



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02878/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6 December 2017

**Determination
Promulgated
On 8 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

**Mr MUHAMMAD SALEEM IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford, counsel (instructed by Lupins)
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Designated Judge First-tier Tribunal Judge McCarthy on 13 July 2017 against the determination of First-tier Tribunal Judge Lucas who had dismissed the appeal of the Appellant against the refusal of his international protection claim.

The decision and reasons was promulgated on 9 January 2017.

2. The Appellant is a national of Afghanistan, born on 17 June 1997. He had claimed asylum on 3 June 2015 after entering the United Kingdom illegally, having previously made a similar claim in Austria but absconded. He asserted that he was at risk in Afghanistan because of the Taliban. His father had been killed by the Taliban because he had refused to join. The Appellant maintained that he was born in 2000 and so still a minor. The Kent County Council assessment concluded he was over 18.
3. Judge Lucas found that the Appellant had failed to prove his claims. He was likely to have family in Afghanistan, with resources, as contacts such as sending his Taskira from Afghanistan showed. The Appellant could safely relocate in Kabul. The appeal was accordingly dismissed.
4. Permission to appeal was granted by Designated Judge McCarthy because it was held arguable that the judge had erred in his approach to the evidence of the Appellant's age, and had misunderstood the level of experience of the Appellant's expert and had failed to consider the Merton [2003] EWHC 1689 (Admin) guidelines. The judge had been distracted by immaterial considerations he had raised himself, such as the Appellant relocating to Pakistan. The judge had misunderstood the Appellant's expert report and had not considered the separate elements comprising the Article 15(c) humanitarian protection claim.

Submissions

5. Ms Radford for the Appellant relied on the grounds of onwards appeal and grant. In summary, she submitted that the Appellant's age had been wrongly assessed and he was still a child, meaning that his evidence had to be assessed on the basis that he was accordingly a vulnerable witness. The hearing had not been conducted on that basis and it should have been. The judge had misunderstood the qualifications of the social workers who had prepared the Appellant's age assessment, which were extensive. The Merton guidelines had not been followed in the Kent report and their social workers were less experienced than those of the Appellant, particularly Ms Angeline Seymour.

6. Ms Radford further submitted that the judge had strayed into irrelevancy when discussing why protection had not been sought in Pakistan. Then the judge had failed to see that Dr Guistozzi, the Appellant's expert, had not supported his case without discernment. The judge had erred when considering the availability of state protection. The Article 15(c) Qualification Directive claim had not been considered against the Appellant's evidence and case. There were cumulative errors, not forgetting the problem of the standard of proof. The determination should be set aside and remade in the First-tier Tribunal.
7. Mr Kandola for the Respondent submitted that there was no material error of law. The judge had been entitled to prefer the Kent County Council assessment, which was plainly independent and the result of a multi disciplinary approach. The judge had been entitled to treat the Appellant as an adult. The expert's report had been taken into account. The judge had found that the Appellant had an uncle in Afghanistan so would be returning to his family. Humanitarian protection had been sufficiently considered. The onwards appeal should be dismissed.
8. In reply, Ms Radford emphasised the absence of independence in the Kent report. The Appellant's expert had expressly recognised her duty to the tribunal. The judge had failed to factor in country guidance for Afghanistan and the recent situation.

No material error of law finding

9. In the tribunal's view, the errors asserted to exist in the decision and reasons are illusory. It is plain, in the first instance, that the experienced judge examined the whole of the evidence with appropriate care, applying the correct standard of proof, in the round, returning to the Appellant's expert's reports a number of times during his discussion of the evidence. When considering the competing age assessments, the judge placed the Appellant's story into its proper context, namely that the Appellant had access to the considerable resources which enabled him to reach the United Kingdom via Austria and was able to contact his family after his arrival, on his own admission. The judge's reference to the availability of refuge in Pakistan (with a relative, according to the Appellant) was simply to

illustrate the implausibility of the Appellant's claim that there was any need for him to make a long and costly journey to reach safety. There was no misunderstanding by the judge of the Appellant's age expert's Ms Seymour's qualifications: [83] of the decision is a part quotation from her report, which was the subject of the submissions noted by the judge and which report was in any event examined in detail. In the tribunal's view it is likely that the judge inadvertently omitted "the first and" from before "second social worker" when describing Ms Seymour's qualifications.

10. The point the judge was making is that Ms Seymour's report was in effect an attack on the local authority's report. He explained why he found that there was no good reason for him to go behind the Kent County Council multi disciplinary report, prepared in accordance with Merton standards, and which was undoubtedly independent and unequivocal in its conclusions as to the Appellant's age. The Appellant himself was uncertain as to his age, even at the late stage of the hearing, as recorded in the summary of his evidence. The judge was entitled to find that there was a gulf between the competing reports and had to choose one over the other. In doing so, the judge had considered whether it was possible that the Appellant's story, including his claimed age, was reasonably likely to be true and he explained why he concluded otherwise. The Appellant's selective disclosure of documents was but one significant reason why the judge found against the Appellant.
11. The judge gave close attention to the country report of Dr Guistozzi, accepting his expertise but noting, correctly, that the first report was mostly generic. Dr Guistozzi's opinion in his supplementary report that the Taliban "rarely practice forced recruitment" (see [51] of the decision and reasons) directly undercut the central elements of the Appellant's story of his father's death at the hands of the Taliban and of the supposed subsequent attempt to recruit the Appellant by the Taliban: see [90] to [95] of the decision and reasons.
12. The judge indicated at the start of his decision and reasons that humanitarian protection was part of the Appellant's case, and there are subsequent references to Article 15(c), including a summary of Ms Radford's submissions on that issue. It was an issue that the judge plainly had in mind

throughout his consideration of the evidence. The judge found that the Appellant could safely relocate to Kabul if necessary and expressly found that there was no basis for a grant of humanitarian protection, i.e., that he found the submissions advanced to the contrary insufficient. Current country guidance for Afghanistan supports that finding and there was no need for the judge to have said more.

13. Ms Radford's submissions, like the onwards grounds, amounted in the end no more than disagreement with the judge's decision which exposed a transparently weak and implausible case. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed
2018

Dated 5 February

Deputy Upper Tribunal Judge Manuell