



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02047/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8th December 2017**

**Decision & Reasons
Promulgated
On 16th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**I M J
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Scott of Counsel, Pickup Scott Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DECISION AND REASONS
EXTEMPORE JUDGMENT**

- 1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an Anonymity Order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties. Failure to comply with this order could lead to contempt of court proceedings.**
- 2. The Appellant appeals with permission granted in the Upper Tribunal, a decision of the First-tier Tribunal, (Judge Graham) promulgated on 21st**

April 2017, in which the judge dismissed the Appellant's appeal against the refusal of his claim for international protection.

3. The Appellant is an Afghan minor who made a claim for international protection. He claimed that his father had been killed by the Taliban at the behest of his paternal uncle who, in the context of a land dispute, had informed the Taliban that his father had been working for the Afghan Army. The same Uncle subsequently put the Appellant at risk of forcible recruitment by the Taliban. The Appellant says that he was kidnapped by the Taliban and was in the process of being taken to become a suicide bomber or fighter for the Taliban when, as a result of an intervention by the Afghan Army, he was able to make good an escape, and that subsequently his family were able to achieve his flight from Afghanistan. The Respondent rejected the credibility of that account and before the First-tier Tribunal the Appellant contested the credibility findings made by the Respondent. In the event the judge found in favour of the arguments put forward by the Respondent.
4. The renewed grounds of the application for permission to appeal challenging the credibility findings were found to have merit by Judge Taylor who concluded that the judge may have erred in her approach in considering the Appellant's conduct in Hungary to be adverse given that he was only 14 years old at the time. Judge Taylor also thought that it was arguable that the judge's finding that there was no resemblance between the Appellant's name and the identity that he provided to the Hungarian authorities was incorrect and that in those circumstances there ought to have been greater consideration given to his explanation that his name had been mis-recorded. Judge Taylor found it arguable that the judge had placed substantial weight upon the failure to claim asylum during his journey to the United Kingdom and that might have undermined her credibility findings generally and led to her conclusion that his position was consistent with his being an economic migrant, and in that context Judge Taylor thought it arguable that Judge Graham had failed to give sufficient weight to the Appellant's age.
5. Permission was not restricted to those grounds and before me Mr Scott maintained Grounds 1 to 4. In the event the Respondent has accepted that Ground 4, which dealt with the cursory attention given to humanitarian protection, revealed an error of law and in those circumstances, it has not been necessary for Mr Scott to address me in respect of that ground or for me to give detailed consideration to the point. So far as Ground 5 was concerned Mr Scott accepted that that was not a position which he was going to pursue before me today.
6. In those circumstances I deal with Grounds 1 to 3 at this stage in the judgment. The grounds go to the treatment by the judge of Section 8 and in this regard the challenge is brought to paragraph 35 of the judge's decision. I begin my consideration by noting that the judge has correctly self-directed in the context of Section 8, noting at paragraph 26 that the matters which the Respondent has relied on are matters which are potentially but not determinatively damaging of the claim. That is the

position which the judge reinforces in paragraph 36 where, having considered the Section 8 position, the judge continues in the reasoning to note that the overall credibility findings have not rested on Section 8 alone. I find no error on this ground.

7. The grounds also complain that the Appellant's conduct in Hungary, given his age of 14, should not have counted against him. In particular his middle name and first name are very similar to the names put forward by the Hungarian authorities. In this regard, I note that this was not a position which was misunderstood by the judge because at paragraph 35 the judge is very clear that the difference in names relates to the surname and in that context, it is the name J which is relevant rather than the name M. However, more importantly the judge points out that the Appellant had given a different date of birth and in that regard, I find merit in Mr Wilding's submission that on any reading there was a significant difference in terms of the details of his identity provided to the Hungarian authorities. It was open to the judge to conclude that the Appellant had failed to put forward any reasonable or proper explanation in that regard. The explanation the Appellant put forward was initially that he had not made any claim in Hungary at all and then, faced with the incontrovertible evidence of having done so, his explanation was then that he had been under the control of an agent, and, as the judge notes, in fact at that time physically he was not under the control of an agent. Further the response that he gave in his screening interview, whilst denying any application for asylum including in Hungary or anywhere, for failure to claim was that he thought he would be better off making his claim in the United Kingdom on the basis of advice of friends. In that context it was open to the judge to reach the conclusion that the failures were matters which counted adversely in the context of the Appellant's credibility. I find no error arises.
8. So far as the position of the judge finding the Appellant's actions to be consistent with that of an economic migrant as referred to in the grant of permission, Mr Scott indicated that he was not arguing that it was not open to the judge to reach that view. In any event although the judge concludes that it is behaviour which is more consistent with that of an economic migrant the judge stops short of finding that the Appellant is an economic migrant. Additionally, the term economic migrant is much wider than the suggestion that a 14-year-old is coming, for example, to work. In this context an economic migrant can be more properly read as being a migrant who is seeking to move in order to obtain a better life in the widest context, and of course where minors are concerned, that motivation may be the motivation of responsible adults. I find no error on this point.
9. So far as the remainder of the challenge to the judge's credibility findings are concerned, I find that there is no merit in the points raised by the Appellant. Although it said that the Appellant denied that he had made the statements which were found to be inconsistent that was not an explanation that the judge was bound to find determinative, and the judge has given a detailed account at paragraphs 36, 37, 38, 39, 40 and 41 as to

why overall the credibility is the Appellant's account does not stand up to scrutiny.

10. I turn to the position in respect of the objective evidence because the final complaint is that in referring only to the objective evidence relied upon by the Respondent the judge had been unfair to the position of the Appellant. I have spent some considerable time with Mr Scott investigating precisely what the objective evidence was that the Appellant had put forward in the context of both the application and in respect of the bundle put before the First-tier Tribunal.
11. In respect of the correspondence from the previous representative Duncan Lewis to the Respondent, which appears at H5 of the Respondent's bundle there is a reference to forcible recruitment of some 68 children by various actors, including the Taliban. It is not clear what period of time this relates to. It appears to come from information from the United Nations, and I say that because at H6 there is a reference to a further report of the Secretary General which uses the same figure and indicates that 22 accounts of forced recruitment have been verified and it said that this marks a decrease in child recruitment when compared with 2013, and the reasons for refusal letter refers to the position prior to that in respect of 2012.
12. Mr Scott also took me to documents attached to his skeleton argument before the First-tier Tribunal and I have looked at those. They relate in the main to 2015 which is after the Appellant left the country. Those documents talk about the Taliban recruiting children from their own madrassas which were set up to indoctrinate and train children, and the situation is described in the province of Kunduz, which is not the province of the Appellant. The position there seems to support that set out by the Respondent i.e. that the position of forcible recruitment arises in the context of children being recruited from those madrassas, and then their families being unable to achieve, even with the assistance of community elders, the release of the children. Further the children themselves, having become so indoctrinated, are prepared to say they do not want to return to their families. That is a very different circumstance from the situation described by the Appellant when he said that he was kidnapped from a pastoral landscape where he was looking after sheep.
13. Finally, I was taken to the report at 29 of the Appellant's bundle and a reference to a doubling of the numbers when compared with 2014, in reaching the total of 115. That seems to indicate that the previous figure of 68 related to the period 2014.
14. I find that there is nothing significant in the objective evidence which has been put forward by the Appellant which shows that the information relied on by the judge is incorrect or would justify a different view from that set out by the judge in the consideration at paragraph 41. Mr Wilding has invited me to find that in any event the 68 children referred to there are within a recruiting period as long as 2010 to 2014 but I am assessing the position on the higher basis that that would be within the previous twelve months, and I think there is some substance to that consideration when, in

other documents there is a reference in 2015 to those figures increasing to approximately double that amount.

15. The judge has indicated that she has been referred to and read the skeleton argument submitted by Mr Scott during the course of the consideration of the case. In all the circumstances I am not satisfied that in reading this decision it can properly be said she had not had regard to the Appellant's objective evidence. There was no requirement on her to deal with it in any further or more significant detail given its contents, for the reasons I have described above.
16. Returning briefly to the position in respect of humanitarian protection, the grounds assert that the judge's dealing with humanitarian protection is cursory in the extreme because the judge has simply referred to the adverse credibility findings and then moved on to dismiss the Grounds of Appeal in the alternative without any reference to the resources of the Appellant on return or the position that he would be likely to find himself in on return, and as Mr Wilding has properly conceded that is a material error of law which will require the point in respect of humanitarian protection to be considered again. The nature of the fact-finding required to deal with that matter means that the case must now be remitted to the First-tier Tribunal for the issue to be decided taking forward that the Appellant's appeal in respect of the Refugee Convention has been dismissed with adverse credibility findings.

Decision

The decision of the FtT reveals no error in the dismissal of the international protection claim under the Refugee convention and the decision on that ground of appeal is to stand. The decision on Humanitarian Protection is conceded to be flawed by legal error and the decision on that ground is set aside. The appeal is remitted to the Ft T on Humanitarian Protection grounds only.

Signed:

Date 09 February 2018

Deputy Upper Tribunal Judge Davidge