



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

Appeal Number: PA/01468/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 May 2017**

**Decision & Reasons Promulgated
On 26 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**A K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkins, Counsel, Lawrence Lupin Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant in this case is a citizen of Afghanistan born on 15 February 2001 who appealed to the First-tier Tribunal against the decision of the respondent made on 18 December 2015 to refuse to grant the appellant asylum (the appellant being granted discretionary leave until 18 March 2018 as an unaccompanied minor). In a decision and reasons

promulgated on 9 January 2017, following a hearing on 22 August 2016, Judge of the First-tier Tribunal I A Lewis dismissed the appellant's appeal.

2. The appellant appeals to the Upper Tribunal with permission, from a Deputy Upper Tribunal Judge, on the grounds: ground 1 that the decision is fundamentally undermined due to the delay between the hearing and promulgation of four months; ground 2 that the assessment of credibility was flawed.

Error of Law Discussion

Ground 1

3. I am not satisfied that this ground is made out. The appellant in the grounds and Mr Hawkins before me relied on **RK (Algeria) v SSHD [2007] EWCA Civ 868** and in particular Mr Hawkins drew my attention to the findings of the Court of Appeal that discussed that there would be particular circumstances where a delay that exceeds three months might undermine confidence in the decision.
4. However at paragraph 23 of **RK (Algeria)**, the submission that a delay of six months rendered a decision unsafe, was specifically rejected and the Court of Appeal confirmed that there needed to be a nexus between the delay and the safety of the decision. Nothing I was taken to went to such a nexus.
5. Mr Hawkins also relied on **Sambasivan v Secretary of State for the Home Department [2000] Imm AR** as cited in **RK (Algeria)**. I have considered that the Upper Tribunal in **Arusha and Demushi (deprivation of citizenship - delay) [2012] UKUT 80 (IAC)** the Upper Tribunal considered all of the relevant jurisprudence and confirmed that "in order to show that the delay has led to an error of law it has to be shown that the judgment was not safe and therefore unlawful". I cannot agree with Mr Hawkins' submission that the Upper Tribunal put a "gloss" on **RK (Algeria)**.
6. Although I accept that in this case credibility was at issue I am not satisfied that any nexus has been shown between the unfortunate delay of over four months and the alleged unlawfulness of the decision. It is not the case that the decision is unlawful prima facie because of the delay. The judge was alive to the delay and reminded himself, at [14], that a significant period of time had passed between the date of the hearing and the finalisation of the decision and that "in preparing this decision I have had the benefit of my detailed notes of the proceedings. I am satisfied that the passage of time has not impacted upon my ability to recall the evidence and issues herein."
7. I accept Mr Hawkins' submission that it was not for the judge to decide whether there is an error of law but rather it is for the Upper Tribunal. Nonetheless the judge specifically highlighted his awareness of the issue

and it is important to note that he himself was satisfied that he had adequate detailed notes. I am not satisfied that a nexus has been established between the delay and any of the criticisms made of the judge's decision in ground 2 or by Mr Hawkins (and Mr Hawkins' attempted to raise a new ground at the hearing in relation to an alleged error by the judge in her consideration of the expert evidence of Dr Giustozzi. I indicated at the hearing that I was not minded to take this into consideration. I am not satisfied that it was **Robinson** obvious or that there are any exceptional reasons why the Tribunal should consider this new ground. Even if I am wrong I can see no error in the judge's very careful consideration of the expert evidence in relation to forced recruitment. Although Mr Hawkins sought to criticise the respondent's interpretation of that evidence the judge also noted that Dr Giustozzi does not expressly address the apparent discrepancy between the appellant's claim that his father was forcibly recruited and Dr Giustozzi's own knowledge that forced recruitment is not in practice exercised currently by the Taliban save in "very rare circumstances." None of these circumstances were related to the circumstances of either the appellant or his brother. No error, material or otherwise, has been identified.)

8. In relation to the remaining ground, this amounts to no more than a disagreement with the judge's findings. The judge found at [28] that he did not accept that the appellant had lost contact with his family and fully explored with great care the evidence of the appellant and that of his uncle in relation to when the appellant's father died. The judge found that the appellant's evidence was at odds with his uncle's evidence in that the appellant's uncle estimated the event had taken place in two to two and a half years prior to the date of hearing (which would be approximately March to August 2014) whereas the appellant estimated it to have been March 2015. However that was not the only information that was taken into consideration. The judge also noted that the appellant's account was discrepant with his account given in his initial witness statement. The judge further found that the appellant had arrived in the UK in possession of a telephone number of a cousin who then came to the airport but that this cousin denied any knowledge of the appellant's arrival in which the judge did not accept as credible. The judge went on to take into consideration that the appellant had suggested that his cousin would be able to get hold of supporting documents which suggested that the appellant understood his cousin to be in contact with persons in Afghanistan, which the judge again undermined the appellant's claim not to have been in contact with family members.
9. It is not the case therefore that the judge found that the appellant had lost contact solely because of the discrepant dates. Even if that was the case the judge had in mind that the dates were approximate. The judge specifically records at 28(2)(ii) that in his oral testimony the appellant's uncle stated that the last time he had had contact was "about two to two and a half years previously" which is self-evidently an approximate and imprecise date. The further submission that the Judge of the First-tier Tribunal failed to have regard to the findings of Dr Cohen which included

that the appellant's memory and concentration are "fair" but his recall of dates is "poor" is without merit.

10. The judge properly directed himself including at 16 in relation to the appellant's age and reminded himself of the context of the UNHCR Handbook and Guidelines and Procedures and Criteria for Determining Refugee Status and of the Presidential Guidance on Child, Vulnerable Adults, and Sensitive Appellants. The judge properly took into account that the appellant has been diagnosed as suffering from post-traumatic stress disorder and the possible implication that this may have in respect of the facility to recall matters accurately and his ability to give a coherent narrative account [18]. The judge noted that it was not suggested in any way that the appellant might be in any way unfit to participate in the asylum or appeal process.
11. The judge was entitled to take into account, in the round, the considerable difference in the dates provided by the witnesses notwithstanding the approximate nature of the uncle's dates and the appellant's recorded difficulties with dates.
12. The appellant also submitted that the judge had failed to take into consideration the unchallenged witness statement evidence of the appellant's cousin Mr QK who in his statement confirmed that he had witnessed the appellant's father working for the Taliban. It was submitted that this witness was a recognised refugee who had been accepted as credible by the Tribunal and that it was not open to the judge to assert that there was no other evidence before the court supporting the appellant's father's role in the Taliban.
13. The judge found at [34] that there was no other "independent corroboration of the appellant's father's involvement with the Taliban or otherwise of the appellant's father's fate." The judge at [15] of the decision and reasons confirmed that he had taken into consideration all of the evidence and had reminded himself that it was not necessary to set out his approach in every point and that the omission of reference to any particular document or aspect of evidence was not indicative of a lack of consideration of that document or aspect of the evidence. In this context the judge at [13] specifically set out that he had taken into consideration the evidence of Mr QK who was in attendance and his witness statement was in the bundle at pages 22 to 25 but that he was not a witness to the particular events in Afghanistan upon which the appellant relied having himself come to the UK in 2010 and in all the circumstances he was not called as a witness. The judge went on to state that he considered the contents of Mr QK's witness statement as essentially providing contextual material albeit not addressing directly those events upon which the appellant bases the core of his claim. In these circumstances the judge was entitled to reach the decision he did that there was no "independent" cooperation of the appellant's father's involvement with the Taliban.

14. The judge at [27(ii)] had not accepted the respondent's reasoning at paragraphs 26 of the refusal letter as undermining the appellant's account of his father's involvement and did not find the respondent's reasoning to be sustainable but reminded himself that this did not mean inevitably that he must accept the appellant's claim but that it was a matter for consideration in the round. Upon that detailed consideration the judge made the findings he did at [33] that he did not accept the appellant's account of his father's involvement with the Taliban including as the appellant's general credibility was damaged for the reasons carefully set out by the judge.
15. The grounds of appeal also complain that it was not open to the First-tier Tribunal to find the appellant's troubles were as a result of being a child in a war zone given the expert report. However the judge, including at [36], gave cogent reasons, having considered Dr Cohen's report, but that in all the circumstances and taking into account those areas of difficulty identified in respect of the appellant's account, reached the conclusion that the appellant's psychological and mental health difficulties arose by reason of the proximity as a child to a war zone. It was noted in particular that paragraphs 4 and 5 of Dr Cohen's report referred to the appellant recounting matters unrelated to those matters that were then advanced subsequently as part of his asylum claim.
16. It was a matter for the judge what weight he gave to the evidence before him and the judge properly considered Dr Cohen's expert report including that Dr Cohen identified some of the injuries may be attributable to being in the proximity of explosions and it was also open to the judge to make the ultimate finding that he did that he did not "find the medical evidence so compelling by way of corroboration that it outweighs those other aspects of the appellant's account that I find fabricated, incredible or unreliable." There was no properly arguable challenge to those findings, either on a stand alone basis, or on the basis put forward by Mr Hawkins that a lower standard applied given the delay.
17. For the reasons already given I am not satisfied that there was either any nexus established between the delay and any alleged deficiencies in the judge's decision, or that there has been established that any material error has otherwise been disclosed.

Conclusion

18. The decision of the First-tier Tribunal, as I indicated at the hearing, does not disclose an error of law such that it should be set aside.

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

Dated: 24 May 2017

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee award is applicable or is made.

Signed

Dated: 24 May 2017

Deputy Upper Tribunal Judge Hutchinson