



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: AA/10186/2012**

Appeal

THE IMMIGRATION ACTS

Heard at Field House, London On 12 June 2013	Date Sent On 28 June 2013

Before

**UPPER TRIBUNAL JUDGE MARTIN
DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

Between

USMAN GHANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms K Chandrasingh, Duncan Lewis & Co Solicitors
For the respondent: Ms H Horsley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is Usman Ghani, a national of Afghanistan. He appealed to the First-tier Tribunal against the decision of the Secretary of State dated 1 November 2012 to refuse his application for asylum. Judge of the First-tier Tribunal Telford dismissed his appeal. He now appeals with permission to this Tribunal.

2. On 14 May 2013 the decision of Judge Telford in relation to the appellant's asylum appeal was set aside. The reasons are set out fully in the decision issued on that date, in summary the decision was set aside because the Judge gave inadequate reasons for his findings as to the core of the appellant's account.
3. Judge of the First-tier Tribunal Telford accepted the age assessment carried out by Barnet Children's Services which assessed the appellant's date of birth as being 1 January 1993, 4 years earlier than that claimed by him, which made him 18 years old when he entered the UK in July 2011. The appellant did not challenge the Judge's findings in relation to the age assessment. The reasoning for the age assessment was found to be adequate and that part of the decision as set out at paragraphs 40-46 was preserved.
4. At the resumed hearing Ms Chandrasingh applied for an adjournment as the appellant was not present in court. She said that he is currently in Birmingham and claimed that he did not receive notification of the hearing. She said that the interpreter she spoke to said that the appellant may not have understood when the hearing was to take place.
5. The panel refused the request for an adjournment. We were satisfied that the appellant and his solicitors had been notified of the decision to set aside the decision of the First-tier Tribunal and had received a Notice of the resumed hearing at the addresses given on the Notice of Appeal to the Upper Tribunal. Further, the date for the resumed hearing had been set at the hearing on 14 May 2013 when the First-tier Tribunal decision was set aside. We also considered that the appellant's solicitors must have been in contact with him about the resumed hearing in order to comply with the directions and to prepare for the hearing.
6. We were therefore satisfied that the appellant was properly informed of the date and time of the resumed hearing and that it was fair and just to proceed with the hearing in the absence of the appellant in keeping with the overriding objective of the Upper Tribunal set out in Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008. We indicated that we would remake the decision on the evidence before the Judge of the First-tier Tribunal including the oral evidence recorded at paragraphs 8-27 of the First-tier Tribunal Judge's decision. Ms Chandrasingh accepted that the recording of the evidence was not challenged. We heard submissions from Ms Horsley and Ms Chandrasingh.

Assessment

7. The appellant's account is set out in the record of the screening interview of 2 August 2011, the Statement of Evidence Form (SEF) interview of 1 September 2011, the witness statements of 15 August 2011 and 30 November 2012 and the record of oral evidence set out in the Judge of the First-tier Tribunal's decision.
8. In summary the appellant claims that he is from Nangarhar province in Afghanistan. He claims that when he was around two years old his father and

paternal uncle were killed by the Taliban for refusing to join them. When he was around 5 years old the Taliban came to his home, hit his mother and took him away in a car. He was taken to a base where many other children were being held and trained to be suicide bombers. He escaped after two or three days and stopped a lorry on the main road and the driver took him to a place near his village, he then walked for two or three hours before he reached his house. When he was around 9 years old the Taliban visited the house but he was at the mosque, they beat his mother. When he was around 13 years old the Taliban came to his house for the third and final time and again he was at the mosque. The appellant claims that his mother decided to send him to Pakistan and she sold land to finance his journey. He claims that he left Afghanistan about eight and a half months before his asylum interview and stayed with his uncle in Pakistan for 15 days and that he then travelled to the UK.

9. The Judge's findings in relation to the age assessment raise fundamental issues in the appellant's case. Firstly the fact that he was prepared to lie about his age casts doubt over his credibility generally. Secondly the findings fundamentally affect the chronology of his account. The appellant did not put forward any evidence to deal with the chronology of his account in light of the age assessment. There was no further witness statement prepared for the resumed hearing and he did not attend to give oral evidence.
10. Further, the age assessment finding fundamentally damages the credibility of the appellant's account in the context of events in Afghanistan. The Judge found that he was born on 1 January 1993. The appellant claims that his father and paternal uncle were killed for refusing to join the Taliban when he was 2 years old. This would have been in 1995. The background evidence Ms Chandrasingh relied on to support her submission that the Taliban were forcibly recruiting men (at pages 16-21 of the appellant's bundle) was published in 2011 and refers to evidence from 2001. She did not submit any evidence to support the appellant's claim that the Taliban were forcibly recruiting adult men in 1995, prior to the 2001 invasion. Ms Chandrasingh submitted that the appellant was told that he was 2 years old when this happened but that he may not have been. However all of the subsequent events in the appellant's account flow from this event and are timed in relation to this event. Further, the appellant failed to take the opportunity to put forward further evidence to clarify this.
11. The appellant claims that he was taken by the Taliban when he was 5 years old. This would have been in 1998. Again there is no evidence before us that the Taliban were forcibly recruiting children in 1998 prior to the 2001 invasion. The evidence relied on by Ms Chandrasingh related to 2010.
12. The appellant claims that he left Afghanistan after the last visit by the Taliban when he was 13 years old. According to the age assessment this would have been in 2006. The appellant said that he left his home two days after the Taliban visited and that he went to Pakistan where he stayed with his uncle for 15 days before travelling on to the UK. This is inconsistent with his claim to have arrived in the UK around July 2011.

13. There are further issues of credibility in relation to the appellant's account. The appellant claims that he had a maternal uncle in Pakistan. If the appellant's father and paternal uncle had been killed when he was 2 years old, his mother had been beaten and the appellant taken when he was 5 years old and his mother was beaten when the appellant was 9 years old it is not credible that his mother would not have relocated or left Afghanistan for Pakistan to join her brother after any one of these events. She clearly had the resources to do so, having been able to sell land after the death of her husband and again to fund the appellant's journey abroad. The fact that she did not do so undermines the credibility of the appellant's account.
14. The appellant's account of his capture and escape at the age of 5 is not credible. It is not credible that any 5 year old child in any country would be able to flag down a lorry, get a lift to his area and make his way home from where he was dropped off without knowing his home address as described at paragraph 4 of his witness statement of 15 August 2011. Had the Taliban wanted to find the appellant after his claimed escape when he was 5 years old they could have found him immediately as he claims that they had previously taken him from his home and when he returned he claims that he did not leave the house except for brief trips to the mosque.
15. According to the appellant's account the Taliban did not look for him again until four years later when he was 9 years old. They came once and he was not there, they did not return for another four years when he was 13 years old. If the Taliban had been interested in forcibly recruiting the appellant during this period they could have easily found him and done so. It is not credible that they would have left such long intervals between looking for him and that on each occasion when they did not find him they did not return within a short period. Even if the appellant's account were credible we do not accept that the Taliban had any interest in him. Apart from three visits to his home over a period of 8 years the Taliban have shown no interest in the appellant. They made no enquiries as to his whereabouts on the two occasions they came and he was not at home. Had they done so they would have found him at the mosque.
16. According to the age assessment the appellant would have been 13 years old in 2006. He claims that he left Afghanistan two days after that visit. He has not given any explanation as to where he was between then and arriving in the UK in July 2011. This gap in his account for a period of 5 years fundamentally damages the credibility of his account.
17. We have considered all of this evidence and do not accept any part of the appellant's account. In these circumstances we do not accept that there is a real risk that the appellant will face persecution upon return to Afghanistan.

Asylum

18. The appellant has not demonstrated that he has a well-founded fear of persecution in Afghanistan.

Humanitarian Protection

19. The appellant is not entitled to humanitarian protection as he can return to Afghanistan without fear of Article 15 (c) harm.

ECHR

20. The appellant has not shown that he faces a risk of death or inhuman or degrading treatment in Afghanistan in breach of Article 2 and 3 of the European Convention on Human Rights. We have also considered Article 8 of the ECHR. The appellant has not shown that he has established a family life in the UK. In his statement of 30 November 2012 he referred to a distant relative with whom he stayed for a few months after his arrival in the UK but said that he no longer has contact with him. In that statement he also referred to his distant relative's a friend, Sher Khan, with whom he lives. However there is no evidence from Mr Khan as to his relationship with the appellant. In that statement the appellant also said that he has not worked or studied in the UK since arriving here. He has provided no evidence of any private life established in the UK since coming here in July 2011. We are not satisfied that the appellant has established a family or private life in the UK such as to engage Article 8. He has family in Afghanistan. The appellant has not demonstrated that any other provision of the ECHR would be breached by his removal to Afghanistan.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision and remake it.

The appellant's appeal is dismissed.

Signed
2013

Date: 26 June

A Grimes
Deputy Judge of the Upper Tribunal

