



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04725/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2018

Decision & Reasons Promulgated
On 2 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

G A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimons, Counsel, instructed by Hoole & Co Solicitors
For the Respondent: Mr Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan who was born on 1 January 2007. The Respondent refused his application for asylum and humanitarian protection in a decision letter dated 4 May 2017. The Respondent also decided that he failed to meet the requirements of the Immigration Rules for leave to remain on the basis of his family life or private life in the United Kingdom. The Respondent further concluded that he did not qualify for discretionary leave as he was not an unaccompanied child given that his brother also was a failed asylum seeker and he would be able to return to Afghanistan with him and locate family members.

2. The Appellant appealed the Respondent's decision and his appeal came before First-tier Tribunal Judge Page, who in a Decision and Reasons promulgated on 21 February 2018 dismissed his appeal on all grounds.
3. The Appellant then sought permission to appeal against the decision of Judge Page and permission was granted by First-tier Tribunal Judge Kinnell, who concluded that it was arguable that when the Judge recorded at paragraph 23 that no evidence had been produced to show children aged 8 or 9 would be forcibly recruited he failed to take account of passages in the Appellant's bundle. He found it also arguable that the finding that the Appellant would have protection from his older brother on return to Afghanistan was insufficiently reasoned.
4. The appeal therefore comes before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Page and if so whether to set that decision aside.
5. I heard representations from Ms Fitzsimons for the Appellant and Mr Walker for the Respondent. After hearing Ms Fitzsimons' submissions Mr Walker conceded that Judge Page had failed to take the evidence in relation to forced recruitment in the Appellant's bundle into account and that this was a material error as it affected the overall assessment of the Appellant's credibility.
6. In the circumstances, having had regard to all of the arguments and evidence, I find that the concession was duly made by Mr Walker that there was a material error because it is clear from reading the decision of Judge Page that the evidence in relation to forced recruitment, in particular at pages 27 and 71 of the Appellant's bundle dated June 2017, were not taken into account.
7. It is worthy of note that the grant of permission stated that it had to be acknowledged that the Judge was not helped by the weak skeleton submission at page 9 of the bundle and that there was no other properly developed skeleton argument addressing all the points now made in the permission grounds. It is clear, however, that children as young as 6 are cited as being recruited in the Respondent's own Operational Guidance Note and consequently the finding at paragraph 23 of the decision that no evidence has been adduced that a boy of 8 to 9 years of age would be forcibly recruited cannot stand.
8. The specific evidence that the Judge did not consider and which contradicts his finding at paragraph 23 of the decision is to be found at paragraph 5.1.5 of the Respondent's policy guidance on Afghanistan: Fear of anti-government elements, which was published in December 2016. Specifically, at paragraph 5.1.5, it is recorded that Al Jazeera reported that during its siege of Kunduz in September 2015 Taliban fighters went door to door forcibly recruiting young boys. There is also a report from Human Rights Watch which states that the Taliban recruit and train children in age-specific stages. Boys begin indoctrination as young as 6 years old and continue to study religious subjects under Taliban teachers for up to seven years. According to relatives of boys recruited by the Taliban, by the time they are 13,

Taliban-educated children have learned military skills including the use of firearms and the production and deployment of IEDs.

9. In consequence, therefore, it is clear from this and from the UNHCR report at page 27 of the Appellant's bundle that AGEs are reported to continue to recruit children, both boys and girls, to carry out suicide attacks and as human shields, as well as to participate in active combat. In view of the reference to the age of the children recruited at page 71 of the Appellant's bundle it is clear that the finding that there was no evidence that children of 8 to 9 would be recruited cannot stand as it failed to take into account material evidence on that point. The Judge concluded at paragraph 23 of the decision that as a result of the absence of evidence of forced recruitment the Appellant had invented his story. The finding was therefore material to his rejection of the Appellant's claim and to his assessment of risk on return to Kabul.
10. I therefore set aside the decision of the First-tier Tribunal and with the agreement of both representatives and in view of the fact finding required I remit the matter to the First-tier Tribunal for a de novo hearing not before Judge Page.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and I set it aside.

The appeal will be listed in the First-tier Tribunal for a de novo hearing before a Judge other than Judge Page.

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 his 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 8 June 2018

Deputy Upper Tribunal Judge L J Murray