluded was not a cultural imposition of his own views on that of the Appellant at all. The Appellant's account was that his family had been visited on two occasions and they had been threatened. Yet, his elder brother continued to work for the Afghan Government and his father was not at any risk at all. The judge was entitled to conclude that "This simply does not follow" (paragraph 12). The Appellant's brother continued to work with the army and the Afghan

Government (paragraph 13) and the judge was entitled to conclude that this also was not indicative of any threat being levied at the Appellant. The Appellant had also changed his evidence (paragraph 14 and paragraph 18). The account given by the judge that the Appellant was able to escape after 48 hours of abduction with no-one coming looking after him (at paragraph 20) was one that was open to the Appellant.

23. However, most importantly, the fact that the judge makes her findings of fact by reference to the expert report of Dr Giustozzi, that the Taliban operate by ordinarily recruiting people by subtle methods, rather than by force (at paragraph 22) was one which the judge was entitled to come to. Although Mr Toora properly refers me to a list of cases where it has been held that a decision maker must take a cautious approach to making findings of fact in such context, and especially where a child is concerned, I see no evidence that the judge has not done exactly that. The findings made by the judge were ones that were open to her.

24. In conclusion, I note that Mr Toora in his reply to Mr Howells, had said that the Appellant could not be returned to Kabul because he had no family support network there. However, the judge rejected this. He held that:-

> "I find that the Appellant does have a family support network in Afghanistan. On his return to Kabul, the Appellant and his family can make the necessary arrangements to have him return to Baghdad to join his family. In the alternative, the appellant can remain in Kabul, where he will be safe and can be assisted by his family in establishing himself there" (paragraph 34).

That conclusion too was open to the judge.

Notice of Decision

25. The decision of the First-tier Tribunal does not amount to an error of law. The decision shall stand.

26. An anonymity direction is made.

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 his 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

Deputy Upper Tribunal Judge Juss 13th February 2020