



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00050/2020**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC (via Microsoft
teams)
On 2 August 2021**

**Decision & Reasons
Promulgated
On 12 August 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MGA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Howard of Fountain Solicitors.

For the Respondent: Mrs Aboni a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Howorth ('the Judge') promulgated on 6 April 2020, in which the Judge dismissed the appellant's appeal on all grounds.
- 2.** The appellant is a citizen of Afghanistan, born on 2 March 2003, whose immigration history is noted by the Judge.

Background

3. The Judge had the benefit, in addition to the documentary evidence, to seeing and hearing the appellant give oral evidence. Having done so, findings of fact are set out from [18] of the decision under challenge in which the Judge takes as the starting point an earlier decision of FTTJ Gribble in accordance with the Devaseelan principles.
4. At [19] the Judge writes:
 19. I do not find good reason to depart from the findings of FTTJ Gribble. The Appellant's representative relies on the Appellant now being older and able to give better evidence, however FTTJ Gribble placed appropriate weight on the Appellant's ability to give evidence as a minor. I find that the passage of time has slightly reduce the Appellant's ability to give evidence, not enhanced it.
5. The Judge noted the appellant's representative relied upon a claim the appellant was a member of a Particular Social Group (PSG) as a child in Afghanistan perceived to be westernised and also a member of a PSG defined as 'boys and men of fighting age at risk of forced recruitment' but did not find that the appellant had established that any greater risk arose sufficient to meet the threshold of persecution. The Judge did not find sufficient evidence to show the appellant will be at risk of forced recruitment from any group [24] and discounted the argument of risk based upon the appellant's age by reference the country guidance case of AS (safety of Kabul) [2018] UKUT 118.
6. The Judge did not accept the appellant had established a risk in his home area and noted that his account of attempts to recruit him being made by the Taliban was found to lack credibility [26].
7. The Judge did not accept that the grounds relied on by the appellant amounted to Convention reasons and did not find any entitlement to international protection.
8. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal, the operative part of the grant being in the following terms:
 2. The appellant seeks permission to appeal against this determination on the grounds that the judge made arguable errors of law. Firstly, in failing to give adequate reasons for the findings made and considering the further evidence provided by the appellant in support of his appeal, and secondly failing to take account of the Presidential Guidance in relation to children.
 3. It is alleged that at paragraphs 17 to 25, the judge misdirected herself when she stated that in submissions made on behalf of the appellant it was said that he did not know where he came from. This was a misunderstanding of the submissions made which were to the effect that the appellant had more information now, than which had not been before the first judge.
 4. This is what is recorded by the judge at paragraph 17, but subsequently at paragraph 25 the judge notes that in the previous reasons for refusal letter dated 8 January 2016 in paragraph 4 it was noted that the appellant was born in Barake Barak district of Loghar Province in Afghanistan. This was therefore a misunderstanding of the submission being made and therefore an arguable error of law in the judge's understanding of the submissions made. The judge misunderstood that what was being claimed was that there was now more information about that region than that which had been before the previous judge. Her failure to take account of this new information is an arguable error of law.

5. The grounds further allege that at paragraph 26 of the judgement in finding that there was no particular social group that are being of an age which would mean forced recruitment or being considered westernised, the judge failed to take into account evidence produced at Annex A8 to A 11 of the appellant's bundle or the and the decided authorities she was referred to and noted at paragraph 20.
 6. It is arguable that in adequately looking at the evidence that was before her and in her findings at paragraphs 23 and 24 the judge has failed to give adequate adequately reasons. This is an arguable error of law.
 7. The other examples given, showing that the judge has not reasoned decision adequately raise arguable errors of law.
- 9.** Mrs Aboni provided a copy of the Secretary of States Rule 24 Reply, the operative part of which reads:
4. The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to remit the appeal to the First Tier Tribunal for them to determine the appeal de novo.
- 10.** In light of the Secretary of State's view, the grounds on which permission to appeal is sought, and the grant of permission to appeal, I find it is appropriate in all the circumstances to make a finding that the First-tier Tribunal Judge has erred in law in a manner material to the decision to dismiss the appeal, to set that decision aside with there being no preserved findings, and to remit the matter to the First-tier Tribunal sitting at Birmingham to be heard afresh by a judge other than Judge Howorth.

Decision

11. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Birmingham to be heard afresh by a judge other than judge Howorth.

Anonymity.

12. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 5 August 2021