



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

Appeal Number: AA/08419/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2016**

**Decision & Reasons Promulgated
On 8 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

FAN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms T Jaber, counsel instructed by Sutovic & Hartigan Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ R Cooper, promulgated on 29 September 2015.
2. Permission to appeal was granted on 23 November 2015 by Upper Tribunal Judge Coker.

Background

3. The appellant, aged 20, previously applied for asylum, that claim being refused on 22 October 2009 and again on 20 February 2012. He was granted Discretionary Leave to Remain (DLR) until 30 September 2012. On 21 September 2012, he sought further leave to remain in the United Kingdom on human rights grounds, specifically Articles 2, 3 and 8 of the ECHR.
4. The basis of the appellant's asylum claim is that he is from [a] village, Bagrami District, in Kabul Province and that his father, who worked for a French-run organisation failed to return from work one day, it being believed that he was abducted by the Taliban. The appellant states that the Taliban also had an adverse interest in him, as the eldest son. His mother sold the family home in order to pay for the appellant's travel to the United Kingdom.
5. The Secretary of State's Reasons for Refusal letter of 26 September 2014 explains that the appellant's application was refused for the same reasons contained in the earlier refusal letters. In addition, the respondent provided reasons as to why she had been unable to comply with her duty to endeavour to trace the appellant's family in Afghanistan. Regard was also had to section 55 of the Borders, Citizenship and Immigration Act 2009, however the conclusion was that the appellant's best interests were served by him leaving the United Kingdom and being reunited with his family in Afghanistan. Consideration was also given to Article 8 within the Rules, however the appellant was said to be unable to meet any of the requirements. There were said to be no exceptional circumstances and it was considered that the appellant's removal from the United Kingdom was appropriate.
6. During the course of the hearing before the First-tier Tribunal, the reasons for refusal letter of 20 February 2012 was not available and the Secretary of State's representative conceded that paragraph 34 of the reasons for refusal letter of 26 September 2014 did not apply to the appellant. The FTTJ concluded that the appellant was not at risk of persecution owing to a number of inconsistencies in the appellant's account. Nor was it accepted that the appellant was at risk of serious harm and therefore entitled to humanitarian protection. The appeal was allowed under "*the Immigration Rules and Article 8*" on the basis that there were significant obstacles to the appellant's re-integration in Afghanistan.

Error of law

7. Permission to appeal was sought on the basis that firstly, it was arguable that the FTTJ failed to apply relevant factual findings to an assessment of the appellant's membership of a particular social group, that being "*practical orphans*." Secondly, it was argued that the FTTJ failed to assess whether the appellant qualified for humanitarian protection on the basis of his personal circumstances and thirdly it was said that the FTTJ's credibility assessment was flawed in a number of respects.

8. Permission to appeal was initially refused by FTTJ Garratt on 23 October 2015. The UTJ granting permission, on similar, albeit expanded grounds, considered that; *"It is arguable that the judge erred in law for the reasons given namely failing to apply her findings to the specific age of the appellant who even though an adult was still accepted to be vulnerable; failed to apply her own findings as to the appellant's circumstances to the issue of humanitarian protection and failed to have adequate regard to credibility findings made."* Permission was granted on all grounds.
9. The Secretary of State's response indicated that the respondent opposed the appeal as it was considered that the FTTJ appropriately directed herself.

The hearing

10. Mr Avery advised me that there was no cross-appeal in relation to the decision to allow the appellant's appeal. Furthermore, the respondent had now granted the appellant DLR.
11. Ms Jaber relied on the grounds of appeal, which were set out at length in her 17-page skeleton argument, which I have taken into consideration in deciding this matter. The additional points she made in terms of expanding the first ground included emphasising that the fact the appellant was aged 20 at the time of the FTTJ's decision, did not mean that he could not qualify for asylum as a practical orphan. There had been limited consideration by the FTTJ as to whether his age qualified him. In relation to ground 2, Ms Jaber asked me to consider the issues accepted by the FTTJ between [108] and [123] of the decision and to conclude that she had used an erroneous test in finding that he did not qualify for humanitarian protection in those circumstances. With regard to ground 3, Ms Jaber identified a number of findings made by the FTTJ, which she argued were problematic.
12. Mr Avery argued that the FTTJ had made findings open to her and that Ms Jaber's arguments did not identify any material error of law. The appellant's age at the time of the hearing was a relevant factor. There was nothing in the evidence, which ought to have led the FTTJ to treat him as a child. While the FTTJ had made findings in relation to the decision amounting to a breach of the appellant's rights under Article 8, this did not lead to the conclusion that he was entitled to international protection. On the second ground, Mr Avery asked me to find that the FTTJ's conclusions as to humanitarian protection were perfectly sustainable. The FTTJ found that the appellant had family in Afghanistan and that he had no significant health problems. The criticisms set out in ground 3 were, he submitted, no more than mere disagreement with the FTTJ's findings. Mr Avery went on to address the credibility issues, which were highlighted by Ms Jaber in her arguments.
13. In reply, Ms Jaber argued that the appellant's age was not the only relevant factor with regard to whether the appellant qualified as a refugee

on account of being a practical orphan. This was a material error in that it was not a foregone conclusion that the FTTJ would have reached the same decision had she approached the issue differently. The findings the FTTJ made on Article 8 were factors, which supported the appellant being a refugee. On ground 2, she argued that the FTTJ had excluded the relevant factors and in relation to ground 3 the FTTJ had relied on unsubstantiated reasons.

14. At the end of the hearing I reserved my decision as to whether there was a material error of law.

Decision on Error of Law

15. I will address the grounds in the same order as they were made. The first ground took issue with the FTTJ's conclusion that the appellant was not a member of a particular social group on account of his age; LQ (Age : immutable characteristic) Afghanistan [2008] UKAIT 00005 and DS (Afghanistan) v SSHD [2011] EWCA Civ 305 applied. The FTTJ gave careful and detailed consideration to this matter between [97] and [107] of the decision and reasons. She correctly directed herself as to the case law at the beginning of her consideration and when reaching her overall conclusions. Other than the fact that the appellant is a young adult, Ms Jaber did not draw my attention to any other part of the evidence, which might have led the FTTJ to conclude that the appellant should be treated as a child.
16. There is a reference in Ms Jaber's skeleton argument to the appellant's apparent or assumed age, however I heard no argument to the effect that this was below 20 at the time of the hearing before the FTTJ. While the FTTJ's comment about the appellant not challenging the first refusal of his asylum claim when he was a minor was of doubtful relevance, I do not accept that this amounts to a material error in light of the fact that on the evidence before the FTTJ, the appellant was a physically and mentally healthy 20 year old man with many relatives in Afghanistan, specifically in Kabul Province. Other than his age and a "Fit certificate" from a GP dating from January 2014 (some 18 months before the hearing) referring to anxiety related symptoms; there was no evidence before the FTTJ, which could have led her to reasonably conclude that the appellant would face the same risk of persecution, as would a child.
17. The second ground concerns the argument that the FTTJ failed to assess whether the appellant was at risk of serious harm from indiscriminate violence based on all of his personal circumstances and not just his age. The FTTJ addressed this issue between [108] and [122] of the decision. I reject the assertion that the appellant's age was the only issue taken into consideration. At [114-115] the FTTJ took into consideration the worsening security situation; at [116] she particularly noted the rise in IDP's in the Kabul area to which the appellant would be returned; at [117], she took into consideration that the appellant had not lived in Afghanistan since the age of 13 and that the appellant would need to locate his relatives in his

village with whom contact had lapsed and reintegrate upon return there; at [118], the FTTJ took into consideration the appellant's circumstances in the United Kingdom throughout his residence here and the degree of independence he had attained and accepted that he still received some support from the local authority.

18. Ms Jaber submitted that the reasons given by the FTTJ for allowing the appeal under paragraph 276ADE(vi) of the Rules ought to have been applied to her findings on serious harm. I note that the FTTJ took into account the appellant's age, lack of experience of independent living and that he was last in Afghanistan as a 13 year old child and concluded that there would be significant obstacles to his re-integration.
19. I do not accept that these matters were not considered in terms of the appellant's humanitarian protection claim for reasons given above.
20. The FTTJ paid careful attention to the somewhat limited evidence relating to the appellant's physical and mental health at [119] and she accepted that he suffered from some anxiety symptoms (notwithstanding the vintage of the GP's certificate) but concluded that she was not satisfied that he had "*significant*" health problems.
21. Finally at [120] the FTTJ considers the evidence of the difficulties of failed asylum seekers reintegrating in Afghanistan. While the FTTJ, at [122] refers, to the appellant's age and the security situation, it is abundantly clear from reading the preceding 14 paragraphs that the FTTJ considered every aspect of the appellant's personal circumstances prior to deciding that he was not at risk of serious harm owing to indiscriminate violence. The grounds amount to disagreement with the FTTJ's findings.
22. In ground 3, issue is taken with a number of the reasons given by the FTTJ for concluding the appellant's father was not abducted by the Taliban. Five specific matters are relied upon in Ms Jaber's skeleton argument and they initially appear persuasive, when taken in isolation.
23. The first matter concerns the FTTJ's finding that the appellant only belatedly made efforts to verify his father's employment, which it is (rightly) argued fails to take into consideration the appellant's age and the fact that (partial) verification was ultimately obtained.
24. Secondly, I am told that the appellant was never asked about how he obtained the Tiskara, which he relied upon in the Administrative Court proceedings and which resulted in the local authority's assessment that he was two years older than his stated age, being quashed. I accept that, ideally, this matter ought to have been put to the appellant for his comments during the hearing.
25. Thirdly, it is doubtful that the appellant's failure to challenge the 2009 refusal of his claim ought to adversely affect the credibility of that claim given that he was a minor at the time.

26. Fourthly, there is also the FTTJ's reliance on the screening interview record when the appellant was interviewed without an appropriate adult as well as the interviews taken in connection with the age assessments, which were subsequently quashed. On this point, I find that the FTTJ was entitled to place some weight on the appellant's responses provided that she considered the appellant's circumstances, in particular his age, as well as those in which these interviews took place; this she did at [53-56] and elsewhere in her findings.
27. Fifthly, the FTTJ was criticised for placing weight on the failure of the appellant to mention to social workers that he did not know his father's whereabouts. Indeed, the FTTJ goes further than this, she notes that there were "*numerous references*" in the Pathway Plans to both his birth parents.
28. I reject the argument that the social services evidence is deserving of no weight solely because the age assessments were quashed.
29. The FTTJ's credibility findings, both positive and negative, occupy 40 paragraphs of the decision and reasons. I conclude that of the five matters isolated in the ground 3, only the first three have any merit. However, in relation to the issue of the Tiskara, the FTTJ did not err in placing some weight upon the fact that the appellant denied having such a document on arriving in the United Kingdom and that he had offered to contact his mother in order to obtain it.
30. In addition to the negative credibility findings mentioned in the grounds, the FTTJ placed weight on what I consider to be significant inconsistencies in the appellant's account as to the timing of the warnings he states he received from the Taliban [76-78]. Furthermore at [79-82], the FTTJ remarks upon the evolution of the appellant's claim between his substantive interview when he claimed not to know the details of two of the warnings from the Taliban and his witness statement made three years later when details were provided. Before concluding that the appellant had bolstered his claim in some aspects, the FTTJ firstly took into consideration that any further details might have been due to careful questioning by his advisors as well as the brevity of some aspects of the asylum interview [81]. The FTTJ notes further inconsistencies at [83] regarding the circumstances in which his father was abducted; at [84] in relation to what steps his mother took subsequently and at [88] where the appellant was when the Taliban went to his home on the first occasion.
31. At [90] it is noted that the appellant claimed that his parents were beaten by the Taliban for the first time, only six years after his arrival in the United Kingdom. At [91] the FTTJ records that the appellant told social workers of a conversation with his father about his age, which took place some months after he states that his father was abducted.
32. In conclusion, while the FTTJ may have fallen into error in her treatment of the Tiskara and the comments made about the appellant's failure to

appeal or obtain evidence earlier, I find that these were not material to the outcome of the appeal, in view of the substantial inconsistencies and other areas of cause for concern with the evidence before her.

33. The FTTJ made no material error of law.
34. I dismiss this appeal
35. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. ”

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the FTTJ.

Signed

Date: 28 February 2016

Deputy Upper Tribunal Judge Kamara