



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03486/2017

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunals
On 24th May 2018

Decision & Reasons Promulgated
On 09th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MOHAMMAD [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharif (Solicitor)

For the Respondent: Ms H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Chapman, promulgated on 11th May 2017, following a hearing at Birmingham Sheldon Court on 8th May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Afghanistan, and was born on 1st January 2000. At the date of the hearing before Judge Chapman he was 17 years old. He appealed against the decision of the Respondent Secretary of State dated 27th March 2017, refusing his application for asylum and for humanitarian protection, under paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that, whilst at school in Kabul, a friend of his, [F], told him that he was attending a training camp for commandos, and asked the Appellant if he would like to join. The Appellant did so, and at the training camp, he was shown videos, learned about different weapons, bombs, and how to ride a motorbike. He was told that his training would continue in Pakistan. He realised soon that the camps were run either by the Taliban or Daesh and he decided to stop attending (paragraph 11 of the determination). A few days after he stopped attending, his friend came to his house and told him that the camps were run by very dangerous people, and several days later the people came to the Appellant's house and spoke to his father. The Appellant was not present. His father decided that the Appellant should leave the country. These events took place some ten to fifteen months before the Appellant arrived in the United Kingdom.
4. The Respondent Secretary of State rejected the Appellant's account of his training because it "lacked detail, consistency, and credibility and therefore did not accept that he had attended training with the Taliban, as claimed, or that his brother has disappeared" (paragraph 17).

The Judge's Findings

5. In his determination, the judge referred on several occasions, to the fact that the Appellant was a minor, and that he was conscious of this, and had borne it in mind (see paragraph 36, 38 and 40). Significantly, the judge accepted "the Appellant's account of being recruited by the Taliban is consistent with objective evidence" because "his evidence is generally consistent with the methods used by the Taliban" (paragraph 37). However, the judge went on to say that the Appellant's evidence was, as the Respondent Secretary of State had found, "very generalised and lacking in the sort of detail that might be expected if the events he claims occurred". This was despite recognising that the Appellant was "very young" (paragraph 38). The Appellant's account about being recruited was vague; his account of the training he received was vague, and who trained him at the camps was equally vague, and the failure of the Appellant to consider that he was being trained by insurgents, was equally vague (see paragraph 39). The judge concluded that the Appellant's account demonstrated "a lack of coherence and detail which undermines the credibility of his account" (paragraph 40).

The Grant of Permission

6. On 1 November 2017 permission to appeal was granted by the Upper Tribunal, on the basis that the judge has not approached the evidence in the light of the Presidential

Guidelines on vulnerable witnesses and **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123**.

7. On 27th November 2017, a Rule 24 response was entered by the Respondent Secretary of State to the effect that the judge had noted at paragraph 36 that the Appellant was a minor, and plainly had the Appellant's age in mind when considering the appeal, but the fact remained that there were adverse credibility findings to be made (at paragraphs 38 to 41) which went against the Appellant.

Submissions

8. At the hearing before me on 24th May 2018, Mr Sharif, appearing as the Appellant's representative, submitted that this was a case where the judge had accepted "the Appellant's account of being recruited by the Taliban" as being "generally consistent" (paragraph 37). The only reason why he did not win his appeal was because his account lacked detail and was vague. However, before an adverse credibility finding could be made, there had to be recognition, not only of the fact that the Appellant was a minor, but that as a vulnerable witness, he was eligible for the application of the Joint Presidential Guidance Note No 2 of 2010, on children and vulnerable adults. Moreover, in **AM (Afghanistan) [2017] EWCA Civ 1123**, Sir Ernest Ryder, had stated that "there is particular force in the guidance" (at paragraph 33). Mr Sharif urged that I make a finding of an error of law and remit this case back to the First-tier Tribunal, to be determined de novo so that the Appellant's vulnerable condition is expressly taken into account, which was not the case here.
9. For her part, Ms Aboni relied upon the Rule 24 response and she submitted that the judge had repeatedly reminded himself of the fact that the Appellant was a child. It was true that no express reference was made to the Joint Presidential Guidance Note No 2 of 2010. Nevertheless, it was equally clear that the judge had the condition of the Appellant firmly in mind. For example, at the outset, the judge noted how the Appellant "was accompanied by a responsible adult from the local authority" (paragraph 22). Later on, when looking "at the evidence in the round" the judge was clear that, "I have borne in mind at all times that the Appellant is a minor" (paragraph 36). Even when criticising the Appellant for his lack of detail, the judge had observed that "I stress again that I bear in mind that he is very young" (paragraph 38). Therefore, there was no material error of law.
10. In reply, Mr Sharif submitted that it was not enough for the judge to simply recognise the fact that the Appellant was young. More needed to be done to ensure that the Joint Presidential Guidance Note had expressly been applied, and not just borne in mind.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. This is a case where the judge found the Appellant's account of being recruited by the Taliban to be "consistent with objective evidence" and the Appellant's own evidence was "generally consistent with the methods used by the Taliban" (paragraph 37). Second, given that the judge then found against the Appellant on the basis that his evidence was "very generalised and lacking

in the sort of detail that might be expected” (paragraph 38), the question arises as to what weight he then attached to the fact that “he is very young”, especially, given that “his level of recall might not be what can be expected of an adult” (paragraph 38). All that the judge was able to say, in this context, was that “it might be reasonable to expect a reasonable amount of recall of the details” (paragraph 38). This does not in any way suggest the awareness by the judge of the application of the Joint Presidential Guidance Note No 2 of 2010. This was a case where, not only was the Appellant “very young”, but part of his claim was that “his brother has disappeared” (paragraph 17). Under the Joint Presidential Guidance, it was necessary to consider whether there was in existence any factors of vulnerability before a determination of credibility could be made. Under the Joint Presidential Guidance, it is necessary for the Tribunal, to record not only the fact that an Appellant is a child, but whether he is vulnerable or sensitive, and the Appellant has to consider any vulnerability in assessing the evidence (see paragraph 15 of the guidance). It is not enough to say that because the events “were not a significantly long time ago”, that “it might be reasonable to expect a reasonable amount of recall of the details” (paragraph 38) unless consideration has been given to whether the Appellant's account is affected by his being a vulnerable person. The determination does not give consideration as to whether the Appellant is a vulnerable person.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Chapman, so that the Joint Presidential Guidance Note No 2 of 2010 can be applied, before the Appellant's evidence is assessed and evaluated. I remit the matter under Practice Statement 7.2(A) because the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put or to be considered by the Tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

7th July 2018