



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

Appeal Number: PA/01551/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 July 2017**

**Decision & Reasons Promulgated  
On 21 August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**Y A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss J Fisher, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

1. 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.

2. The appellant is a citizen of Afghanistan. He is minor with a date of birth assessed as 1 January 2002. The appellant has been granted discretionary leave to remain in the United Kingdom as an unaccompanied minor asylum seeker. He arrived in the United Kingdom on 1 August 2016, clandestinely, and claimed asylum the same day. The appellant's claim for asylum was based on a fear of persecution by the Taliban in Afghanistan. The Secretary of State refused the asylum claim notifying the appellant of the decision on 30 January 2017. The appellant appealed against the respondent's decision refusing to recognise him as a refugee on the grounds of his imputed political opinion and on the ground that he would be an unattended child.

### **The Appeal to the First-tier Tribunal**

3. In a decision promulgated on 20 April 2017 First-tier Tribunal Judge A Monson dismissed the appellant's appeal. The First-tier Tribunal found the appellant's account was not credible and therefore found that the appellant did not qualify for recognition as a refugee, for humanitarian protection or for subsidiary protection under Article 15(c) of the Qualification Directive. There was no substantive Article 8 claim advanced.
4. On 4 May 2017 the appellant applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal against the decision of Judge Monson. On 16 May 2017 First-tier Tribunal Judge Kelly granted the appellant permission to appeal. However, the grant of permission to appeal was limited only to the ground as set out in paragraph 8 of the grounds of appeal. Permission to appeal was refused on the remainder of the points set out in ground 1 and was refused in respect of both grounds 2 and 3 in their entirety.
5. On 21 June 2017 this matter was listed for an error of law hearing before me. At the commencement of that hearing I was handed a copy of a fax that had been transmitted to the Tribunal earlier on the morning of the hearing. The appellant had submitted a renewed application for permission to appeal against the decision of the First-tier Tribunal on the grounds that had been refused.
6. I adjourned the case for a short period to enable me to consider the renewed application for permission to appeal. I gave my decision orally indicating that full reasons in writing would follow. I refused the renewed application for permission to appeal. My decision in writing was sent out to the parties on 30 June 2017.
7. Subsequently the matter was listed for an error of law hearing on 28 July 2017.

## **The Hearing before the Upper Tribunal**

### **Preliminary issue**

8. At the commencement of the hearing Miss Fisher raised an issue concerning information regarding the Red Cross. She submitted that the Red Cross has confirmed in writing that are not able to conduct any tracing in Afghanistan at present. It was not clear to me how that matter was relevant to the error of law hearing. The letter from the Red Cross (of which I do not have a copy) was not before the First-tier Tribunal Judge. When I asked Miss Fisher to clarify how this was relevant to the error of law she submitted that it is relevant to the protection element of the claim as the appellant would be returning as an unattended child. She referred to paragraphs 39 and 40 of the First-tier Tribunal decision which sets out that the background evidence demonstrates that unattached children returned to Afghanistan may be exposed to risks of serious harm and that such risks will have to be taken into account when addressing the question of whether return is in a child's best interests when determining a claim to humanitarian protection.
9. When pressed to indicate where in the decision this would indicate that the First-tier Tribunal had erred in law, Miss Fisher referred me to paragraph 59 of the decision and submitted that clearly the First-tier Tribunal's finding at paragraph 53 (that the appellant had not discharged the burden of providing credible evidence of efforts to contact his family in Afghanistan with the assistance of the Red Cross) was quite clearly wrong. As I indicated to Miss Fisher, in effect she was attempting to re-open the grounds of appeal upon which permission to appeal had been refused. I do not consider, despite Miss Fisher's valiant attempts, that she has made a sufficient connection between the letter from the Red Cross and any material error of law. Miss Fisher advised that the Red Cross stopped conducting tracing in Afghanistan from around February 2017. The appellant has been in the UK since August 2016. He made no efforts to contact the Red Cross during the period when they were undertaking tracing. Secondly, and more importantly the First-tier Tribunal did not accept that the appellant had lost contact with his family. The judge made clear findings that there were no substantial grounds for believing that the appellant's family have left the village where they lived or that they are not contactable (paragraph 58).

### **The 'weapons training' ground of appeal**

10. Permission to appeal had been granted purely on the argument set out in paragraph 8 of the grounds of appeal. It is asserted that the First-tier Tribunal Judge wrongly suggested that the appellant had claimed to have

been provided with weapons training. It is submitted that the appellant's evidence, in keeping with the background material referred to, was that his training was limited to running, fetching water, carrying and cleaning bullets. At the hearing Miss Fisher submitted that the judge has not given anxious scrutiny by taking into account the age of the appellant when assessing credibility on this issue. She submitted that there is no inconsistency in the appellant's evidence when considered in light of the age of the appellant. In the interview the appellant clarified what was said in his witness statement and made it clear that it was the older children who were given weapons training and he watched. She referred to paragraph 49 of the First-tier Tribunal's decision and submitted that the judge made an adverse credibility finding against the appellant because of inconsistencies which she submitted when read as a whole the witness statement and the interview are not inconsistent.

11. Mr Armstrong submitted that there is no material error in the First-tier Tribunal's decision. The judge correctly refers to the interview and the evidence of the answer of the appellant, i.e. that he was given training to fire weapons. He noted that there is nothing in the grounds to indicate that what was recorded in the witness statement is incorrect. Therefore, the judge's conclusion as to the inconsistencies and the finding that it was not credible that he would have embarked on weapons training at such a young age are correct. Mr Armstrong submitted that, in any event, in light of the overall credibility findings adverse to the appellant this is a minor element of that, and even if it were an error of law it would not amount to a material error.

## **Discussion**

12. The First-tier Tribunal Judge considered the evidence of the appellant in some detail. In respect of the narrow issue upon which permission to appeal has been granted the judge set out at paragraphs 49 and 50:

"49. Moreover, the Appellant claims that the process of forced recruitment began when he was as young as eight or nine. It is not credible that he would have embarked on weapons training at such a young age.

50. There are also internal inconsistencies in the Appellant's account. In his witness statement, he said that he had been trained to fire weapons. In his asylum interview he said that he had been given the training to fire them, but had not actually been 'forced' to fire a round. Of greater materiality is the Appellant's extreme vagueness about the number of times when he had allegedly escaped from the Taliban base. It is not in any event credible that the Appellant would be repeatedly reassigned to sentry duty at the base if he was repeatedly using this as an occasion to escape."

13. The appellant in his witness statement dated 28 September 2016 at paragraph 6 stated:-

“I was taken to the Joynaw base. They started to show me how to fire shots with a gun, they then made me wash their clothes, I had to sweep their base and clean their bullets.”

14. In the interview of 19 January 2016 the appellant was questioned about the evidence in his witness statement and about his account of what happened in Afghanistan in respect of the Taliban. At question 46 in answer to a question about when his problems first started the appellant answered that he was made to fetch water, wash clothes, clean the bullets and that they also started to train him by asking him to carry bullets from one place to another. At question 69 he was asked “Earlier you said the Taliban started to train you, can you tell me what they trained you to do?” In answer the appellant said “They started by making us run and asking us to clean the bullets. They started with these little things. They never made us shoot any rounds.” The next question, number 70, the appellant was asked “In your witness statement you said they showed you how to fire shots with a gun”. In answer he said “Yes they did, they never made us fire, they just instructed us how to”.
15. The appellant’s representative had not sought to clarify anything in his witness statement. It is clear from paragraph 6 of his witness statement, as set out above, that the appellant’s evidence was that the Taliban started to show him how to fire shots with a gun. The First-tier Tribunal Judge was entitled to conclude that the appellant’s evidence was that he had been provided with weapons training at a very young age and that that was not credible and that the evidence in interview when he said he was never made to fire was inconsistent with that evidence. However, even if this were an error of law it would not amount to a material error of law. This was not the most significant issue. The First-tier Tribunal Judge considered a greater materiality was the appellant’s vagueness about the number of times he had allegedly escaped from the Taliban base and that it was not credible that the appellant would be repeatedly reassigned to sentry duty if he was repeatedly using that as an occasion to escape.
16. There was no material error of law in the Tribunal’s findings.

### **Notice of Decision**

17. I find that there was no material error of law in the First-tier Tribunal’s decision. The appellant’s appeal is dismissed.

Signed P M Ramshaw

Date 19 August 2017

Deputy Upper Tribunal Judge Ramshaw

