



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00905/2018

THE IMMIGRATION ACTS

Heard at Field House
On 5 November 2018

Decision & Reasons Promulgated
On 15 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

OR
(ANONYMITY DIRECTION MADE)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, of Counsel, instructed by Fawad Law Associates

For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Robertson who in a determination promulgated on 1 August 2018 dismissed the appellant's appeal against a decision of the respondent made on 4 January 2018 to refuse to grant asylum.
2. The appellant is a citizen of Afghanistan who was born on 15 April 1998. He entered Britain in May 2016 and claimed asylum. He initially stated that his date of birth was 15 April 2002 but that was not accepted and after a **Merton** compliant age assessment

his age was confirmed by a social worker to be over eighteen years, his assessed age being between 18 and 19.

3. The appellant's claim was that his father had been killed by the Taliban and that the Taliban had made attempts to recruit him. He had argued that if returned to Afghanistan he would be at risk of being targeted by the Taliban for forced recruitment and that there would be no state protection for him.
4. The appellant stated that he had been born and raised in Kote Sangi, a district outside Kabul, and that the Taliban would come to his home and demand that he go with them. He would hide when they came. They came four or five times and spoke to his mother. They made threats and his mother would make excuses. They did not come into the house. The appellant said that he spent most of his time playing cricket and had never worked and that the Taliban, although they would come to the village, had made no attempt to pick him up as he was playing cricket in the open and other people were around.
5. His mother had sold their home and made arrangements for him to leave Afghanistan. He said he had left in 2015 travelling for almost a year before arriving in Britain.
6. The judge also heard evidence from a Mr Rabani, a cousin of the appellant who stated that the appellant would not be safe on return to Afghanistan and also that he was aged 16 or 17.
7. It was submitted by the appellant's representative that the appellant was a child and that background evidence showed that the Taliban would recruit children to become soldiers. It was argued that cultural difficulties had led to the discrepancy in age.
8. The judge did not find the appellant to be credible. She placed weight on the age assessment, where the appellant had claimed that he had left Afghanistan at the age of 13 and fact he had been assessed in June 2016 as being aged between 18 and 19. She considered the submission that the report should be given little weight as it was not a contemporaneous note, but the judge has stated that the appellant had had the opportunity to comment on the assessment when it was made. The judge emphasised that this matter damaged the appellant's credibility.
9. With regard to the appellant's account of having been of interest to the Taliban in Afghanistan, she stated that his account was inconsistent – the appellant had claimed that the Taliban had visited his home but that he had heard them coming as they knocked on the gate and managed to hide and that this had happened five or six times over a period of two to three years, but the appellant had also said that it had been a year before he left and that his mother would speak to the Taliban and they would leave as they would not disrespect her. They did not search the house. However, if the appellant was playing cricket with his friends, as he had said and that the local police were involved with the Taliban they would have been aware of

his movements but he himself was never approached. Although he had claimed that he had heard the Taliban forcibly removing children from his neighbour's house he had himself never been directly approached despite spending much of his time in a public place.

10. The judge also stated that although the appellant claimed to be unable to read and write he appeared to have a Facebook account on which he had messaged his friends. That raised the issue of his credibility regarding education but also because his cousin was on his friend's list.
11. Moreover the applicant had not claimed asylum en route to Britain.
12. The judge assessed all these factors and concluded that the applicant was not credible and would not be at risk on return.
13. The judge then applied the country guidance case of **AS (Safety of Kabul) Afghanistan [2018] UKUT 00118**, which held that a person who was of lower level interest of the Taliban - that is not a senior Government or security services official or a spy, was not at real risk of persecution from the Taliban in Kabul.
14. The judge having found that the appellant was not credible, pointed out that the conclusion in **AS** was that, in general, it would not be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he did not have any specific connections or support network there. The judge stated that she did not accept that the appellant had no family support on return and did not accept that the appellant did not know where his mother was living in Afghanistan.
15. She concluded that the current security situation in Kabul was such that internal relocation was not unreasonable or unduly harsh. She did not accept that he would be at risk wherever he located in Afghanistan.
16. The judge also found that the appellant could not benefit from the provisions of Article 8 of the ECHR.
17. The grounds of appeal argued that the appellant's claim was plausible and therefore the judge had erred in her findings that the appellant was not credible, and that her conclusions were inadequate. They emphasised that it was not necessary for an appellant to be able to prove every aspect of his claim and it was submitted that the judge had applied too high a standard of proof and furthermore that she had not stated whether she accepted or rejected the evidence of the appellant's cousin.
18. At the hearing before me Mr Raza took me through the findings of the judge and stated that the judge had not given reasons for dismissing the evidence. He referred to the appellant's witness statement and to the bundle of documentation which he asserted showed that there was the forced recruitment of children to become child soldiers and indeed that other children had been kidnapped and forced to become

suicide bombers. He argued that the judge had r ignored the evidence of the appellant's cousin and his lack of detailed reasoning meant that the determination was unsafe. While he accepted that from the determination in AS internal relocation would be open to the appellant, he stated that the judge had erred in not considering the issue of whether or not the appellant would be in danger in his home area.

19. Ms Isherwood asked me to find there was no material error of law in the determination and stated that even taking the appellant's claim at its highest there is no evidence that the Taliban would be looking for him on return.

Discussion

20. The reality is that the judge did consider the appellant's claim and gave reasons for finding that his claim was not credible. The appellant's claim is indeed slight. He states that the Taliban came to his mother's house to recruit him but he hid and they made no attempts to force entry or to take him with them. Moreover, although he asserts that they were looking for him for some time, the reality was that he was living much of his life out of doors and was playing cricket. Should the Taliban have wished to pick him up they would clearly have been able to do so. The fact that they did not or did not make any particular effort to kidnap him or take him with them is a clear indication that his claim was not plausible. Moreover, the judge was correct to place weight on the Merton compliant age assessment. Clearly the appellant had not told the truth about his age and the judge was entitled to place weight on that, as well as the fact that the appellant had not claimed asylum en route to find, having weighed up the evidence, that the appellant was not credible.
21. The statement of Mr Rabani does not assist the appellant. He could clearly not speak to the appellant's claim that he was sought by the Taliban and although he says that the situation in Afghanistan is dangerous and the Taliban were still actively trying to recruit young boys, his conclusion that the appellant would be a target and forced to do their bidding, was not one for which he had any particular evidence and again, of course what he said was not based on any direct evidence of the appellant's particular circumstances. I would add that clearly his statement with regard to the appellant's age is at odds with the age assessment and that that too diminishes his evidence.
22. I have considered the background documentation to which Mr Raza referred. The reality is of course that while that documentation does talk of children being taken by the Taliban, this appellant was not taken by the Taliban when he was a child and by the time the appellant claimed asylum here he was not a child – he was assessed as being 18 or 19. The methods the Taliban use to abduct children were clearly not used in respect of this appellant before he left Afghanistan. Therefore the background documentation which refers to children being groomed to be suicide bombers or even killed by the Taliban does not apply to the appellant. There was simply nothing to indicate that when he left Afghanistan there would be any likelihood that the appellant would face persecution or ill-treatment from the Taliban.

23. However, even taking the appellant's claim at its highest and accepting that the Taliban had sought to recruit him in a somewhat desultory fashion internal relocation to the city of Kabul would be open to him. There is simply no evidence whatsoever to indicate that the Taliban would have any interest in him on return. The guidance given in **AS Afghanistan** is quite clear in that regard and the judge was entitled to place weight thereon.
24. While Mr Raza argued that the judge should have made findings on whether or not the appellant would face persecution in his home area before going on to consider the issue of internal relocation, that argument is incorrect. The judge, by finding that the appellant was not credible clearly found that he would not face persecution in his home area. But in any event the reality is that the judge had to consider whether or not the appellant was entitled to protection here. The fact that the appellant could relocate to Kabul would not face persecution there, is effectively determinative of this appeal given the fact that the appellant is a young and healthy man who clearly has lived for most of his life in Afghanistan and indeed the judge was entitled to consider that it was likely that he would have family members in Kabul.
25. I therefore consider that there is no material error of law in the determination of the judge in the First-tier Tribunal and therefore her decision shall stand.

Decision.

This appeal is dismissed and the determination of the Judge in the First-tier 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:



Date: 7 November 2018

Deputy Upper Tribunal Judge McGeachy