



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

Appeal Number: PA/01502/2018

THE IMMIGRATION ACTS

Heard at Field House

On 15th March 2019

**Decision & Reasons
Promulgated
On 23rd April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MR HAMEED KHAN HAZARBUZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Papal, Counsel, instructed by Virgo Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a citizen of Afghanistan whose date of birth is recorded as 4th November 2000. He made application for international protection as a refugee but on 18th January 2018, a decision was made to refuse that application and the Appellant appealed.

The substance of the Appellant's case was that he had a fear of the Taliban through his paternal uncle, himself a member of the Taliban, who sought to encourage the Appellant to join. At the time, the Appellant was living with his grandfather, who was reluctant to have the Appellant comply with that uncle's

wishes. On the Appellant's case, the family home was visited by governmental authorities and the Appellant and his grandfather were detained and ill-treated because the authorities were looking for that uncle. Once released, as they were, the Appellant's grandfather arranged for him to leave Afghanistan.

The above is a summary of the Appellant's case, more particularly set out within the Decision and Reasons of Judge of the First-tier Tribunal Swinnerton, who heard the appeal against the Respondent's decision when sitting at Hatton Cross on 17th December 2018. Judge Swinnerton dismissed the appeal, finding the Appellant to be an unreliable witness.

Not content with that Decision, by Notice dated 23rd January 2019 the Appellant made application for permission to appeal to the Upper Tribunal. The grounds submit that the judge failed to give sufficient weight to the Appellant's age when assessing the evidence as well as the cultural and educational factors which attached to him. It is said that inadequate reasoning was given by the judge for failing to accept the Appellant's account and in particular, for saying that certain evidence in the asylum interview was completely at odds with what was contained in the detailed witness statement.

In saying that it was "difficult to accept" with respect to the Appellant's contact with his grandfather, which, the Appellant had said was non-existent, it was submitted that the judge had failed to apply the correct standard of proof. The point was taken before me after permission was granted by Judge of the First-tier Tribunal Povey on 6th February 2019 that the points taken were not clearly within the grounds. Nevertheless, whether or not clearly within the grounds matters not because I heard representations on the various points made.

The substantive points that were taken without any of the points in the grounds being abandoned was on a very narrow point, focusing on the word "or" at paragraph 17. There were, and this is common ground, various aspects to the Appellant's account. He firstly asserted that it was his uncle who was putting pressure on him and his grandfather for him, the Appellant, to join the Taliban and it was also his case that governmental authorities had visited the family home and detained him along with his grandfather. What Ms Papal invited me to find was that there was a material error of law because although the judge rejected the notion that governmental authorities had visited the family home there was no finding one way or the other as to whether or not the uncle had been a member of the Taliban or had sought to put pressure on the Appellant to join.

The second point that was pursued before me with some vigour related to the failure on the part of the judge to consider the country guidance with respect to unaccompanied young persons being returned to Afghanistan, although there were no findings directed towards the assessment which the country guidance calls for.

In **VW (Sri Lanka) [2013] EWCA Civ 552**, McCombe LJ said at paragraph 12:

"Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment

explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact."

I accept that this Appellant is a young man and understand why those represented him have continued to pursue his best interests. It was submitted that a person who has been unsuccessful in an appeal should understand why they have been unsuccessful. That is trite law and I agree. Nothing more need be said about it. It is true that the judge has not made a specific finding with respect to the uncle but in my judgment, it is perfectly clear what view the judge took of the quality of the evidence that was being presented. It is to be remembered that in a statutory appeal, I am concerned with whether the findings and Decision made by the judge were open to him or her.

The standard of proof is a lower standard. It is a "reasonable degree of likelihood" that is to be considered but that cannot be reached without some evidence. There is a burden of proof, not just a standard, and if the judge finds, as this judge did, and gives sufficient reason for it that the only evidence that was being given orally, as was the case here, coming from the Appellant, as it did, was unreliable then one can readily understand why it was that negative findings were made. In a case such as this the question is whether or not there is a real risk. Has the Appellant satisfied that burden and that standard? It is not necessary for the judge to go on to make other findings, merely to consider the Appellant's case. Sometimes it may be appropriate, but not always.

Particular complaint was made at the remark that the Appellant's account in his asylum interview was "completely at odds" with what was in the detailed statement. It was said that it was not completely at odds. There would have been merit in that point had it not been for the fact that the judge actually explains why he took the view and what he meant by it because the word "because" follows and then there is an explanation. In my judgment, there is no merit in that point.

That the judge did not specifically make a finding as to whether the Appellant's uncle was a member of the Taliban, again, is not material in my judgment because, for reasons which were sufficient, it was not accepted that the authorities had come to the family home. The Appellant had been inconsistent in his evidence and it is not for me to say whether another judge would come to a different view. It is for me to say whether it was open to that judge to make that finding and it was, and, having made that finding, it would have been inconsistent, in my judgment, for the judge to have found against the background of finding that the Appellant was an unreliable witness, that his evidence in relation to his uncle was evidence that he could accept. That is not to say that the Appellant was lying. It is simply to say that the evidence was

not adequate, it was not sufficient to meet the standard of proof that was required because it was unreliable.

As to the failure on the part of the judge to consider the country guidance case which looks to risks on return for young persons who are unaccompanied, the judge explained why he did not accept that the Appellant was no longer in contact with his grandfather but it also follows that if the Appellant was an unreliable witness then it was open to the judge not to have been able to accept what the Appellant might have had to say and did say about what would greet him or meet him on return, and so, those matters identified in the submissions and in the grounds before me as being flaws, if they are flaws, are not material.

In those circumstances, the decision is maintained. The appeal to the Upper Tribunal is dismissed.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed

Date: 23 April 2019

A handwritten signature in black ink, consisting of a stylized 'Z' followed by a long horizontal line that tapers to the right.

Deputy Upper Tribunal Judge Zucker