



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/04061/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 24 July 2017**

**Decision &  
promulgated  
on 25 July 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**SUM  
(anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Bandegani instructed by Wilson Solicitors LLP  
For the Respondent: Mr C Avery Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Tribunal Judge Gaskell promulgated on 23 January 2017 in which the Judge dismissed the appellant's appeal on asylum and human rights grounds.

## **Error of law**

2. The appellant is a minor, having been born on 1 January 2000, and a citizen of Afghanistan. At the date of hearing he was 16 years of age.
3. The appellant appeared before the Judge without the benefit of legal representation but accompanied by his foster parent and social worker [2].
4. The Judge noted the appellant had been represented until 7 June 2016 at which point his previous solicitors withdrew as a result of funding issues. The Judge noted [3] there was no appellants bundle and no witness statement. The appellant gave oral evidence.
5. The Judge, in a decision of some 42 paragraphs starts the findings of fact from [34].
6. The appellant sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Martin on 6 June 2007 in the following terms:

“It is arguable that the Judge, addressing only two brief paragraphs to credibility in an 11 page Decision and Reasons, when the Appellant was 16 years of age and unrepresented at the hearing failed to apply anxious scrutiny to the appeal and gave inadequate reasoning.”

7. It was submitted by Mr Bandegani, on the applicant’s behalf, that the procedure adopted by the Judge was unfair. The appellant was 16 years of age, had no representative, was barely literate with only two months schooling and no support from any advocate. There was no bundle and no witness statement and no country information before the Judge. It was submitted that had the Secretary State submitted appropriate country material the Judge would have seen that the appellant’s village and district are in a contested area which would arguably make relocation unreasonable.
8. Although a number of minors appear before the First-tier Tribunal unrepresented, in this case there is a particularly weak Reasons for Refusal letter. The Judge noted the appellant’s age and immigration history but what was required was for there to be very careful consideration of the appeal, the anxious scrutiny point noted by Upper Tribunal Judge Martin.
9. In this appeal the Judge may have been advised to have noted the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, dated 19 April 2016, in particular are pages 44 to 47 and 81 to 86 and to have had regard, in addition to the case law set out in the decision, to the United Nations in Afghanistan – Population Movement Bulletin dated 14 April 2016 which are highly relevant to the appellant’s account, ongoing risk of persecution, and issue of internal relocation.
10. Whilst it appears the Judge was not assisted by the respondent failing to provide country material to the Tribunal these documents are in the public domain. This is a matter which, on balance, is a decision that is unsafe and in the interests of fairness shall be set aside.

11. Notwithstanding earlier difficulties in relation to funding Mr Bandegani advises that Wilson solicitors are now representing the appellant.
12. I find the Judge erred in law in a manner material to the decision to dismiss the appeal. The findings of the Judge shall be set aside. The appeal shall be remitted to Taylor House to be heard by a judge other than Judge Gaskell. Extensive fact finding is required in relation to all pertinent issues.

**Decision**

13. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to be heard by a judge other than Judge Gaskell sitting at Taylor House on a date to be fixed in light of the operational requirements of that hearing centre.**

Anonymity.

14. The First-tier Tribunal made make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 24 July 2017