



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00505/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 9 April 2018

**Decision & Reasons
Promulgated
On 25 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR SHAIQULLAH SAHIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Tate, Legal Representative
For the Respondent: Ms T Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appealed against a decision of the respondent dated 3 January 2017 refusing him asylum and humanitarian protection in the United Kingdom. First-tier Tribunal Judge dismissed the appeal in a decision dated 29 November 2017. Permission to appeal was granted by First-tier Tribunal Judge Berrell on 4 January 2018, who stated that it is arguable that the Judge erred in his consideration of the appellant's age by accepting the age assessment report which was not provided at the hearing and by rejecting other evidence which was provided.
2. The First-tier Tribunal Judge in her decision made the following findings, which I summarise. The respondent in her reasons for refusal letter accepts the appellant's identity and nationality but does not accept the

remainder of the appellant's account about his age and credibility. The respondent relies on the fact that the appellant has not had any difficulties with the Taliban despite his brothers warning letters in 2010 and thereafter managed to live in Afghanistan without difficulty for about six years. The fact that his cousins have a feud with the appellant lacks credibility as the appellant has given inconsistent evidence about this. The appellant has continued to live in the same area for 5 to 6 years without serious harm and he has not established that his cousin's death was either caused by the Taliban linked to his brothers work or that he would be of any interest to the Taliban on return.

3. Section 8 of the Asylum and Immigration (Treatment of Claimants, Etc) Act 2004 applies to the appellant's appeal because he travelled through several safe third countries on his way to the United Kingdom and spent several months in France. It was clearly his intention to come to the United Kingdom to join his brother who lives in this country. The appellant's evidence that he did not know where he was going as he was in the agent's hands is contradicted by his brother's evidence in this country who stated that his mother told them that she was sending the appellant to him and he should look after him and take responsibility for him. The appellant's credibility is compromised by his failing to claim asylum in Turkey or France.
4. The appellant's age is in dispute. He could be 17 years 11 months or 19 years 11 months. The appellant arrived in the United Kingdom in June 2016 and claimed asylum eight days later. The appellant claimed that he did not know his age until he was in Calais and enquiries were made about his age. It was not until this point that he was aware of how old he was. However, when answering questions at the hearing he was able to say that his younger brother was 14 years of age. When asked in his interview at question 9 how old his siblings were he answered that he said that he has three sisters, aged 30, 23 and 26 and he also has a 14-year-old brother. It is not credible that the appellant would be able to know his siblings ages so clearly and yet claim he had no knowledge or concept of his own age until he arrived in Calais and his mother told him. It is also not credible that the appellant would have to telephone his mother to find out how old he was.
5. The appellant produced his identity document, Tazkira, with a translation which states that his age was assessed as nine years old in 2008. This document was sent by his brother from Afghanistan. Having considered the document in line with the case of **Tanveer Ahmed [2002] UKUT 00439**, the document cannot be relied upon as comparing it to his brothers Tazkira, where the details such as hair colour and eye colour have been filled in, the appellant's Tazkira does not have such details. This does not assist the appellant's credibility as to his age. Therefore, the appellant's account of his own age cannot be accepted.
6. The evidence of Ms Ortiz was of limited evidential value on the issue of age as it would not have been her role to question the appellant's age as she herself states in her witness statement as she was present in Calais to

provide support and aid to refugees. She stated in her witness statement at paragraph 7 that her feelings are that he is under the age of 18 years.

7. Even if it is accepted that the appellant may not have been able to state his date of birth according to the Gregorian calendar and that this should not count against him but there is no suggestion by the appellant that he is depressed or has suffered any other mental health issues. In his skeleton argument Mr Tate does not address the issue of age and nor has he taken any points on any compliance issues in relation to the assessment. The Judge was therefore satisfied that the appellant is now 19 years of age.
8. There were several inconsistencies in the appellant's account in his interview and his oral evidence at the hearing. The appellant stated in his oral evidence that his cousins had not been able to attack him too much as he was hardly ever outside the house and had missed some school. However, at the interview he had claimed that his cousin attacked him on the way to school when he went to play football. The appellant also claimed that she never had any trouble with the Taliban and nor had his family after his brother left Afghanistan in 2010. One explanation for this was that he was still young, and the Taliban do not act against women or children. However, he had two older brothers aged 22 and 20 and the older one of the two apparently fled to Iran only 10 days prior to the appellant leaving which means he would have been 21 years old and therefore well into adulthood and he had not had any trouble from the Taliban. Given that the events surrounding the appellant's brother happened in 2010 it would be expected that the Taliban, if they wanted to show interest in the appellant's family, would have done so earlier. Earlier
9. Dr Guistozzi who had prepared a report in support of the appellant's brother's appeal has also prepared a report in this appeal and states at paragraph 9 that there is no time limit to feuds and the offended party's family can take revenge wherever possible and these feuds can last for generations. However, whilst this may be the case for family feuds this evidence however does not relate to the Taliban's specifically and it is not credible that the Taliban would have interest in the appellant or his family and yet the appellant would not have had any difficulty or problems caused by the Taliban. Dr Guistozzi further states in his report that the Taliban could have plausibly targeted the paternal cousins in order to put pressure on the appellant's brother. This is one plausible explanation but that falls far short of establishing that this is what actually happened even on the lower standard of proof.
10. It is not accepted that the appellant's cousins have carried out a campaign of harassment and abuse that has led to the appellant having to leave Afghanistan to seek international protection. Dr Guistozzi said that the appellant would be at risk in his home area from the Taliban. This further undermines the appellant's account that he is at risk from the Taliban as neither he nor his older brothers living in Afghanistan with him have had any problems from the Taliban.

11. The appellant's brother's asylum case is materially different to that of the appellant's case. The appellant's brother left in 2010 after which the appellant has had no problems with the Taliban. His cousins have not targeted him and his family to any significant extent and there is no credible evidence to suggest that they would inform the Taliban of their dispute seven years after their cousin's death. The appellant was able to live safely in his home village so was his older brother who was 21 years of age on the appellant's own account when he left for Iran and therefore some years out of childhood.
12. The appellant was not a target of sustained harassment and violence from his cousins and is of no interest to the Taliban. The appellant can return to his home area where his mother lives and with whom he remains in touch as well as his younger brother, sister and brother-in-law. There is no need to consider relocation as an option.

Finding as to whether there is an Error of Law in the decision

13. The main complaint against the First-tier Tribunal Judge is that he rejected the appellant's assessment of his age but instead accepted the age assessment of the social services. It is stated that the social services age assessment report was not produced at the hearing and the Judge was not entitled to rely on it but should have relied on the evidence submitted by the appellant as to his age.
14. The Judge gave clear and cogent reasons for rejecting the appellant's evidence as to his age. The Judge did not find it credible that the appellant would be able to give the exact ages of all his siblings but would need to telephone his mother in Calais to find out about his own age. The Judge was entitled to find that the appellant was aware of the concept of age as he knew the ages of all his siblings and it is not credible that the only age he did not know was his own. The Judge's conclusion on the evidence is not perverse.
15. The Judge rejected the evidence of Mrs Ortiz who the Judge stated that she was not in a position to assess the appellant's age and merely gave her opinion that "her feelings are" that the appellant is under 18 years of age. He found her evidence of limited value because it was not her role to question the appellant's age as she herself stated in the witness statement that she was present in Calais to provide support and to aid refugees. There is no perversity in the Judge's finding that her "feelings" as to the appellant's age does not assist the appellant.
16. The Judge further placed no reliance on the appellant's Tazkira to demonstrate his age. The appellant was assessed as nine years old in 2008. This document was sent to the appellant by his mother from Afghanistan. The Judge considered this document in line with the case of **Tanveer Ahmed** and found the document cannot be relied upon for good reasons. The Judge said that he compared the appellant's Tazkira to his brother's Tazkira which had details such as hair colour in eye colour on his

and the appellant's Tazkira these details were not filled in. That the judge was entitled not to rely on this evidence to prove the appellant's age.

17. The appellant was also entitled to find that the appellant's brother's application for asylum in 2010 was different from that of the appellant.
18. Judge was therefore left with the evidence of the social services age assessment who put the appellant's age at 19 years of age. Although the grounds of appeal state that there was no social services report, but it was pointed out to me that the report was in Annexe B of the respondent's bundle. The Judge was entitled to rely on the age assessment of the social services and he added in his decision that no issue had been taken as to the procedure of the age assessment.
19. The Judge found that the appellant had not been the victim of harassment by the Taliban because his own evidence is that he managed to live there for six years after his brother fled in 2010 without any adverse interest from them in him. The judge was entitled to take into account that past persecution is an indicator of future persecution.
20. The Judge also took into account that the appellant's fear of his cousins is not objectively placed because he had no trouble from them while he lived in Afghanistan after his older brother left on 2010. The Judge was entitled to say that if anyone had an adverse interest in the appellant they would have done something to him while he lived in Afghanistan for all that time. This is a sustainable finding on the evidence before the judge and I find no perversity in it
21. I find that the first-tier Tribunal Judge has not made a material error of law in his decision. He was entitled to reach the conclusions that he did on the evidence before him. I find that the appellant's appeal is no more than a quarrel with the First-tier Tribunal Judge's findings and conclusion.
22. I therefore dismiss the appellant's appeal and uphold the decision of First-tier Tribunal Judge.

Notice of Decision

The appellant's appeal is dismissed

No anonymity direction is made.

Signed by

Dated this 23rd day of April 2018

A Deputy Upper Tribunal Judge
Ms S Chana