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**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02933/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2015**

**Decision Promulgated
On 21 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

K B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Grigg, Counsel

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan, now aged 17. I have made an anonymity direction to protect his identity as a minor. He has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal C. Chapman, promulgated on 18 May 2015, dismissing his appeal against a decision of the respondent to refuse him asylum status. The appellant was granted discretionary leave and this is

an appeal brought under section 83 of the 2002 Act.

2. The appellant arrived in the UK clandestinely on 20 September 2013 and claimed asylum the following day. He had travelled through Iran, Turkey and Bulgaria, where he was fingerprinted, for making his way the UK. He gave an account of coming from Maidan Wardak province where he lived with his parents and siblings. His father was a mechanic. Three years previously his father was seriously injured in a car accident. The appellant went to work for a person called Mustapha as a mechanic in his shop. Four months later Mustapha received a letter from the Taliban instructing him to stop repairing police vehicles. Mustapha ignored the letter and carried on working. A second warning was sent. Mustapha closed his shop but helped the appellant to open his own shop. Two months after the appellant opened his own shop he was asked by two people to fix a generator. He was taken to a house in the village of Malakhail, where the Taliban resided. He fixed the generator but was not paid. Two days later the same two men returned and asked him to repair a motorcycle. They continued to come to his shop every two or three days asking him to repair things but they never paid him. The appellant informed the police and the two men were captured. Another escaped. The appellant returned home and told his mother who took him to his maternal aunt's house, where he remained for a week. During that time the Taliban came to his house. The appellant's maternal uncle arranged for the appellant and the family to move to Kabul. The appellant worked in a hotel kitchen. One day he heard someone shouting his name and he recognised the man as the one who had escaped from the police. The appellant escaped from the back door of the hotel and ran home. He informed his mother about the incident and moved to his mother's friend's house. A week later his mother and maternal uncle arranged for him to leave Afghanistan. He believes that, were he to return to Afghanistan, the Taliban would kill him because he reported them and two of their members were captured.
3. The respondent accepted the appellant was Afghan. However, his account was disbelieved and his claim to be at risk from the Taliban was rejected as a fabrication. The appellant appealed, maintaining that his account was true and he was entitled to refugee status.
4. The appeal was heard by Judge Chapman on 7 May 2015 in Birmingham. He heard oral evidence from the appellant and took into account background evidence, including an expert report prepared for the appeal by Mr Tim Foxley MBE, dated 10 April 2015. The judge's findings begin at [45]. He found there were a number of significant inconsistencies in the accounts given by the appellant which led him to the conclusion that his evidence was not credible. He went on to give examples of these in the ensuing paragraphs. He also set out the matters he did not find credible. He found the appellant has a family to assist and support him on return and did not find he was at risk of persecution either from the Taliban or on account of being an unaccompanied minor. He found it more likely than not that, given the

difficult circumstances in which his family found themselves following his father's accident and consequent disability, that they had invested in the appellant coming to the UK for economic reasons.

5. Grounds seeking permission to appeal were prepared by Mr Mark Bradshaw of counsel, who had represented the appellant at the hearing in the First-tier Tribunal. Permission to appeal was granted by the First-tier Tribunal. The respondent filed a rule 24 response arguing was no error in the decision.
6. I heard submissions on whether the judge made a material error of law. Mr Grigg raised a possible difficulty at the beginning of the hearing. One of the grounds prepared by Mr Bradshaw concerned an allegation that the judge had failed to record and therefore take note of aspects of the appellant's oral evidence. Mr Bradshaw had provided copies of some notes which he took during the hearing to support this contention. Mr Grigg was concerned that it might be necessary for Mr Bradshaw to give oral evidence on the point or at the very least to prepare a witness statement. However, he did not go so far as to request an adjournment and Mr Tarlow did not raise any objection to me having regard to Mr Bradshaw's written notes. In any event, there had been sufficient time for Mr Bradshaw to make a statement if it was intended he should do so and it was apparent from the written application to adjourn the hearing so that Mr Bradshaw could represent the appellant in the Upper Tribunal hearing that there had never been any intention for him to give evidence. The hearing proceeded.
7. Mr Grigg's submissions closely followed the 10 points raised in paragraph 2 of the grounds, numbered (a) to (j). I shall therefore deal with each one in turn. However, before I do so, I remind myself that, when analysing a decision which contains adverse credibility findings which are the subject of challenge, it is important to remember that the judge saw and heard evidence from the appellant, which I have not, and the judge is only required to give sufficient reasons properly to explain his decision, which in this case was to find that the appellant not credible. Whilst the judge's reasons have to demonstrate a correct understanding and appreciation of the totality of the evidence¹, it is not necessary for judges to "record, analyse, rehearse and repeat entire interstices of the evidence"² in order to give adequate reasons. As will be seen, my overall conclusion in this case is that, despite Mr Grigg's eloquent and measured submissions to the contrary, whilst some of the judge's reasons are stronger than others, having heard the appellant and looked at the evidence in the round, which he plainly did, he was entitled to come to the conclusion he reached regarding the appellant's credibility.
8. I should also say by way of preamble that Mr Grigg correctly identified the young age and vulnerability of the appellant when he arrived and

¹ Pill LJ in *Malaba v SSHD* [2006] EWCA Civ 820.

² *VHR (unmeritorious grounds) Jamaica* [2014] UKUT 00367 (IAC).

was interviewed (aged 14) and at the hearing (aged 17). This point arises in relation to some of the numbered grounds. In some cases involving minors great caution has to be exercised before drawing inferences from omissions or discrepancies in the SEF or interview³. However, the judge in this case was evidently aware of the appellant's age at the time of the hearing as this appears in his first paragraph. That the appellant arrived as an unaccompanied minor is mentioned in his second paragraph. Moreover, at [41] the judge stated he had taken into account that the appellant was 14 when he arrived here and he stated he had made due allowance for his age at the time of the events in question.

9. Finally, Mr Grigg argued the judge's finding at [47] that the reason for the appellant being given his date of birth in English was that it was the intention of his family from the outset for him to claim asylum in the UK, was not based on any evidence. I was not shown any place in the appellant's accounts that he stated in terms that his mother gave him his date of birth in the English language. However, the appellant did say at [5] of his witness statement of 3 December 2013, that his mother wrote his date of birth converted to the Gregorian calendar on a separate piece of paper. She told him this was what his date of birth was and he should show it to people if they asked. In my judgment, it is safe to conclude that that is plainly what the judge had in mind when referring to the date of birth "in English" and he was entitled to take the view of it that he did.
10. I now turn to the numbered submissions:

(a) The first point is that the judge failed to take a holistic approach to the evidence and, specifically, having rightly distinguished plausibility from credibility, failed to take the expert's opinions into account. It is important to note that the judge set out the key opinions of the expert in considerable detail at [18-21]. He then stated at [42] that he had taken into account the expert report and that he regarded him as a reliable source of evidence on Afghanistan. At [43] he noted Mr Foxley's view that the account given by the appellant was plausible but rightly reminded himself that the question of credibility was for him to decide to the lower standard of proof. It is correct to say that there is no further mention of the expert's opinions in the judge's analysis and findings, apart from when used against the appellant (see (h) below). However, I do not accept this means the judge "simply sidelined" the expert's opinion. By setting out the various aspects of the account which Mr Foxley, drawing on his knowledge of Afghanistan, confirmed were plausible, the judge showed that he had not made the error of judging matters out of context and by reference to a "Westernised" viewpoint. He was required to give a valid reason for not giving weight to the opinions of Mr Foxley⁴ but

³ GM (risk – failed asylum seekers) Democratic Republic of Congo [2002] UKIAT 06741.

⁴ Brooke LJ in Karanakaran v SSHD [2000] All ER 449, at p.472.

that is what he did by explaining the limited evidential value of an opinion on plausibility. He was not required to refer to it in respect of each and every finding he made. I do not accept the judge's approach to the expert evidence showed he had failed to weigh up all the evidence in the round.

(b) At [45] the judge gives as a reason for disbelieving the appellant's account his perception that there was a marked variation between the ability of the appellant to give detailed evidence concerning his contact with the Taliban and his problems in Afghanistan and his ability to describe such matters as his family, childhood, schooling and his father's accident. The judge gives two specific examples: the appellant was unable to recall where he went to fix the generator, yet otherwise demonstrated a good knowledge of local geography, and he could not recall where his uncle's restaurant was located in Kabul, although he was travelling there by bus/taxi every day.

Mr Grigg argued the first example was based on a mistake by the judge because the appellant had said the place where he went to fix the generator was Malakhail. It is this reference which was omitted from the judge's notes of evidence. However, Mr Bradshaw's verbatim note has the appellant saying, "every time it was Malakhail or somewhere near", which could reasonably be adjudged to be vague. Mr Grigg said the appellant's age was an important consideration in this context but this applies equally to all the appellant's evidence. There is no reason the appellant's young age should render parts of his evidence more vague than others, which was the disparity noted by the judge. I reiterate what I said above: the judge heard the appellant give evidence and I would be slow to intervene on the basis of an analysis of the language used by him in giving reasons for his impressions.

(c) On the point about the location of the hotel, Mr Grigg argued it was not reasonable to use this as a credibility point against the appellant given his young age at the time and the judge also failed to note the appellant's explanation given in his witness statement dated 27 April 2015 at [15]. This statement responded to the reasons for refusal, where the same point had been made regarding the appellant's account. The appellant said he was new to Kabul and did not know the names of the roads. Firstly, I would say that there is no basis for suggesting the judge was unaware of the contents of either of the appellant's witness statements. The judge noted that the appellant adopted them in evidence-in-chief at [25]. He also gave a broad assurance that he had taken all the evidence into account at [39]. Secondly, regarding whether it was a legitimate point to take against a 14-year old boy new to Kabul that he did not know precisely where the hotel in which he worked was located, I note the appellant said he took a taxi to work and I struggle to understand how he would be able to do so without being able to tell the driver where he needed to go. In [46] the

judge noted further difficulties with the appellant's account of the hotel. I do not accept the judge fell into error.

(d) Mr Grigg likened the judge's finding in [46] that it was not credible the whole family moved very quickly to Kabul to a mistake and Mr Bradshaw's grounds describe it as "irrational". Mr Grigg made the reasonable point that, if the move had been caused by fear, it was likely to have been made rapidly even if the appellant's father were in a wheelchair. The grounds make the equally reasonable point that the appellant's evidence was that it was accomplished in three to four days, which is not an unreasonable timeframe. I agree this is not a strong point for the judge to have taken as it does not appear to be evidence-based and might easily be deemed to be a case of the judge applying a yardstick as to what is inherently credible, the dangers of which are well-known⁵. However, that is not a fair assessment of the paragraph as a whole and the error on this single point does not necessarily bring down the entire edifice of his reasoning. The judge identified a material inconsistency in the appellant's accounts as to whether the entire family left together or the appellant had been sent alone to Kabul to work. He also noted a less important inconsistency regarding whether the hotel was 20 minutes' walk or taxi-ride from where he was living in Kabul.

(e) This ground argues it was unreasonable for the judge to give weight to the appellant not knowing the name of the hotel at which he said he worked. Mr Grigg did not say much about this ground other than to point out the appellant had never said the words "unknown establishment". I agree it would have been surprising if he had but the judge's use of the phrase in [46] was clearly not intended as a record of what the appellant had said. The judge was simply contrasting this aspect of the appellant's account with the more forthcoming account given at his age assessment. He was entitled to draw an inference from this. Again, it has not been shown the judge did not have regard to the appellant's explanations in [15] of the second witness statement. In [47] the judge sheds more light on his thinking because he came to the conclusion the appellant was reluctant to disclose details of his uncle's hotel because it was not in his interests for the family tracing exercise to succeed.

(f) This ground challenges the judge's finding in [47] that the appellant had the means of contacting his family if he had wanted to as irrational and finds fault with the judge's record of the evidence. Mr Grigg's submissions were more measured and pointed out that the appellant's comment that the agent may have had the means of contacting his family was simply a possibility and not an admission that there had been contact. He also suggested the judge had overlooked the witness statements and oral evidence regarding the absence of contact. He highlighted the use by the

⁵ Chadwick LJ in HK v SSHD [2006] EWCA Civ 1037.

judge of the phrase “invested in his relocation” as inappropriate. Again, this ground fails to stand back and take an overall view of what the judge is saying in [47]. He links the slight discrepancy in the appellant's accounts as to the possibility of making contact with his family to the vagueness regarding the name and location of his uncle’s hotel in Kabul and the matter of the appellant knowing his date of birth in the Gregorian calendar. He did not treat these matters in isolation. He concluded there had been a degree of contrivance in the appellant's denials regarding contact with his family because it was the intention of his family and of himself to achieve status in the UK. That was not an assessment which all Tribunals would have made on the evidence but that is not to say it was outside the range of permissible conclusions. It plainly was not.

(g) Still on [47], this ground argues the judge erred in placing weight on the appellant's statement in cross-examination that his uncle and aunt remained in the village as showing that family members could be contacted because it overlooked the appellant’s answer in re-examination that his family did not have much to do with this aunt and uncle. Mr Grigg did not take this any further and he was right not to do so. It was open to the judge to draw the inference that the uncle and aunt were contactable notwithstanding the clarification given.

(h) This is the point about the judge at [50] using Mr Foxley’s evidence (and other sources of background evidence) about the Taliban’s thirst for retribution as a ground for disbelieving the appellant's account of the Taliban’s apparently lax approach towards finding him and his family after the police had arrested two of their members following information received from the appellant. The judge’s statement that “there is no evidence” of the Taliban pursuing them is unfortunate because the absence of evidence is not evidence of anything, as the grounds and Mr Grigg correctly pointed out. However, this is another example of misconstruing by reference to one or two sentences the overall clear meaning of the judge. The point being made by the judge was not that the appellant had failed to support his account of the Taliban not widening their search with evidence but that the fact they did not appear to have detained the appellant when they could have done so quite easily was inconsistent with what is generally known of the Taliban’s methods.

(i) This ground argues the judge ignored important evidence in [51] in taking the point against the appellant that the Taliban’s failure to capture him when they had opportunities to do so in Kabul lacked credibility. Mr Grigg drew my attention to [19] in the appellant's first witness statement in which the appellant had explained he was able to escape from the encounter at the hotel by running out the back door. However, he did not add to the submission. I refer to what I have said already about the judge being taken to have read all the evidence. The general level of

detail provided in the decision as a whole makes this clear and there is nothing to be achieved by highlighting a failure to refer to one small part of it.

(j) The final ground is also a challenge that the judge at [51] failed to take into account a material consideration and it is founded on the judge not referring to the appellant's explanation in [20] of his first witness statement regarding the Taliban coming to the house in Kabul. The ground fails to recognize that the judge was making a broader point about the Taliban not making much effort to pursue the appellant, who had informed on them and who might therefore have been expected to become their target for retribution. Whether or not the judge had in the forefront of his mind the precise chronology as set out in [20] of the witness statement, his overall point was a matter he was entitled to give weight to.

11. The judge made clear, reasoned findings. Some of his reasons are stronger than others. Disregarding the weaker ones does not fatally undermine the decision as a whole. It is a decision the judge was entitled to come to on the evidence, even though other Tribunals might legitimately have come to a different conclusion. The judge's decision was not irrational or perverse. It is not vitiated by material error of law.
12. I dismiss the appeal and uphold the First-tier Tribunal.

NOTICE OF DECISION

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal on asylum and humanitarian protection grounds shall stand.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. However, I have made an order.

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 their 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 15 October 2015

Judge Froom,

sitting as a Deputy Judge of the Upper Tribunal