



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03628/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd November 2017**

**Decision & Reasons
Promulgated
On 19th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**SM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna of Counsel, instructed by Virgo Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Widdup made following a hearing at Harmondsworth on 21st March 2017.
2. There is a history to this appeal. The appellant claimed asylum on 10th October 2015. He claimed to be at risk on return to Afghanistan following the murder of his father by the Taliban after he refused to obey their orders. It was accepted by the respondent that his father had worked for a local police commander and was killed as claimed, but it was not accepted that the appellant himself would be at risk.

3. The appellant appealed to an Immigration Judge and his appeal was dismissed on 28th September 2016. That decision was set aside by Upper Tribunal Judge Gleeson on 6th February 2017 and the appeal was remitted back to the First-tier Tribunal.
4. Judge Widdup reached the same conclusion as the respondent and the previous judge. He rejected the appellant's account of his mother leaving the village and remarrying and said at paragraph 53:

“My findings of fact that the appellant has not given a credible account of his family circumstances when he left Afghanistan is not a finding of fact that he has family waiting for him in his home village. However it is for him to show that he will be an unaccompanied child and my concerns about his credibility in relation to this mean that I am not satisfied that he does not have family in his home village.”
5. The appellant sought permission to appeal on the grounds that the judge had approached his analysis of risk on return incorrectly and had failed to properly apply the case of AA (unattended children) Afghanistan CG [2012] UKUT 0001. In particular he had failed to take proper account of paragraph 123 of AA where the Tribunal accepted the expert's evidence referring to the Taliban in relation to un-associated relatives of those alleged to have collaborated with the government.
6. The grounds also challenged the judge's approach to credibility when assessing the plausibility of his account, failing to properly consider the appellant's evidence and misunderstanding his case in relation to whether his brothers and aunt had remained in the village permanently. He had also dismissed the possibility of the appellant's mother remarrying and leaving her children behind based on his own preconceptions about how she would have behaved.
7. Permission to appeal was initially refused by Judge Ford on the basis that the appellant had sought permission out of time although she considered that the grounds were arguable.
8. Upon application to the Upper Tribunal, permission was granted and time extended by Upper Tribunal Judge Pitt.
9. Mr Melvin sought to defend the determination and submitted that the judge's credibility findings were sound, but I conclude that this determination is vitiated by errors of law.
10. First, the judge did not engage with the evidence accepted by the Tribunal in AA and referred to in the skeleton argument. On the face of it, given the accepted facts, the appellant could potentially be at risk as a young male relative of a person killed by the Taliban.
11. Second, the judge erred in his approach to assessing the plausibility of the claim for the reasons set out in the grounds.

12. Third, he failed to make clear findings about whether the appellant, still a child, would have family support in his home village. In fact he specifically said that he had not made such a finding. However, the judge was required to decide that issue in order to make a decision on whether he would be at risk on return.
13. This is a matter which has been heard twice in the First-tier Tribunal. It was therefore agreed by both parties that it should stay in the Upper Tribunal and will be reheard by me on 23rd November 2017 for a fresh hearing on all issues.

The resumed hearing

14. At the resumed hearing the appellant relied upon the previous bundle of papers which his representatives had produced in support of his original appeal. Ms Patyna also produced a skeleton argument, a map of Taliban-controlled areas in Afghanistan, the reported decision in AA (unattended children) Afghanistan CG [2012] UKUT 00016, up-to-date Country Policy and Information Notes from the Home Office dated December 2016 in relation to fear of anti-government elements in Afghanistan and a skeleton argument.
15. Mr Melvin provided a skeleton argument together with copies of the cases upon which he intended to rely and the most up-to-date Country Policy and Information Note on the Security and Humanitarian Situation in Afghanistan dated August 2017.
16. Immediately before the hearing Ms Patyna sought permission to adduce a further witness statement, from the appellant's foster mother. She gave evidence, as did the appellant, SM.

The Evidence

17. The appellant's evidence is set out in his initial statement and in his statement dated 2nd September 2016, which he adopted to stand as his evidence-in-chief. He is a minor, having been born on 1st January 2002 and is therefore still only 15 years of age.
18. The appellant is the eldest of five sons. He claims that his father had worked for a local police commander and had been threatened and killed by the Taliban. He fled Afghanistan with the help of an agent following his father's murder. In the refusal letter the respondent accepts that his father was killed by the Taliban as claimed because his father was working for a government official.
19. Following his father's death his mother left the family home. The appellant said in his screening interview that his mother remarried after his father had died. At question 67 of the substantive interview he was asked how long after his father's death did his mother remarry and he replied "about five days".
20. In his comments on the refusal letter at paragraph 7 the appellant said:

“I maintain that my mother did leave after five days. The simple fact is that as far as I am concerned my widowed mother could not have chosen to leave us and gone away all by herself. I assumed she must have got remarried. If she is not with us, her family, she must have remarried.”

21. At his interview the appellant said that when his father had been killed, they did not know what had happened to him initially. They went to the Molvi, who told the family that his father had been killed. They were frightened and the family stayed in hiding in their house. The villagers said that the appellant could be killed as well and his life was in danger. His brothers were sent to his aunt’s home and he left with the help of an agent. His uncle arranged everything.
22. The appellant was asked in his oral evidence why the other brothers were not sent away as well. He said that maybe they did not have the money for them all or because they were younger. He left the village five days after his father had died and not two months before he left, as he had wrongly stated in his interview.
23. The appellant knew little about his family in Afghanistan. He said that he did not know what his uncle’s job was, nor whether he had any other relatives who were alive aside from the aunt and uncle who had helped him. He had had one telephone call with his uncle when he was in Iran but had subsequently lost his telephone number.
24. The appellant was asked about whether he had tried to trace his family through the Red Cross. At first he said that he had not been told anything about it but then said he had had an interview with his social worker and he had given the family details to him. There had been two interviews, once at school and once at home, because he wanted to find his brothers. He had no copies of any papers which had been sent to him and he thought that the interview had been around two months ago. He then said he thought that he might have had a paper from the Red Cross.
25. The appellant’s foster mother, MA, gave oral evidence. She said that the appellant had had a number of different social workers and one of them had had an appointment with the appellant at the house and SM had passed on the details to be given to the Red Cross to trace his family. He also had a meeting at school. In oral evidence she said she thought that the interview had taken place about a year ago in September 2016. She named the social worker who had conducted the meeting. She said that she herself had seen a letter from the Red Cross, confirming that they had been unable to trace the appellant’s family but it had never been mentioned to her that it was important to bring the letter to the Tribunal.

Submissions

26. Mr Melvin submitted that, even after making allowance for the appellant’s age, he had been deliberately evasive in his evidence. He submitted that it was not credible that his mother would have remarried and left her sons in the care of the aunt so quickly after the father’s murder. The

appellant's evidence was that the whole family had been targeted and not just him and there was therefore no reason for the appellant himself to be the only one to have left.

27. The evidence in relation to contact with the family was vague and he asked me to disbelieve both the appellant's evidence and the foster mother's evidence, because they contradicted each other as to the timing of the appointment with the social worker. His credibility was damaged by not having made any attempt to contact his family in Afghanistan.
28. In his submission it was not credible that the appellant would have been able to remain in the family home for five days following the death of his father if the Taliban were genuinely interested in him. Furthermore, it was not plausible that his mother would have remarried so quickly and abandoned her children.
29. Ms Patyna submitted that the appellant had given credible evidence. He was only now 15 and his level of understanding must be assessed in the context of his very young age at the time of the asylum interviews. The only aspect of the claim which had not been accepted was that his mother had left the family home and got married following his father's death. Essentially the respondent was arguing that it was not plausible, but this was dangerous, particularly in the context of the evidence of a child.

Conclusions of the Credibility of the Appellant's Claim

30. The respondent accepted in terms that the appellant's father, who was a farmer, used to work for a local police commander and because he refused to stop working for him he was killed by the Taliban. The core of the appellant's story is therefore not in dispute.
31. The appellant is uneducated. When he was in Afghanistan he worked in the bazaar putting goods in a handcart for people to take them to their cars. He did not study. I note that although he signed his second witness statement in September 2016 his first witness statement, which was completed shortly after his arrival in the UK, is marked by a thumb print.
32. He clearly has difficulty with dates. He said at one point in the interview at question 63 that his father was killed about two months before his departure, and at another point five days. He also contradicted the evidence of his foster mother when he said that he had had the interview with the social worker about two months ago, and she had said it was about a year ago. I can place no reliance upon his ability to give an accurate timeframe. However, that does not mean that the core of his story is not true.
33. I do not know how long it was between the murder and his leaving the village but, the exact timescale does not matter. The accepted facts, namely his father's history of employment by a local police commander, and his subsequent killing would be sufficient for the appellant and his family to fear that the Taliban would have an interest in him.

34. It is not implausible that the appellant's mother would have remarried, given the difficulties she would face as a female head of household, following the death of her husband. The appellant said that he assumed that this is what had happened because she was not with her family, which is credible.
35. There is no merit in the respondent's argument that the fact that the boys remained in the family home for five days after the murder indicates that they were of no interest to the Taliban. Mr Melvin submitted that it was the appellant's case that the whole family had been targeted and not just the appellant. However, the basis for that submission appears to be the appellant's evidence that he was told by the villagers that whoever violated the order of the Taliban would be killed (question 66) and his father had been sent a night letter. It is logical that if the Taliban were interested in the family at all, they would be most interested in the appellant as the eldest son. It is not illogical that the uncle and aunt decided to remove him from the perceived danger rather than the younger boys.
36. I do not accept Mr Melvin's rather surprising submission that the evidence of M.A should be discounted. She gave her evidence in a wholly straightforward manner, answering all of the questions which were put to her without any hesitation. She named the social worker who had conducted the interview with the appellant. The fact that her timing differs from his is not a reflection on her but on the difficulty which the appellant has with dates. Both she and he said that there were two interviews, one at school and one at home. She said that she had seen the letter herself, which said that the Red Cross could not continue searching for his family because of the security situation in Afghanistan. There is no basis whatsoever to dispute that.
37. In conclusion, whilst I accept that aspects of the appellant's evidence were indeed vague, and that he was hopeless on his dates, this does not mean that the necessary conclusion is that he is being untruthful, particularly when the core of his story has already been accepted by the respondent. Moreover I accept, on the basis of the wholly credible evidence from the appellant's foster mother, that the appellant has made an effort through the Red Cross to trace his family and that he has been unsuccessful.

Findings and Conclusions

38. The appellant has leave to remain until October 2018, but his case must be assessed on the hypothetical basis that he would be returning to Afghanistan as at today's date.
39. There are two limbs to his appeal. First is that he would be entitled to asylum as an unattached child returned to Afghanistan without family support and second that he would be at risk from the Taliban on account of his perceived political opinion.
40. The appellant relies on the country guidance case of AA, in which the Tribunal accepted expert evidence that unassociated relatives of those

alleged to have collaborated with the government might be at risk. The respondent has always accepted that his father is dead. I accept his evidence that he does not know his mother's whereabouts and that he has lost contact with his family. His village is in a contested district of Afghanistan and he has no relatives in Kabul. He has made an attempt through the Red Cross to trace his family but has been unsuccessful.

41. There is in fact no evidence that the Taliban sought to target the appellant. I accept Mr Melvin's submission that there is no evidence that the appellant has been directly or indirectly targeted by the Taliban. They targeted his father because of his occupation. The appellant's evidence about the length of time between his father's murder and his departure from Afghanistan is very unclear. That does not, however, mean that the appellant himself did not have a subjective fear of unwanted attention from the Taliban or that the relatives responsible for making decisions on his behalf did not have such a fear.
42. Mr Melvin sought to distinguish AA because in that case the Tribunal accepted that the Taliban were interested in that particular appellant. However, that is to ignore the alternative basis upon which AA succeeded. He relied on AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163, but that of course was not a case dealing with minors.
43. The issue in this case is whether in fact the appellant has family to whom he could return. In EU (Afghanistan) & Ors v SSHD [2013] EWCA Civ 32 the Court of Appeal accepted that the costs incurred by a family in paying for a fare and an agent to arrange the journey of a child to the UK will have been considerable and they are therefore unlikely to cooperate with an agent of the Secretary of State for the return of their child to Afghanistan. In KA (Afghanistan) [2012] EWCA Civ 1014 Elias LJ considered that an adverse inference was in principle open to the Upper Tribunal on the evidence of a lack of cooperation. However, that is not the case here. There is no basis upon which it can properly be said that the appellant has failed to cooperate.
44. In summary, whilst I accept that the appellant has not established that he would be at risk of persecution by the Taliban, I do accept that he is entitled to succeed on return to Afghanistan as an unattached child. The respondent accepts that his father is dead. I accept that the appellant does not know where his mother is. His evidence has always been consistent at its core. The variation in the dates is entirely explicable by his youth and lack of education. He has made attempts through the Red Cross to trace his family. The risks which he would face on a return to Kabul are set out in AA, which remains country guidance to be applied in his case.

Notice of Decision

The original judge erred in law. His decision has been set aside. The appellant's appeal is allowed.

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 his 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.

Deborah Taylor

Signed
2017

Date 14 December

Deputy Upper Tribunal Judge Taylor