



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00077/2018

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2018

Decision & Reasons Promulgated
On 21 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

HS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Uddin, Counsel, instructed by Lawrence & Co Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan. He is appealing against the decision of First-tier Tribunal Judge Onoufriou promulgated on 28 February 2018 whereby his appeal against the decision of the respondent dated 8 December 2017 to refuse to grant his protection and human rights claim was dismissed.
2. The appellant claims to have been born on 13 April 1994 although the respondent's view is that he was born on 10 November 1991. The basis of his asylum case is that he claims to be at risk from the Taliban because of his involvement with his

stepbrother, who he claims was a senior commander in the Taliban. He claims to have been asked by his stepbrother to transport items which he understood to be car batteries but which he subsequently realised were being used to make improvised explosive devices. He claims that his stepbrother tried to have him killed and will kill him because of a concern that he will reveal activities to the authorities. He also claims to be at risk from the authorities in Afghanistan. Amongst other things, he claims that an arrest warrant against him was handed to an elder of his village for whom he worked for several months.

3. The respondent did not accept the appellant's account and refused his application. The appellant appealed and his appeal was heard by First-tier Tribunal Judge Onoufriou at Hatton Cross on 13 February 2018.

Decision of the First-tier Tribunal

4. The judge found that the appellant's account was plausible in the context of the objective evidence relating to Afghanistan, in particular as set out in the expert report by Dr Guistozzi that the appellant relied on. Despite this, the judge rejected the appellant's account in its entirety, finding him to not be credible. He gave several reasons for not finding the appellant credible.
 - (a) First, part of the appellant's claim had been that his stepbrother had left a rucksack with important documents and photographs at his house and that his mother had given it to him when he left Afghanistan. The judge found at paragraph 57 that this did not "add up" and that it "does not make sense that [the stepbrother] would leave such important and valuable items in the family home when it was raided by the police only a month or so before the appellant left Afghanistan."
 - (b) Second, the appellant claimed was that an individual who knew his father well had been instructed by his stepbrother to kill him but upon realising who the appellant was and because of his friendship with his father allowed him to escape. The judge found this to be implausible, stating at paragraph 58:

"He must have known the appellant's father well in order to decide to spare the appellant and therefore it is highly likely he would have known about the appellant's father's family and that he had three stepchildren from his first marriage which included the stepbrother and that the appellant was his sole child of his second marriage. Furthermore, the stepbrother would obviously have informed [LM] of the identity of his target so that [LM] could carry out the operation. It therefore does not make sense that he only discovered that the appellant was the son of his former friend after he was taking him to a place where he presumably intended to kill him."
 - (c) Third, the appellant claimed that an arrest warrant against him had been given to an elder in the village who lost it. The judge stated at paragraph 59 that in his view "as a man of influence as claimed by the appellant he [the person to

whom the warrant was said to have been given] would have been able to obtain a duplicate”.

- (d) Fourth, the judge found the appellant’s chronology of events did not match the corroborating evidence. This is set out at paragraph 61 of the decision where the judge has gone through the sequence of the appellant’s education and work history in Afghanistan. Taking as a starting point the date of birth claimed by the appellant (April 1994) the judge found as follows:

“If, say, he was aged 6 when he started school then this would have been in the year 2000 and according to his evidence he was at school for eight years which means that he left school in 2008 so, allowing for the obvious gap between him leaving school and starting work with [HB] this would then be sometime in 2009 before he ceased work with [HB] but this is after when the events he claimed took place, i.e. in December 2008.”

- (e) Fifth, the judge took into consideration that the appellant absconded and did not pursue his asylum claim until he was encountered by immigration officials many years after he entered the UK.
5. Having rejected the appellant’s credibility for the aforementioned reasons the judge found that he was not satisfied he was under threat either from the Afghan authorities or the Taliban through his stepbrother.
6. The judge then went on to consider whether in the event that the appellant was at risk from the Taliban he would be able to relocate to Kabul and concluded that he would be able to do so.
7. At paragraph 67 the judge considered the appellant’s Article 8 claim, which was based on his contention that he suffers from post-traumatic stress and has attempted to commit suicide on two occasions. The judge rejected the claim, stating that “the extent of the appellant’s mental condition is not such that it engages Article 3 of the ECHR” and that “there would not be a disproportionate breach of his moral and physical integrity under Article 8 of the ECHR”.

Grounds of Appeal and Submissions

8. The grounds of appeal raise six issues, all of which were elaborated upon by Mr Uddin. The first ground argues that the judge erred by failing to make a finding on the age of the appellant. The grounds submit that the age of the appellant was in dispute and it was essential for the judge to make a finding on this as it was directly relevant to the assessment of credibility. The ground notes a *Merton* compliant age assessment was not undertaken and that the Secretary of State did not follow his own policy on age assessment, which states that an applicant should be treated as an adult if their appearance suggests they are significantly above the age 18, which on any legitimate view would not have been the case here. It is argued that the judge failed to apply *KS (benefit of the doubt)* [2014] UKUT 00552 (IAC). Mr Uddin stressed that in his view it was important for a decision to be made as to the appellant’s age so that a

child-sensitive analysis could be carried out. He argued that it was apparent from the decision that the judge had not taken a child-sensitive approach to the evidence.

9. The second ground of appeal argues that the judge failed to make findings in relation to the core of the appellant's claim that the appellant was involved in transporting batteries for his stepbrother and an arrest warrant was issued. He contended that without these facts being dealt with explicitly the judge was not in a position to make findings or reach a conclusion about whether the appellant would be at risk on return to Afghanistan.
10. Third, Mr Uddin argued that rather than focus on the core issues the judge was distracted by peripheral matters such as the rucksack that was left in the family home by the stepbrother and the friend of the appellant's father who had allowed him to escape. The grounds state that the issue of the rucksack was not relevant to credibility. Mr Uddin also argued that the judge made assumptions which he was not entitled to make. In particular, the judge had assumed that the friend of the appellant's father LM would have known who the appellant was but there was no basis for this assumption to be made. Similarly, Mr Uddin argued that the judge assumed without foundation that the appellant's stepbrother would not have left the rucksack where he did.
11. The fourth ground of appeal argues that inadequate findings and reasons were given in respect of the appellant's fear from the State. The contention made in the grounds is that there was no challenge to the genuineness or the reliability of the arrest warrant and there was sufficient evidence to substantiate the document in the form of a statement by the elder who had lost it. The grounds take issue with the judge's assumption that the elder would have been able or willing to obtain a duplicate of the arrest warrant on the basis that it may not be possible in Afghanistan to obtain duplicates of such documents and that by attempting to do so he would be potentially placing himself at risk, given that he had been involved in the appellant leaving Afghanistan despite the arrest warrant.
12. The fifth ground pursued by the appellant is that the expert evidence he submitted in the form of a report from Dr Giustozzi and the objective evidence does not support that internal relocation would be safe or reasonable.
13. The sixth ground is that there was a flawed assessment of Article 8. Mr Uddin acknowledged that this was the weakest of the grounds and did not pursue it at any detail at the hearing.
14. Mr Melvin, in response, argued that it was not incumbent on the judge to make any definitive age assessments. He noted that the appellant arrived in the UK in February 2010 and shortly thereafter absconded, only to be encountered by enforcement officials six years later whilst working illegally. Mr Melvin submitted that in these circumstances it could not be an error of law for the judge to not make a definitive finding on the appellant's age as even by his own claim he is now 24 years

old and the reason that the formal age assessment was not carried in 2010 was that he that absconded.

15. Mr Melvin also submitted that a judge does not need to make a definitive finding on each aspect of a claim. He maintained that the judge, for sound reasons, had rejected the appellant's credibility and therefore was entitled to reject the whole of the account. In respect of the arrest warrant, he argued that it was open to the judge to find that a duplicate would be obtainable. In terms of the risk on relocation to Kabul Mr Melvin referred to the recent country guidance case of *AS (Safety of Kabul) Afghanistan CG* [2018] UKUT 118 and argued that this should be preferred to the analysis of Dr Giustozzi.

Analysis

16. The judge did not make a finding as to whether the appellant was born on 13 April 1994, as he claimed, or on 10 November 1991, as maintained by the respondent. Mr Uddin argues that this undermines the decision. I disagree. By the time of the First-tier Tribunal hearing the appellant was, by his own account, almost 24, and the reason an age assessment had not taken place when he first came to the UK was that he had absconded. The purpose of the appeal was not to evaluate the appellant's age and a definitive finding on age was not necessary to determine the appeal.
17. Although a definitive finding on age was not necessary, the appellant's age was relevant to credibility, given that the events in question took place when (according to his claimed date of birth) he was 14 or 15. Although the judge did not say so explicitly, reading the decision as a whole, it is apparent that for the purposes of assessing credibility the judge has assumed the appellant's claimed age. This is apparent at paragraph 61 where the judge took as a starting point the appellant's claimed date of birth when looking at his chronology of events. Accordingly, I am satisfied that the appellant cannot succeed on the first ground of appeal.
18. I also do not accept the argument that the judge failed to consider the core of the appellant's claim concerning his transporting of batteries for his stepbrother. At paragraph 4 of the decision, the judge summarised the appellant's case and set out his claim to have transported what he understood to be car batteries but which in fact were improvised explosive devices. The judge did not refer to this in the section of the decision headed "findings of fact and credibility" but that does not mean it was overlooked. The approach taken by the judge in writing the decision was to set out, in this section, the aspects of the appellant's account which he found undermined his credibility because of lack of plausibility, absence of corroboration or internal inconsistencies. The fact that the appellant's claim to transport batteries was not mentioned in this part of the decision does not mean it was overlooked, it just means that it was not one of the several aspects of the account that the judge considered implausible or otherwise undermining of the appellant's case.
19. The claim that the judge focused on only peripheral aspects of the claim is likewise without merit. As mentioned above, the judge's approach was to set out the elements of the claim that undermined the appellant's credibility. It was not necessary for the

judge to refer to every part of the claim. The (not unreasonable) approach of the judge was to identify aspects of the claim that undermined credibility and draw a conclusion as to overall credibility on the basis of this. In any event, I do not agree that the issue of the appellant taking his stepbrother's rucksack containing incriminating material was peripheral as by his own account this was a key reason why he was at risk from his stepbrother.

20. A further challenge to the decision concerned judge's finding that the village elder HB, who was said to have lost the arrest warrant for the appellant, would have been able to obtain a duplicate. There is some merit to this argument as there was no evidence before the judge to show that it would be possible to obtain a duplicate and, if the appellant's account is true, it would follow that HB would potentially be placing himself in danger by seeking to obtain a duplicate arrest warrant. I therefore accept that the judge erred in finding that HB could have obtained a duplicate of the lost arrest warrant. However, I do not accept that this error was material. The judge gave a range of reasons for finding the appellant lacked credibility which did not depend on the absence of the arrest warrant and it is clear that the same outcome would have been reached even if the judge had accepted that HB would have been unable to obtain a duplicate of the arrest warrant.
21. I am also satisfied that the judge did make an error of law in respect of whether the appellant could relocate internally, to Kabul. At paragraphs 65 and 66 of the decision the judge found that the appellant was not a high profile individual and killing him would not achieve the original purpose, which was to prevent him giving the authorities information about the activities of his step brother. In light of these findings it was consistent the recent country guidance case of *AS (Safety of Kabul)* to conclude that the appellant could safely relocate to Kabul.
22. The challenge to the decision on the basis of article 8 ECHR has no merit and I note it was not pursued in detail by Mr Uddin at the error of law hearing. The judge set out in sufficient detail the relevant medical evidence before concluding that the severity of the appellant's mental health problems was not sufficient to bring him within the ambit of article 8 ECHR. This conclusion was clearly open to the judge.

Notice of Decision

The appeal is dismissed.

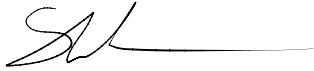
The decision of the First-tier Tribunal does not contain a material error of law and shall stand.

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

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Deputy Upper Tribunal Judge Sheridan

Dated: 19 June 2018