



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

Appeal Number: AA/06932/2015

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 8<sup>th</sup> December 2015**

**Decision & Reasons Promulgated  
On: 21<sup>st</sup> December 2015**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**AHH  
(anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

Representation:

For the Appellant: Mr Reza, Sultan Lloyd Solicitors

For the Respondent: Mr Staunton, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Afghanistan born on the 20<sup>th</sup> March 2002. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Row)<sup>2</sup> to dismiss his appeal against a decision to refuse to vary his leave to remain. That decision followed the Respondent's refusal to grant the Appellant asylum.
2. The basis of the Appellant's claim was that he faced a real risk of

<sup>1</sup> Permission granted on the 26<sup>th</sup> August 2015 by First-tier Tribunal Judge Martins

<sup>2</sup> Determination promulgated 5<sup>th</sup> August 2015

forced recruitment by the Taliban and/or punishment for refusing to join them that would amount to persecution for reasons of his imputed political opinion and/or membership of a particular social group. He claimed that his father was killed in an explosion in approximately 2010 and that his mother had been compelled to take on work in a foreign-owned factory. The Taliban had threatened her to stop working there but she could not give up her only source of income. The Taliban kidnapped the Appellant's brother. Then his mother was killed. The Appellant's departure from Afghanistan was arranged by a family friend.

3. The Respondent accepted that the Appellant was only 12 years old when he arrived in the United Kingdom as an unaccompanied minor. Asylum was refused on credibility grounds, the Appellant's evidence being considered too vague to discharge the burden of proof. Discretionary Leave was granted in line with the Respondent's policy.
4. On appeal to the First-tier Tribunal the Appellant gave oral evidence. Having heard that evidence, and having referred to his young age and the 'benefit of the doubt', the Tribunal made several negative findings about the Appellant's evidence. There was a discrepancy as to what happened after his mother died, specifically who it was that returned her body to the family home; the Appellant had first claimed only to have an aunt who lived far away then that he had an aunt in his home village. He has been vague and inconsistent about who and where his grandparents were. The Tribunal considered the "main problem" with the account to be the overall credibility of the story, or rather lack of it. It was not considered to be credible that the Taliban would have any interest in a 12 year old boy, nor that a foreign company would set up a sewing factory in an area of Taliban activity, nor that of the employees, only the Appellant's mother would be targeted. The Tribunal questioned why the family friend Mr Zahir would pay a large sum of money to get the Appellant all the way to the UK: if the only object was securing his safety it would have been far easier, safer and cheaper to send him to another village or even Pakistan. As to the question of return, the Tribunal notes that this would be hypothetical since the Appellant was not being removed, having been granted Discretionary Leave in accordance with published policy. The Tribunal did not accept that the Appellant had no family to whom he could turn, found that the Appellant had been less than forthcoming in explaining what relatives he had and where.

### **Error of Law**

5. The grounds of appeal, elaborated in oral submissions by Mr Reza, are threefold:
  - i) The following finding is contrary to the country background material, and to the accepted findings in, for instance, HK v

SSHD [2006] EWCA Civ 1037:

“The main problem with the appellant’s account however is not internal inconsistencies but whether the story as a whole is credible. It is difficult to see why the Taliban should have any interest in a 12 year old appellant or his 14 year old brother”

- ii) There was a material misdirection in that the Judge failed to follow the guidance in ST (Child Asylum Seekers) Sri Lanka [2013] UKUT 292 (IAC) in that the determination only addresses the welfare of the child after the asylum matter has been determined.
  - iii) There was a failure to give reasons for the findings that the Appellant would be met and cared for by his parents. This finding was contrary to the evidence and speculative.
6. The appeal was opposed on all grounds by Mr Staunton.
7. I find as follows.
8. A finding that it was somehow inherently incredible that the Taliban would act with malice towards young teenagers would, I agree, fly in the face of the background material which makes it abundantly clear that teenage boys have long faced a risk from such insurgent groups, in particular of forced recruitment. Reading the determination as whole, however, I am not satisfied that the Judge was making a general comment about 12 and 14 year old boys. He was doubting why the Taliban would be interested in *these* boys in the context of the claim overall. The point was that the Appellant’s mother was accused of collaborating with the enemy by reason of her employment with a foreign owned firm, and she was accordingly targeted. I understand the Tribunal, at paragraph 32, simply to be raising a question as to why they would then go on to target this woman’s children. Moreover it is clear from the determination that this was but one strand of the credibility findings as a whole. As I have summarised above, the Judge found there to be fundamental discrepancies that went to the core of the claim, and found the account overall to lack cohesion and credibility. Those findings were made bearing in mind at all times the extremely young age of the Appellant.
9. Ground 2 is similarly selective in its analysis of the decision. The Tribunal does address the matter of the Appellant’s age at the end of the determination but this does not mean that the matter is overlooked in the asylum risk assessment. The fact that the Appellant is young child who requires care is not lost on the Tribunal, which makes specific findings that he would not be returning to Afghanistan to be on his own: the tribunal expressly finds that he has family members who would be able to offer him care and support.

10. That leads to ground 3. Mr Reza contends that the findings in respect of the Appellant's ongoing links with Afghanistan must be speculative, since there was no evidential basis for concluding that he had any family members at all there. The point is that the Tribunal had given reasons for rejecting the Appellant's case about the current state of his family network; for instance he had had given three differing accounts as to the aftermath of his mother's murder, he had given inconsistent accounts of whether he had an aunt and where she lived, and he had given extremely muddled evidence in respect of whether he knew his grandparents, whether they were alive or dead and where they lived. The Tribunal was entitled to reject that evidence for the reasons it gave. Further it was entitled to infer from that finding that the Appellant did in fact have some family to whom he could turn if he was ever to go back to Afghanistan. As to the suggestion that the Respondent had failed to discharge her obligations as to family tracing, she had not. The refusal letter confirms that attempts were made to trace the Appellant's family, but on the scant information provided by him, no results were found.

### **Decisions**

11. The determination of the First-tier Tribunal contains no error of law and it is upheld.
12. The anonymity direction made by the First-tier Tribunal is maintained.

Upper Tribunal Judge Bruce  
8<sup>th</sup> December 2015