



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

Appeal Number: AA/04885/2015

THE IMMIGRATION ACTS

**Heard at Field House
on 12 February 2016**

**Decision Promulgated
on 19 February 2016**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AHSANULLAH NIAZAI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rendle instructed by Wai Leung Solicitors

For the Respondent: Mr Norton Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Robison promulgated on the 17 September 2015 in which the appellants appeal against the refusal of his claim for asylum or for leave on any other basis was dismissed.
2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Parkes on the basis it was said to be arguable the Judge failed to deal with the issue of the appellant becoming westernised

given his time in the UK or to address the provenance of photographs provided which are said to show the body of the appellants father in a coffin. Judge Parkes recognised that further consideration may not assist the appellant but that the grounds are arguable.

Error of law discussion

3. The Judge took as her starting point, in accordance with the decision in Devaseelan [2002] UKAIT 00702, the previous determination of then Immigration Judge Andonian promulgated following a hearing at Taylor House on the 8 July 2011. This is a legally correct position and that approach not disputed.
4. Having considered the evidence Judge Andonian found there were substantial inconsistencies in the appellants account even taking into account his age and being very cautious with the evidence. It was specifically found that “I do not think that there would be so many inconsistencies in the Appellants evidence if what he said had the ring of truth” [24]. It was found there is an available internal flight option to Kabul [36] and that the appellant did not have the profile that made it unduly harsh for him to do so.
5. In relation to the claim by the appellant that his father worked for the Taliban and then the Americans, this was rejected by Judge Andonian ‘for the reasons set out in the determination’ [40].
6. In paragraph 45 Judge Andonian found:

“45. There was no evidence before me that the Appellant’s father had been killed by the Government and assassinated as alleged and that the appellant would be next in line. There is no evidence that the Appellant’s father worked for the Taliban or for the American forces as an Interpreter and there was no evidence that the Americans have visited the Appellants house to look for him and I do accept that the Taliban have targeted young people in the past but they are a spent force and the likelihood of this happening is far less than before. I find it incredible that the Appellant’s uncle would sell his business and car in order to arrange and pay for an agent to take the Appellant out of the country and not give the Appellant any information about where he could find him in Afghanistan and where members of his family would be in that respect. Surely the Appellant’s uncle would want to know whether the money that he paid for his Agent is put to good use in taking the Appellant to a safe country and it is simply not credible that the Appellant would not know where to contact his family in that regard.”
7. The appellant was not found to be credible or to have discharged the burden of proof upon him to the required standard to show he was entitled to a grant of asylum or international protection.
8. That determination was challenged on six grounds although permission to appeal was only granted on three relating to the risk on return and Judge Andonian’s treatment of the reasonableness of relocation in light

of the appellants' age and lack of evidence about the whereabouts of his family in Afghanistan.

9. Upper Tribunal Judge Pitt heard the initial, error of law, hearing at Field House on the 30 May 2012. It is noted by Judge Pitt that permission to appeal to challenge the adverse credibility findings was not granted and that the asylum claim has been comprehensively rejected [2]. Upper Tribunal Judge Pitt made the following findings:

"8 This appellant has therefore not provided any credible evidence that he is unable to contact his family or that they would be unable to meet him in Kabul and care for him on return, in Kabul, if necessary. As in [7] of ZH (Afghanistan) [2009] EWCV Civ 470 there is an "an evidential lacuna which only the appellant himself can fill" concerning his circumstances on return. The burden of proof remains on him to provide credible evidence about his ability to contact and live with his family on return even when he is a minor, confirmed by the Court of Appeal in [34] of HK (Afghanistan) & Ors v SSHD [2012] EWCA Civ 315 and in [133] of AA. Both those authorities confirm that to be so even where, as here, the respondent has not complied with her duty to attempt to trace the appellant's family. It was not necessary to consider the separate issue in HK and DS (Afghanistan) v SSHD [2011] EWCA Civ 305 concerning the respondent's duty to attempt to trace the appellant's family and her duty under s.55 of the UK Borders, Citizens and Immigration Act 2009 where the point was not argued before the First-tier Tribunal or on the written or oral grounds before me."

- 9 Where the appellant has not shown that he is an unattended minor, he cannot come within the ration of AA. He also cannot argue that it would be unreasonable to expect his family to relocate to Kabul to care for him. The country guidance case of AK (Article 15(c) Afghanistan CG) [2012] UKUT 00163 (IAC) states in paragraph B (iv) of the head note that:

"(iv) Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing "safety" and reasonableness) not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable." "

10. The first ground relied upon by Mr Rendle is the claim the Judge failed to deal with the appellants submission that he will be at risk on return to Kabul as he has become westernised. A submission to this effect is noted by the Judge in the determination under challenge [21]. This claim has no arguable merit. When asked what evidence was before the First-tier Tribunal to support the claim to be at risk on this basis, Mr Rendle referred to an article at pages 98-106 dated 16 July 2015 from the Bureau of Investigate Journalists written by a Maeve McCleneghan as part of a journalistic project tracking a number of asylum seeking children. At page 105 it is written:

“Despite the scale of the return programme, little is known of what happens to those that are sent back to Afghanistan. Refugee Support Network is currently undertaking a long term research tracking the experiences of these young men. So far they have found that a quarter of those tracked have experienced difficulties as a result of being viewed as “westernised outsiders” “

11. At pages 107-111 is a further article dated 16 July 2015 from the same journalist. At page 109 it is written:

‘Case study: Hakim’s return to Kabul

This is what happened to Hakim (name changed to protect his identity). He spent six years in the UK after arriving aged 13. He went to school, made close friends and assumed his life would be spent in this environment. But when he was 19 he was put on a charter flight and flown to Afghanistan. He was unable to find his family and ended up living in a derelict warehouse.

Hakim told the Bureau: “When I returned back to Afghanistan it was the worst situation for my life. No one helped me at all because I was completely different ... I was strange to them and they were or me. I dressed differently I was not able to communicate with anyone.”

Hakim was kidnapped by thieves who demanded he pay a ransom to be released. He said after paying a portion of the demanded money he managed to escape. He now hopes to leave Afghanistan again.’

12. The evidence from this journalist has not been shown to warrant the same weight being attached to it as a report from a country expert and there is no indication that the information provided by such as Hakim has been verified, although it is accepted that there are criminal elements in Afghanistan including Kabul and that if it is perceived a person has money that they might be targeted for extortion. In the appeal under consideration it is relevant to recall the finding of Upper Tribunal Judge Pitt that the appellant will not be abandoned without the support of his family as he had not shown that he is an unattended minor and also cannot argue that it would be unreasonable to expect his family to relocate to Kabul to care for him. The degree of vulnerability a person living on the street may experience is not made out in this appeal.
13. The appellant failed to identify any arguable real risk sufficient to warrant a finding that he is entitled to a grant of international protection. It has not been shown he cannot re-adjust to the life he had prior to coming to the UK. No language or cultural issues have been made out and even if the appellant has the mannerisms of a young person who has lived in the UK for some time it has not been shown

they represent a fundamental belief that it is not permissible to expect him to change or adapt his behaviour to hide as per HJ (Iran) [2010] UKSC 31. No real risk was made out on the basis the appellant is 'westernised' per se. Any error made by the Judge in this respect has not been shown to be material.

14. The second head of challenge relates to the photographs provided by the appellant the provenance of which was explained in the evidence of the appellant's witness, his cousin, who gave oral evidence of the First-tier Tribunal.
15. Judge Andonian made the specific finding at paragraph 45 of the earlier determination that there was no evidence before him that the appellants father had been killed by the Government and assassinated as alleged. This was the claim made.
16. The appellants witness before Judge Robison, his cousin Imarn Ahmed Niazi, stated in his witness statement [A's appeal bundle page 15 para 4 - 6], that his mother had told him the appellant's father had been murdered in 2012 and that the photographs showed that the appellants father had been killed. Paragraph 5 is in the following terms:

"5 The villagers told my mother that they had been posted though the door. This is a traditional practice of the Taliban. When they have murdered someone they will send pictures of their funeral as a warning."
17. Many have been killed by the Taliban in Afghanistan but the claim they send photographs of the funeral to family members is not an argument often heard. There is no country material to show that the Taliban give those they deem traitors who they kill a funeral. It is also noted that even though the claim was that the appellants father was initially involved with the Taliban and thereafter with the Americans, his claim before Judge Andonian was that the government were responsible for his assassination whereas his cousin appears to be suggesting it was the Taliban, which is inconsistent.
18. Judge Robison clearly considered this evidence and found that the photographs do not prove the fact the appellants father was killed [41]. That is factually correct for even if the pictures are of the appellant's father all they show is that he is dead not the causes of his death.
19. Mr Rendle correctly acknowledged that this is a matter that depended upon the credibility of the appellants claim. Although Judge Robison does not set out in clear terms findings in relation to the weight given to the cousin's evidence it is clear that the finding made was that the photographs did not prove cause of death.
20. Judge Robison was required to conclude, having considered the evidence, whether there had been a material change such as to enable her to depart from the previous findings. It was concluded there was not which is a sustainable finding on the facts. Although the appellant was

found to be slightly younger than thought, Judge Andonian had a clear view of the appellant's maturity and made particular reference to the appellant's own assertion in relation to his age. Judge Andonian took a view as to credibility which included an assessment and appreciation of the fact the appellant was a minor at that time. It has not been shown the adverse credibility findings made by Judge Andonian are in any way unsafe.

21. No legal error material to the decision to dismiss the appeal has been made out. The determination shall stand.

Decision

22. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

23. The First-tier Tribunal did not make an 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 the 12 February 2016