



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04018/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 November 2019

Decision & Reasons Promulgated  
On 27 February 2020

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

AA  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Fisher, Counsel, instructed by Lamptons Solicitors  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Afghanistan who gives a date of birth of 2 July 2000, although the respondent has asserted that his date of birth is 20 October 1992. A decision was made on 1 March 2018 to refuse his protection and human rights claim. He appealed against that decision and his appeal came before First-tier Tribunal

Judge Wood (the FtJ) at a hearing on 8 July 2019 following which the appeal was dismissed on protection and human rights grounds.

2. Permission to appeal having been given by a judge of the First-tier Tribunal, the appeal came before me.
3. The essence of the appellant's protection claim, and the basis upon which the appeal was advanced before the FtJ, was that in Afghanistan the appellant had a relationship with his step-sister who became pregnant. The appellant's father found out and his step-sister was killed. The appellant was himself beaten and ran away. He claims that his life would be in danger from his father, the Taliban or the Afghan authorities if he returns to Afghanistan. He had received threats from the Taliban in a letter given to his brother.
4. After the hearing on 13 November 2019 I arranged for the matter to be re-listed in the light of the fact that neither party made submissions at the first hearing in relation to the Immigration Officer's statement or report dated 27 November 2018. Amongst submissions made on behalf of the appellant was the contention that the qualifications of the Immigration Officer to give expert opinion about the authenticity of a document were not apparent. His qualifications, expertise and experience are in fact set out in the 27 November 2018 report.
5. I now summarise the FtJ's decision before setting out the grounds on which it is challenged.

*The FtJ's decision*

6. At [15] the FtJ referred to the appellant's credibility being a major issue, noting that that involved issues relating to his age and as to the provenance of his tazkera ID document.
7. At [26] the FtJ said as follows:
 

“... it has been necessary to discuss individual issues in apparent isolation of others. However, my analysis of the appellant's credibility has been based on the evidence as a whole”.
8. Dealing with the appellant's disputed age, which the parties agreed was a key issue, he referred to the appellant having repeatedly stated that he was born on 2 July 2000 and was (at the date of hearing) 19 years of age, whereas the respondent's case was that he was born on 20 October 1992 and was therefore 26 years of age. The FtJ referred to the evidence relied on by the respondent which included an application for entry clearance made by the appellant in 2010 which the appellant accepted was made in respect of him. The FtJ said that that was an important admission. He noted that the appellant was fingerprinted for the purposes of the application, which is how it came to be linked with his claim for asylum in 2016.
9. Explaining further, the FtJ said that it was important because the application was made in a different name (the details of which are in the FtJ's decision) and date of

birth. Based on those details, the appellant would have been 17 at the time when the application for entry clearance was made on 23 August 2010, refused on 26 August 2010. It was a Tier 4 (General) Student application, which the judge noted was therefore on the basis that the appellant was at least 16 years of age. The FtJ concluded that the nature and timing of the application made perfect sense if the appellant was born in 1992, going on to add that there was evidence that the appellant was intelligent. He concluded, however, that it was difficult to reconcile that application with the suggestion that the appellant was born in 2000 because he would have been 10 years old at the time of the application in that case. Thus, it would have been obvious to anyone at the port of departure or arrival that the application had been made on a false premise and would have been bound to fail. It would have been a complete waste of the considerable application fee, and the time and money spent on the agent (if one was used) the FtJ said.

10. The FtJ referred to submissions made on behalf of the appellant to the effect that although there were other types of application which might have been better suited to a 10 year old, for example a Tier 1 Child, they have more onerous requirements. It was also submitted that an unscrupulous agent would not be concerned about the basis upon which entry clearance was obtained. Thus, the submission continued, once a minor was in the UK, some other more appropriate application could be made. However, the FtJ said that he did not accept that explanation, commenting again that the application made in 2010 was “entirely consistent” with the date of birth of 1992 and wholly inconsistent with a date of birth of 2000. He concluded that it was implausible that the application would have been made on behalf of a 10 year old.
11. As to the appellant’s explanation that he played no part in the making of the application and was unaware of it at that time, that explanation was not credible if the appellant was 17 years of age.
12. At [32] the FtJ said that there was other evidence as to the appellant’s age which “on its face” was capable of supporting the appellant’s appeal in this respect. That included the age assessment report dated 9 November 2018 which incorporated a dental report by a Dr Hassan dated 2 November 2018. The FtJ accepted that both of those reports were written by experts. He nevertheless concluded that he did not feel bound by their conclusions because the findings seemed to rely heavily on the authors’ own assessment of the appellant’s credibility rather than on some other aspect of the evidence in respect of which they have utilised their expertise.
13. He referred to Dr Hassan accepting that the non-eruption or partial eruption of wisdom teeth has a “high risk of error for age assessment”. The FtJ also pointed out, however, that two other factors led to Dr Hassan estimating the appellant’s age at 16 – 18. The first was the “patient’s honesty”, and the second was that the appellant had lost his deciduous teeth three years ago. However, the FtJ pointed out that that was based only on the appellant’s account.

14. So far as the age assessment report is concerned, the two social workers who carried out that assessment obviously believed and accepted his account of his journey to the UK but they relied on the report of Dr Hassan and upon a 'birth certificate'. Otherwise, they based their conclusions on the appellant's apparent lack of independence, which is again based on the appellant's own testimony.
15. At [34] the FtJ said that it was not without significance that three professionals had found the appellant to be honest and trustworthy, which he took into consideration. However, he also said that the assessment of credibility was his task and that he had far more information before him in order to carry out that task. He said that their conclusions were dominated by their assessment of the appellant's credibility and not on analysis based on their expertise. He said that to that extent he was not persuaded that their views are expert opinions and he did not consider himself bound by them, placing little weight on their conclusions.
16. He referred to the several documents relied on by the appellant which he also said "on their face" supported his identity and claimed date of birth, stating that they were clearly important parts of the appeal and must be considered very carefully overall. He referred to the letter at page 42 of the appellant's primary bundle, which was a letter "purporting to be" from the Afghan Embassy in London, dated 11 April 2018, stating that the appellant's birth certificate had been verified by the embassy and is genuine. The birth certificate gives the appellant's name as [AA] born on 2 July 2000. The FtJ said, however, that the birth certificate was issued by the embassy on 22 August 2016 and was not issued at birth or in Afghanistan. In his view it was not a birth certificate. Furthermore, it was not clear where the information in relation to the date of birth had come from or how the embassy verified it. He concluded, therefore, that he could not place great weight on that document.
17. The FtJ next considered the tazkera. That also gave the appellant's name as [AA] born on 2 July 2000. The FtJ noted that it was suggested that the embassy examined a copy of the tazkera and confirmed that it was genuine. However, he said that it was not clear what method the embassy adopted in assessing its authenticity and the embassy did not see the original.
18. At [37] he referred to reports from a document examiner dated 2 February 2018 and 27 November 2018. In relation to the tazkera, the document examiner found a number of anomalies, to which the FtJ made reference.
19. At [38] he referred to the report of Dr Antonio Giustozzi dated 14 February 2019. He accepted his evidence that the use of xerographic printers was not unusual. However, he pointed out that Dr Giustozzi did not address the significant issue of the concealed alteration of the tazkera, which the FtJ said was highly probative as to the authenticity of the document.
20. At [39] he again referred to the application for entry clearance made by the appellant in a different name and with a different date of birth. He noted that in that case the Secretary of State had found that a false bank statement had been submitted and that

that decision was not challenged by the appellant. He concluded that the 2010 application and the use of false documents in it, reduced the weight that he could place on documents (in this appeal), the provenance of which was in doubt. Thus, in the past the appellant or those associated with him had been prepared to use false documents in support of an application, which made it more likely that they would do so on this occasion.

21. Next, he referred to s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Drawing inferences from the use of false documents in the past, he said that that supported the evidence from the document examiner that the tazkera was not genuine. He found that the respondent had satisfied the burden on him to show that the document was counterfeit. Alternatively, the appellant had not shown that the document was reliable as to his date of birth.
22. At [41] he said that he did not accept the appellant's explanation for having signed a notice during his screening interview apparently accepting that he was not a minor and that he was born in 1992. Although the appellant had alleged that he was coerced into signing the form and was treated aggressively and threatened with detention if he did not sign, the FtJ rejected that account. He said that the appellant was an intelligent young man who was far from naïve. He found that he would have fully appreciated the significance of the date of birth. He doubted very much that he would have signed the form unless he was satisfied that he was actually born in 1992 and that the date of birth he had originally given was untruthful. He did not accept that he was threatened or was in any other way the victim of aggressive or oppressive behaviour by immigration officers.
23. In relation to other documents relied on by the appellant in support of his protection claim, those included what purported to be a witness statement from his sister, a summons in respect of him and his father, and a Taliban letter. Having regard to the fact that the appellant had used false documents in a previous application and done so in respect of the present application in the form of the tazkera, he found that the appellant had not shown that those other documents were reliable. He went on to conclude that the appellant was not a credible witness and his explanations at times were implausible. His evidence in relation to the 2010 application was untruthful.
24. He thus concluded that the appellant had not established that he had a relationship with his step-sister. Although he had given a consistent account of a sexual relationship, that was not to say that the relationship he described was with his step-sister or that it ended in such a way as to be the cause of his departure from Afghanistan. He went on to add that the appellant's lack of interest or curiosity about the fate of his father reveals that his account cannot be plausible.
25. Alternatively, he concluded that there would be no real risk of either the Taliban or his father being able to track him down if he relocated to another part of Afghanistan. He found that the appellant was intelligent and resourceful and speaks Pashto and Dari. He would have "limited difficulty" reintegrating back into Afghan society. He pointed out that he has no health problems and would have no

additional difficulties with finding employment and accommodation beyond those faced by others in Afghanistan. He went on to state that if the police remained interested in any matter allegedly involving the appellant, there was no reason to believe that they would not investigate fairly and prosecute only if it was appropriate to do so having regard to the evidence.

26. Lastly, he said that he would also have refused the appeal under Article 8 of the ECHR.

*The grounds and submissions*

27. The grounds of appeal in relation to the FtJ's decision contend that he was wrong to reject the appellant's explanation for signing papers during the screening interview accepting that he was not a minor and that he was born in 1992. The grounds refer to the appellant having provided a supporting statement from his guardian [Mr P], who went with the appellant to the screening interview. The evidence from Mr P confirms the appellant's account but the FtJ does not appear to have given any consideration to that evidence anywhere in his decision.
28. In relation to [42] of the FtJ's decision, although the FtJ rejected the reliability of the other documents (summons, witness statement of the appellant's sister and Taliban letter) on the basis that he had used deception in a previous application and in the present one in relation to the tazkera, there was no independent assessment or evaluation of those documents to support the conclusion that no weight could be given to them.
29. Further, the grounds argue that the FtJ did not "adequately" consider the social workers' report in terms of the appellant's date of birth.
30. In addition, it is argued that there had not been full consideration of all the matters on which the appellant's "documents expert" comments on in his report in the supplementary bundle (presumably a reference to the evidence of Dr Giustozzi). That expert evidence goes beyond commenting on the lack of consistent practice of printing throughout the country. Otherwise, the FtJ had not "adequately analysed other material factors" in the assessment of his credibility.
31. In her submissions (on 13 November 2019) Ms Fisher relied on her skeleton argument. It was submitted that the FtJ's decision was based purely on credibility, and documents had been ignored.
32. As far as the document examination report ("DER") is concerned, very little is known about the author of the report. The original tazkera was not seen by Dr Giustozzi and it was the appellant's case that he had tried to obtain the original documents. It was, however, accepted that before the FtJ at the hearing no argument was advanced in terms of the lack of availability of the original document. Nevertheless, this was a matter that was *Robinson* obvious. In addition, the email dated 7 February 2019 from the Afghan Embassy to the appellant's solicitors confirming the genuineness of the tazkera and the birth certificate, was not dealt with by the FtJ.

33. There was, furthermore, a fully *Merton* compliant age assessment. It was nevertheless accepted that the FtJ was not bound to accept that evidence.
34. In relation to credibility, even if the appellant had relied on false documents in the past, that did not mean that all the documents before him were false and the FtJ failed to assess those documents.
35. As to the evidence of Mr P (page 40 of the bundle, in which the second page of the statement, is missing), it was true that he did not attend the hearing. Ms Fisher said that she was not aware of whether or not there was any application to adjourn the hearing because of his inability to attend.
36. Although the grounds do not challenge the FtJ's conclusions on the issue of internal relocation, the FtJ's decision does not engage with the UNHCR guidelines on internal relocation in Afghanistan.
37. In his submissions, Mr Tarlow argued that the matters raised on behalf of the appellant amount to no more than a disagreement with the FtJ's findings.
38. As regards the age assessment, the FtJ accepted that the social workers were experts in their field but he did not accept their conclusions. At [35] he dealt with the other documents and at [36] considered the evidence from the Afghan Embassy confirming that the tazkera was genuine. However, he pointed out that how the embassy assessed its authenticity was not clear. Furthermore, the embassy did not see the original document.
39. The FtJ dealt with the evidence of the DER at [37] and pointed out at [38] that Dr Giustozzi did not deal with the significant issue of the alteration of the document. The fact that the appellant had used false documents in the past was a matter that the FtJ was entitled to take into account.
40. Lastly, the FtJ considered the issue of internal relocation and concluded that the appellant could live elsewhere in Afghanistan.
41. At the further hearing on 22 January 2020, I heard submissions in relation to the witness statement, or report, dated 27 November 2018 from the immigration officer who wrote the DER. In part, Ms Fisher repeated some of the arguments previously advanced but also submitted that that report does not say anything about what is in the earlier DER in relation to the alterations to the tazkera. In addition, at [9] of the report dated 27 November 2018 the immigration officer comments on matters which are not known to him. At [10], although stating that he was unable to offer a conclusion in relation to the authenticity of other named documents because they were neither travel nor identity documents, he (impermissibly) went on to say that although the appellant is allegedly wanted by the police in Afghanistan, he nevertheless went into the embassy in London and identified himself, which caused him to doubt the credibility of the issuing of a police summons.

42. In his submissions, Mr Tarlow reiterated the evidence from the document examiner about the alterations to the tazkera in terms of the abrasions made to it. It was not necessary for the immigration officer to repeat what he had previously stated in the report dated 2 February 2018. There was evidence of his qualifications that enabled him to offer an expert opinion on the tazkera.

*Assessment and Conclusions*

43. After the initial hearing before me on 13 November 2019, email correspondence was provided in relation to the question of whether any request had been made by the appellant's solicitors for the return of original documents (in particular the tazkera) in order to allow for their verification. At that hearing I acceded to a request for such information to be provided by the appellant's solicitors. An email dated 13 November 2019 from the appellant's solicitors refers to, and provides copies of, letters written to the Home Office asking for the return of the tazkera and the appellant's birth certificate, those letters being dated 3 April and 13 August 2018. The email states that "our request for adjournment was made at hearing".
44. The letter from the solicitors dated 3 April 2018 refers to the appellant having submitted his birth certificate "along with the other documents" to support his asylum claim and states that the original birth certificate had not been returned. It goes on to state that the Tribunal only accepts original documents and the respondent is therefore urged to return the original birth certificate and all other original documents. It further states that if the birth certificate is not provided the Tribunal would be invited to "strike out" any evidence produced by the Home Office contradicting the appellant's claimed age. The respondent replied by letter dated 9 August 2018 stating that the case was no longer with the Next Generation Casework and that a Home Office representative would be in contact in due course.
45. The solicitors' letter dated 13 August 2018 repeats the request for the original birth certificate and other original documents, or confirmation that they will be produced at the hearing. Neither of the letters states that the originals are needed so that they can be verified.
46. On perusing the Tribunal's file, there is a letter from the appellant's solicitors to the Tribunal dated 16 April 2018 seeking an adjournment, pointing out that the tazkera was said to be fraudulent and was retained by the Home Office, and the appellant was in the process of obtaining a further document from the Ministry of Interior in Afghanistan which he would not be able to produce for the hearing on 26 April 2018. Stating that medical evidence and the tazkera were very important documents, a request was made for the hearing on 26 April 2018 to be adjourned. That application for an adjournment was granted.
47. At a hearing on 29 November 2018, there was a further adjournment with directions being issued, amongst other things, for the service of expert evidence by the appellant if any is relied on, in relation to "the Afghani identity documents", and any evidence in reply from the respondent. A further hearing on 16 April **2019** was adjourned at the respondent's request in order for evidence to be provided to rebut

evidence adduced by the appellant, seemingly the report of Dr Giustozzi. Ultimately, the hearing was adjourned notwithstanding that neither party had complied with directions.

48. As regards the complaint made on behalf of the appellant that the FtJ's decision was flawed and unfair by reason of the failure of the respondent to have produced the original tazkera, I am not satisfied that there is any merit in that complaint. In the first place, that is not a matter raised in the grounds of appeal in relation to the FtJ's decision and upon which permission was granted. Nor, incidentally, is it in the appellant's skeleton argument for the hearing before me. There was no application to amend the grounds. Quite apart from that, there is no evidence at all that any application for an adjournment was made to the FtJ for the hearing to be adjourned so that the original of the tazkera, or indeed any other document, could be produced, despite the appellant's solicitors email dated 13 November 2019 asserting that an adjournment request was made at the hearing.
49. It could not be said to be an error of law for the FtJ to have failed to deal with a matter that was not raised before him. As already mentioned, in any event this is not a matter that is within the scope of the grounds of appeal before me. With respect to Ms Fisher, it is not remotely a *Robinson* obvious point.
50. Insofar as complaint was initially made about the absence of any evidence of the qualifications of the immigration officer who prepared the DER, that complaint has no merit in the light of the later report dated 27 November 2018 which was before the FtJ and which the appellant's representatives were aware of at the time of that hearing. It sets out in detail his qualifications to make the assessment that he did. No submissions to the contrary were made to me at the further hearing on 22 January.
51. Similarly, I do not consider that there is any merit in the contention that the failure of the immigration officer in the November 2018 report to refer to his earlier conclusions about the tazkera having been altered, has any merit. The immigration officer plainly did come to the view that the tazkera had been altered as set out in the 2 February 2018 DER. He found that
 

"On the section that purports to contain the holder's name, details have been removed using mechanical abrasion. There is damage to the print and paper substrate, which is detectable as a result of localised paper fibre disturbances and localised paper thinning. Certain remnants of the blue ink that was previously present remain."
52. It is true that in the November 2018 report the immigration officer does go beyond his remit as an expert, as summarised at [41] above. In that, there is force in the submissions made on behalf of the appellant. However, that does not undermine his conclusions in relation to matters upon which he is qualified to express an opinion.
53. I do not accept that the FtJ erred in his assessment of the social workers' report. He acknowledged their expertise and gave legally satisfactory reasons for rejecting their assessment of the appellant's age. Likewise, in relation to the dental evidence of Dr

Hassan which the FtJ clearly considered as part of his assessment of that and the social workers' evidence at [32] and [33].

54. In relation to Dr Giustozzi, whilst the FtJ noted his evidence that the use of xerographic printers was not unusual, he rightly pointed out that Dr Giustozzi did not address the other, more significant, issue of the concealed alterations to the tazkera. The FtJ was entitled to conclude that the evidence of the alterations to the tazkera was highly probative in terms of the authenticity of the document.
55. The FtJ did not refer to the evidence of Mr P who, in his written evidence, supported the appellant's account of oppressive behaviour on the part of the immigration officer at the time of the screening interview. The FtJ ought to have referred to this evidence and I am satisfied that he erred in not doing so.
56. However, I am not satisfied that that error is material to the outcome of the appeal. Mr P did not attend the hearing to give evidence and there was no application for an adjournment on behalf of the appellant to allow for his attendance. Thus, the FtJ was, at best, faced with written evidence which could not be tested in cross-examination. Otherwise, the FtJ gave detailed reasons for rejecting the contention that the appellant was coerced into signing a notice during his screening interview, accepting that he was not a minor and that he was born in 1992. Furthermore, the FtJ referred to the application made in 2010 in which it had been found that false bank statements had been submitted. In that application the appellant used a passport in a different name with a date of birth of 20 October 1992. The FtJ was entitled to conclude that the application made in 2010 was consistent with his date of birth in 1992 and wholly inconsistent with a date of birth of 2000.
57. The conclusion that the use of false documents in that earlier application fed into the assessment of the documentary evidence in the present appeal is unimpeachable. In that context, the FtJ was entitled to conclude that the appellant had not established the reliability of the other documents that he relied on in the appeal.
58. It is true that the FtJ did not refer to the document at page 16 of the appellant's supplementary bundle, being an email from the Afghan Embassy dated 7 February 2019. However, that email's confirmation of the authenticity of the tazkera and birth certificate fails to take into account the expert evidence revealing that the tazkera had been altered. Whilst that email does provide some information as to the process of verification, contrary to the FtJ's comments at [36] that it was not clear what method the embassy adopted in assessing the authenticity of the tazkera, I do not consider that that is a matter which is material, bearing in mind the expert evidence of the alteration of the tazkera.
59. As to the point made in the skeleton argument (again not raised in the grounds) about it not having been put to the appellant that he had not provided any explanation as to why he thought he was being fingerprinted for the application in 2010, referred to at [31] of the FtJ's decision, it was not incumbent upon the FtJ to put

every matter to the appellant. In any event, that was not a significant feature of the FtJ's credibility assessment.

60. The skeleton argument points to yet another matter not raised in the grounds of appeal in terms of the appellant in the asylum interview at question 156 stating that the interviewing officer was making excuses in dealing with the issue of age. However, that is not a matter which alone or in combination with any of the other arguments, reveals any legal error in the FtJ's reasoning.
61. Accordingly, whilst I do consider that the FtJ erred in not referring to the evidence of the witness Mr P, I am not satisfied that that error is one that is material to the outcome of the appeal.
62. Quite apart from the FtJ's assessment of credibility, whilst his consideration of the issue of internal relocation was relatively brief, there is no challenge in the grounds to that aspect of his decision. The belated contention before me that he did not refer to the UNHCR guidelines does not reveal any error of law in that aspect of his decision. On behalf of the appellant it is not explained how his conclusion is erroneous in terms of those guidelines or, more to the point, in what way his conclusions are inconsistent with existing country guidance.

#### *Decision*

63. The decision of the First-tier Tribunal did not involve the making of a material error of law. Its decision is not set aside and the decision to dismiss the appeal on all grounds stands.

#### **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.

Upper Tribunal Judge Kopieczek

21/02/2020