



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04888/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 September 2018

Decision & Reasons Promulgated  
On 17 September 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

M H A  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Anderson, of Counsel, instructed by Davjunnell Solicitors  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Background**

1. This is a challenge brought by the Secretary of State against the decision of First-tier Tribunal Judge Bird to allow the asylum appeal of this Afghan national. For convenience I continue to refer to the parties as they were before that Tribunal.

2. The appellant claimed to have been born on 15 July 2000 (Annex A4) although he was assessed as having been born on 15 July 1999 by a local authority (Annex E1) on 5 September 2016 when he was put at 17 years and two months. It would appear that he told the French authorities that he had been born in 1994 (A11) but he claimed to have lied about his age to the French because he did not want to be sent to a place for underage people (A12). He does not explain why that would have been a disadvantage. He also lied to the Greek authorities about his date of birth (C7). His family are said to be from Parwan Province but he claims to have been born in Peshawar in Pakistan. He is of Hazara ethnicity and he is a Shia Muslim.
3. The appellant claimed to have attended school in Afghanistan until he was 15. He maintained that his parents and three sisters were still in Afghanistan (at paragraph 3). He has a telephone number for them (A5). He also has aunts and uncles in Afghanistan (D8).
4. His asylum application was refused by the respondent on 29 March 2018 following an asylum interview on 30 January 2018. The appellant lodged an appeal against the decision and that was heard by Judge Bird at Yarl's Wood on 23 May 2018. It was allowed by way of a determination promulgated on 21 June 2018 on asylum grounds.
5. The respondent sought permission to appeal on the basis that the judge failed to consider the recent country guidance case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) when considering the risk of return to Kabul/the viability of internal relocation there. The application was granted by First-tier Tribunal Judge O'Brien on 25 July 2018. The matter then came before me on 13 September 2018.

### The hearing

6. I heard submissions from the parties at the hearing. Mr Tufan submitted that the judge's failure to refer to AS was a material error as she had given no reason for why she had chosen not to consider it or to depart from it. Her findings on the family support were contradictory and there were also errors with regard to the date of interview and the appellant's age. There was Home Office guidance on Hazaras although that post-dated the determination. Mr Tufan referred me to paragraphs 213, 216, 219, 223 and 227 of AS.
7. In reply, Mr Anderson argued that whilst the judge had not referred to AS in her determination, she had been referred to it by Counsel's submissions and skeleton argument. The failure to cite the case was not of itself a material error as she had applied the principles and guidance therein by considering the appellant's personal circumstances and the current climate in Kabul.

8. Mr Tufan did not wish to add to his earlier submissions.
9. That completed the hearing. I reserved my decision which I now give with reasons.

### Discussion and findings

10. I have considered the submissions made by both sides with care and I have had regard to the determination and the evidence before the Tribunal. I also bear in mind that Judge Bird is a long serving and experienced judge. Notwithstanding that, and despite Mr Anderson's able submissions, however, I am unable to find that that her conclusions are sustainable. I cannot accept that her omission of the most recent country guidance on Afghanistan is not a material error. I set out my reasons below.
11. The relevant guidance provided by AS is this:

*Risk on return to Kabul from the Taliban*

1. *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

*Internal relocation to Kabul*

2. *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.*

3. *However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above (added emphasis).*

12. I accept fully Mr Anderson's submission that it is not incumbent on a judge to set out the law if it is properly applied and that a failure to cite case law is not fatal if the principles are properly followed. The difficulty in this case is that I cannot be sure that the latter has been done, nor can I find that the findings which were reached were made on the basis of the correct factual matrix.

13. There is plainly a lot of confusion in the judge's determination as to the appellant's personal details, as pointed out by Mr Tufan and indeed even beyond his observations. Some may have little if any bearing on the conclusions reached but others would have had a considerable impact.
14. At paragraph 3, the judge states that the appellant was born in Peshawar and that his family moved there when he was about three years old. Plainly if he had been born there, the family must have moved before that. Indeed, the appellant's own evidence is that his family moved back to Afghanistan when he was three years old and that he remained there with them until he left for Europe in 2016 because he feared being recruited by the Taliban.
15. The judge also maintained that the appellant was found to be 14 – 15 years old in 2016 when the local authority assessed his age (at 18). That is plainly not the case as Annex E1, cited above, shows he was estimated as being 17 years and 2 months old in 2016. The judge, therefore, wrongly criticized the respondent for not granting discretionary leave to the appellant for the 2.5 – 3.5 years until he was 17.5 (at paragraph 18). In fact, the appellant was just four months shy of being 17.5 at the date of his assessment.
16. Further, the judge found that the respondent took two years to decide the claim after the interview on 5 September 2016 and that the interview was conducted when the appellant was just 15 (at paragraph 8), although she then states it was conducted when the appellant was 16 (at paragraph 23). As the appellant was found to have been over 17 in September 2016, he was not 15 or 16 when interviewed. Further, the asylum interview took place on 30 January 2018 (Annex D1 and D34) when the appellant was already over 18 and not a minor at all, and not in September 2016 as the judge maintained. Plainly her assessment of the appellant's evidence was heavily reliant on the belief that he had been a young boy when interviewed (at 23).
17. Mr Anderson argued that the judge had followed the guidance in AS in that she had considered his personal circumstances and the current climate. The difficulty with that submission, although very attractive, is that the findings on relocation were made without consideration of the Tribunal's guidance that Kabul is generally a safe place for healthy young males. The appellant's claim of a fear of the Taliban in Kabul was found to lack plausibility (at 26); indeed, the country guidance held that those without a high profile would not be at risk of persecution at the hands of the Taliban and the appellant's fear of being recruited as a child soldier is plainly no longer pertinent. In considering whether the appellant would be at risk as a Shia Muslim and a Hazara, she failed to consider the fact that the appellant did not raise any previous issues with either of those factors and there is no suggestion that his father faced any difficulties for either reason. This is relevant when the judge makes her findings on whether the appellant would be at risk for his faith or his ethnicity.

18. When considering his personal circumstances, the judge gives no consideration to the several factors set out in Headnote 3 of AS (cited above). There is no consideration at all of his physical and mental health, his education, his language and vocational skills. This further suggests that the judge did not have the guidance of AS in mind when reaching her findings. She found that the appellant would have no support in Kabul but gave no consideration to the fact that the appellant's father had been in Kabul to see him off and that there was no reason why he would be unable to return to meet him.
19. Whilst the judge considered the country material in the appellant's bundle (at 27-29) this was considered outside the context of the guidance on Kabul given in AS. Whilst it would have been perfectly possible for the judge to depart from AS, reasons would have had to have been given for so doing and there are none. I accept that Mr Anderson made submissions to Judge Bird on AS and that his skeleton argument also engaged with the judgment, but it appears from the determination of the judge, that she overlooked the guidance completely or, if it was considered, that she gave no clear sign of having done so.
20. For these reasons, I conclude that the First-tier Tribunal Judge made material errors of law. I am unable to preserve any findings due to the anomalies I have identified and the incorrect facts on which the conclusions were reached.
21. Mr Tufan pointed out that there was guidance from the respondent on the Hazara community dated August 2018. This will be relevant to the Tribunal's consideration at the resumed hearing.

### Decision

22. The First-tier Tribunal made errors of law and I set aside that decision in its entirety except as a record of proceedings. The matter shall be remitted to another judge of the First-tier Tribunal for fresh findings and for the decision to be re-made.

### Anonymity

23. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 13 September 2018