



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: PA/12386/2016**

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 6 August 2018**

**Decision & Reasons Promulgated  
On 21 August 2018**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**ROKAY [R]**

**(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr Mohzam (Solicitor)  
For the Respondent: Mr Mills (Senior Home Officer Presenting Officer)

## **DECISION AND REASONS**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it sent to the parties on 25 July 2017, whereupon it dismissed the claimant's appeal from the Secretary of State's decision of 10 October 2016 refusing to grant him international protection.

2. The claimant, it is not disputed, is from Afghanistan. But almost everything else he has said in seeking asylum is disputed. In making his claim he gave his date of birth as 5 July 1999 but an age assessment conducted by Northamptonshire County Council led to a conclusion that he had been born between 1988 and 1991. Whilst the claimant had asserted that he was at risk in Afghanistan at the hands of a person called Haji Usman, the Secretary of State had comprehensively disbelieved the account the claimant had offered as to how he came to the adverse attention of that person whom he said was a man of some influence in Afghanistan.

3. The matter came before the tribunal for an oral hearing on 13 July 2017. At the outset of the hearing the claimant's representative asked for an adjournment. The basis was twofold. Firstly, she said that she wished to obtain an expert report as to the authenticity of what is described as a "Tazkera document" which, if authenticated, would, it was argued, be probative as to the disputed matter of the claimant's age. Secondly, she wished to obtain an expert report regarding scarring on various parts of the claimant's body as such might, depending upon the conclusions, provide corroboration for his claim to have been stabbed during the course of attacks perpetrated upon him by Haji Usman's sons and bodyguards.

4. The tribunal refused to adjourn and in its written reasons of 18 July 2017 explained itself in this way:

“ 7. I decided not to adjourn the hearing, being satisfied that it was not necessary in order for the appeal to be disposed of justly. I considered that a medical report was likely to be of very little value in respect of the causes of the scarring since the scars were now over two years old. I consider that the age of the appellant was not a central issue in the appeal since on his own account he was now 18 years old. I also took into account that the request for an adjournment had only been made months after the appellant had instructed Sultan Lloyd Solicitors in November 2016 and I give little weight to what Ms Alban [the claimant's representative before the tribunal] said about her colleague at that firm who had been preparing the case being inexperienced; caseworkers are required by law to have (or be supervised by someone with) a minimum level of expertise and Ms Alban was not saying that the case had been prepared (or supervised) by someone who was not authorised to do so.”

5. The tribunal, having refused the adjournment, went on to conclude that the claimant had not told the truth about the facts said to underpin his claim to be entitled to international protection. As part of its analysis the tribunal concluded that the claimant was, in fact, within the age parameters which had been specified in the age assessment report prepared by Northamptonshire County Council. That meant he would have been substantially older than claimed. Having reached that view, and prior to going on to make its other credibility findings, the tribunal said this:

“ 25. I have therefore approached the assessment of the credibility of the appellant's account on the basis that he was already an adult when he arrived in the UK. I do not make the same allowance that I would have made for a child's replies during interview.”

6. The tribunal then set out various reasons for its disbelief of the claimant's account. The tribunal also found, though this was stated briefly, that in the alternative, the claimant would have available to him an internal flight alternative.

7. The tribunal's dismissal of the appeal was not the end of the matter because permission to appeal to the Upper Tribunal was sought. One of the grounds of appeal was to the effect that the tribunal had erred in refusing the adjournment request. It was said, in particular, that there was error resulting from the tribunal justifying in part its refusal to do so because of its stated view that the claimant's age was unimportant; whilst then going on to reach a view of the claimant's age in the absence of the report on the Tazkera document which had contributed to the adverse credibility findings.

8. Permission to appeal was granted and, when it was, this was said:

"In relation to the first ground, at [6-7] of his decision, the judge refused an adjournment, he indicating, inter alia, that the appellant's age was not a central issue in the appeal, it appearing to be acknowledged that the authenticity of the Tazkera document was relevant to an assessment of age. However, at [24-25], the judge then assessed credibility on the basis that the appellant was several years older than he claimed to be. Such approach amounts to an arguable error of law, which arguably infects the balance of the judge's decision. Permission is granted on all grounds pleaded."

9. There was then a hearing before me, at which representation was as stated above, so that it could be considered whether or not the tribunal had erred in law and, if so, what should flow from that. I am grateful to each representative. Mr Mohzam, essentially, relied upon the written grounds of appeal. Mr Mills, whilst acknowledging that a relatively low bar was set in relation to adjournment requests by the decision of the Upper Tribunal in *Nwaigwe (adjournment:fairness)* [2014] UKUT 00418 (IAC), argued that the delay in making the application in this case had been significant. Further, whilst fairness might have been elevated above all other considerations that did not mean other factors, such as a lengthy delay in seeking an adjournment, would be irrelevant. In any event, it was hard to see that even if the Tazkera document had been authenticated it would have been capable of shifting the robust and detailed findings contained in the age assessment report. After all, the Tazkera document had only been issued in 2011 and all it really said was that the claimant had been of a particular age in 2006. So even if genuinely issued there were concerns as to the accuracy of the information contained in it. As to the obtaining of a medical report, even if the claimant had been stabbed that would not confirm the accuracy of the claimant's contentions as to how such had come about or who the perpetrators had been. There was also the alternative finding regarding relocation to Kabul though Mr Mills accepted that consideration as to that had been brief.

10. I have hesitated over this. The application for an adjournment was made very late in the day. There appeared to have been ample time for the reports to have been obtained prior to the tribunal hearing. There does not appear to have been put to the tribunal a persuasive explanation as to why the reports could not, with proper diligence, have been obtained earlier. Further, there might be reason to think that even if the evidence sought had been obtained it would have had only limited value from the claimant's perspective. As Mr Mills points out, even if a report can be obtained which demonstrates that the claimant's injuries are stab wounds, that will still say nothing about who inflicted them or why. So, its corroborative support for the claimant's account, even if the content of such a report turns out to be favourable, will be limited. The Tazkera document, even if it had been validly issued by the proper authorities in Afghanistan, only seems to say that the claimant was of a certain age in 2005 which was, of course, six years after the date he claims he was born. It was not issued contemporaneously with his birth and there does not appear to be any proper explanation as to how it came to be issued or as to how the facts noted in it have been verified by the issuing authorities. Such a document, it might be argued, is only as good as the sources for the information contained within it.

11. But having said the above, it is right to say that there was some inconsistency in the approach of the tribunal. It said that age was unimportant. I can well understand why it said that. This was not a case where, even on the claimant's own account, he was a minor at the time the tribunal was deciding his appeal. But his young age (assuming for now he is telling the truth about his date of birth) was of potential relevance with respect to the question of whether he was or may have been a minor at the time of the occurrence of the key events which underpinned his asylum claim. If he was a minor at the date of occurrence and at the date of his asylum interview an allowance of some sort with respect to the credibility assessment might have been appropriate as the tribunal did seem to recognise (see paragraph 25 of the written reasons). There is something to be said for the argument that if it was attaching importance to his age in the context of the credibility assessment, it should not have rejected the adjournment request regarding the Tazkera document on the basis that age was unimportant.

12. I can see that, given what Mr Mills contends is an impressive age assessment report, there might be an argument for saying that even an authenticated Tazkera document might not weigh very much in the balance when deciding the question of the claimant's age. But I do not feel able to go so far as to conclude that no rational tribunal could, in the face of such authentication, properly find that he is the age he says he is. Similarly, I do not feel able to conclude that no reasonable tribunal would conclude an expert report confirming that the claimant had stab wounds inflicted at the time when he says they were inflicted upon him, would not be of some corroborative support to his account.

13. As to the argument that the alternative finding regarding internal flight was sufficient, whilst I agree with Mr Mills that it would seem to be in line with current country guidance, it was a very brief assessment indeed. Internal flight is an assessment with a personal element and that was lacking here.

14. In my judgment, for the reasons given above, it was not permissible for the tribunal to reject the adjournment for the reasons it did but to then effectively treat the age of the claimant to be significant (as it did) with respect to its credibility assessment. I accept, therefore, that it fell into error not simply by refusing the adjournment but as a result of its inconsistency in saying as part of its reasoning for that refusal that age was not relevant for one purpose but then saying that for another it was. Had the adjournment been given for the Tazkera document report and had that report proved probative that might have, on the tribunal's approach, had an impact upon the adverse credibility assessment. I have, therefore, concluded, albeit it narrowly, that the tribunal's decision involved a material error of law that it might have impacted upon the outcome and that its decision, in consequence, must be set aside.

15. I have decided to remit. Since I do not consider it appropriate to preserve any of the tribunal's findings or conclusions having the matter reheard in the first-tier is the most appropriate way forward given that there will have to be a further fact-finding exercise.

16. As to directions for the rehearing, I shall simply direct that there will be a complete rehearing in the First-tier Tribunal before a different Judge to the one who decided the appeal on 18 July 2018. Any further directions may be left to any Salaried Judge of the First-tier Tribunal.

17. I assume that the claimant's representatives, if they have not done so already, will now set about seeking to obtain a report regarding the authentication of the Tazkera document and regarding the causes of scarring on the claimant's body. Those representatives may think it prudent to place matters in hand as to that as soon as possible.

18. This appeal to the Upper Tribunal, then, is allowed on the basis and to the extent explained above.

**Decision**

The First-tier Tribunal materially erred in law. Accordingly, its decision is set aside. The case is remitted for a complete rehearing before a differently constituted First-tier Tribunal.

No anonymity direction is made. None was sought before me.

Signed:

Date: 10 August 2018

Upper Tribunal Judge Hemingway