



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07309/2011

THE IMMIGRATION ACTS

Heard at Field House
On 17 September 2013

Determination Sent
On 11 October 2013

Before

UPPER TRIBUNAL JUDGE KING TD

Between

TAUS SAFI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E King, Counsel, instructed by J D Spicer Zeb Solicitors
For the Respondent: Mr Tony Melvin, Home Office Presenting officer

DETERMINATION AND REASONS

1. The appellant claims that he was born on 5th July 1994. The respondent accepts an assessment that he was born on 1st January 1991. He is a national of Afghanistan. He entered the United Kingdom on 2nd October 2008 and claimed asylum on the

following day. That claim was refused by the respondent on 9th June 2011 and a decision was made to remove him from the jurisdiction.

2. The appellant sought to appeal against that decision, which appeal came before Immigration Judge White on 31st August 2011. The Judge concluded that the appellant lacked credibility and the claim was dismissed in all respects.
3. Grounds of appeal were submitted against that decision.
4. Permission to appeal was granted. That came before the Upper Tribunal on 7th February 2012. There was a finding that there had been an error of law in certain respects. It was not found, however, that the Judge's assessment of age was in error. Thus the decision was set aside to be reheard, save as to the issue of age.
5. Thus the matter comes before me to be reheard. Ms King, who represents the appellant, invited my attention to new bundles of material that had been presented in connection with the appeal, together with her skeleton argument. Mr Melvin, who represents the respondent, also presented a skeleton argument together with a number of authorities and reports.
6. At the outset I clarified with the parties the issues which were at large. Those issues were the credibility of the claim, the safety of return and Article 8 of the ECHR. It was accepted that the Judge's findings as to age were to stand for the purposes of this hearing.
7. The appellant gave evidence adopting as he did his three witness statements made on 21 October 2008, 6th July 2011 and at a date in 2011 before the occasion of the previous hearing.
8. In summary he is a Pashtun from a village in Kapisa Province in Afghanistan. He attended an informal school in a garden for some time. Later he attended a more formal school, his father being the head teacher of that school. The father had worked after the fall of the Taliban with an NGO to rebuild the school.
9. The appellant had no problems in Afghanistan until about a year before his flight. These problems intensified about four to five months before he left. Four of his cousins were members of the Taliban who wanted himself and his father to join them. There were also arguments with his father concerning the running of the school. Before the appellant fled these cousins shot his father and younger brother and came looking for him. He was warned at the market by his cousin Azizullah and taken to the home of his uncle. Thereafter the uncle made arrangements for an agent to take the appellant out of the country.
10. In the interview conducted at the Home Office, the appellant indicated that he had left Afghanistan two months previously, but in his statements he indicates that he

had spent nearly a year in travelling, seemingly fingerprinted in Greece in January 2008.

11. In the statement of 21 October 2008 the appellant indicated that during the time that his father was head teacher of the school, he and his brother attended the school and were living relatively comfortable lives with his father who also received income from his farm. In that statement the appellant said that he had no problems in Afghanistan until approximately one week before he fled. It was then that his father and brother were shot by the cousins on the way home from school. It was because they were unhappy that he had opened up a school in the village. In that statement, in dealing with the journey to the United Kingdom, the appellant had indicated that he had left Afghanistan two months before he arrived in the United Kingdom.
12. The more detailed statement was that of 6th July 2011. In that statement he indicated that his problems began one year before he fled Afghanistan and produces his taskera, an ID card, which was obtained by his uncle. In his statement he said that his journey took almost eleven months and not two months. He said that he was told by an agent to say two months due to his fingerprints in Greece. He was scared that if he told the truth about his journey he would be returned to Greece. It was said that his father and brother's death were not reported to the police as this would have caused more problems for his uncle and mother.
13. The appellant said in oral evidence that he had attended a school, and indeed produced school reports for the years 2001 to 2014. He said he only stopped going to school shortly before his departure. The reports had been obtained by his uncle from home. He said that he had been last in contact with his uncle in 2010. He said that his paternal cousins had tried for some time to stop the school but had not at that stage enough power. There came a time when two of the cousins became commanders in the area. Although the school had been built with the assistance of the NGO, he did not know what NGO that was.
14. He was questioned about the fingerprinting of himself in Greece. He said he travelled through a number of countries that he did not remember, and he did not know where he had been fingerprinted. He said of the NGO that it belonged inside the country. His father was also discussing the building of a supermarket with the assistance of the United Nations.
15. He said of his cousin Azizullah that he was the son of the uncle who was a farmer. In 2010 he had spoken with his mother and uncle who were all together. He was aware that his cousin was also in the house at that time.
16. He indicated so far as his private life was concerned that he does not do anything day to day because he has no job because he was not permitted to work. Though he was at school for a time he no longer is at school because he cannot afford to pay the fees. He shares accommodation with another boy. He was at the John Ruskin

College learning how to speak and write for two years, but left in 2011. He has no emotional relationship with anybody and has no children.

17. Mr Melvin made his submissions, relying particularly upon his skeleton argument. He asked me to find that the appellant was not credible. He had told lies about when it was that he had left Afghanistan and sought to conceal the fact that he had been fingerprinted in Greece in January 2008. His evidence was vague, particularly being unable to name the NGO that had assisted his father in building the school, and had given very vague details concerning the superstore or market, also that his father was involved in building. I was asked to find that his willingness to be untruthful to the United Kingdom authorities in pursuit of his claim fundamentally undermined his generally credibility.
18. I was asked to find on the authorities that the appellant could return, certainly to Kabul. My attention was drawn to a number of authorities and reports in support of that submission.
19. Ms King relied upon her skeleton argument and invited me to find that it was unrealistic to expect the appellant, who on any account had left Afghanistan as a minor, to be fully aware of what was happening so far as his father and the NGO and UN were concerned. The appellant had given an explanation as to why he had been untruthful concerning his travel, but had been largely consistent with his account of his experiences in Afghanistan. I was invited therefore to find that he was generally credible as to his claim and that being so that he could not return to his home area. I was invited to find that it would be wholly unreasonable to expect him to relocate to Kabul, particularly he having spent some five years in the United Kingdom. I was addressed on the issue of delay and the consequences that should follow from the respondent's failure to undertake tracing in his case.
20. I remind myself of the definition of refugee as set out in Regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, and also as to the issue of humanitarian protection as set out in paragraph 339C of the Immigration Rules.
21. The burden and standard of proof to be applied is to that lower standard, namely "a reasonable likelihood" or "a serious possibility". I bear in mind that a similar low standard should be applied in the cases of the appellant's human rights, namely whether there was a real risk of a breach to the appellant's fundamental human rights.
22. In assessing credibility, I remind myself that the claim should be put within its proper context, so that a proper evaluation can be made of the individual features thereof.
23. It is common ground that the appellant left Afghanistan as a minor. Accordingly, it is right that I should approach any vagueness or discrepancy with caution as the

awareness or understanding of the young person may be less developed than in an adult.

24. A proper starting point for the consideration of the appellant's evidence clearly is to understand his age. The first assessment was carried out by two Croydon social workers on 16 October 2008. The second assessment was carried out on 19 November 2008 at Kings College Hospital. The third assessment was carried out by Dr Birch on 5 December 2008 and a fourth assessment on 9th July 2009.
25. Judge White conducted a very detailed examination of those reports, noting the criticisms that were made about them. The assessment was conducted from paragraph 23 of that determination until paragraph 51. Consideration was also given to two letters from Ms O'Higgins, a young refugee rights petitioner with the Children's Society, to a Mr Harrison, and also to the taskera and identity card.
26. It is unnecessary to set out in detail that which is already expressed in considerable detail in that determination. So far as the reasoning that is employed, I apply the principles set out in Devaseelan to those findings.
27. It was the finding of the Judge that the appellant was born during the first half of 1991 and would have turned 18 by July 2009. Thus when he left Afghanistan in late 2007, if that indeed be the case, he would have been 16, arriving in the United Kingdom aged 17. At the time of his asylum interview and his evidence at the first hearing he was an adult and will be returned as an adult to Afghanistan should that be decided upon.
28. There was some suggestion made that the appellant had learning difficulties by Ms O'Higgins. The Judge did not find that to be substantiated, not least that no reference was made to it by Dr Birch.
29. The school report scores the appellants with 9s or 10s in most subjects including the Qur'an, behaviour, Dari, maths, science and health, drawing, writing, physical training.
30. There is no key to the value of such points but it is noted that in the last school report very much higher marks are given for Qur'an, behaviour, Dari, Pashtu, history, geography, maths, science and health, drawing, writing, physical training, social civilisation.
31. Although demeanour must be approached with caution there is little in the way in which the appellant gave evidence to indicate any lack of understanding of the question or of any inability to make a proper response. That was also the assessment of the First-tier Tribunal Judge.
32. The respondent relies heavily upon the appellant's lies as to when he left Afghanistan and whether or not he was fingerprinted in Greece. Such lies are of

significance in that the appellant has shown himself capable of producing a false account should that suit him. Clearly care must be employed in not putting too much of an emphasis upon issues involving travel. The fundamental issue is that of the credibility of the matter generally.

33. Mr Melvin suggests that the appellant, in giving his evidence before me that two of his cousins were commanders is an example of exaggeration. The applicant contends that no one had asked him about that directly before. A question arises in the connection with the claimed actions of the cousins in killing his father and his cousin as to why it was necessary to kill his cousin. It is curious if the commanders were seeking to recruit support for the Taliban that they would kill his brother. Indeed, if these commanders had been so powerful the question arises why it was that they did not exact revenge upon the maternal uncle for helping the applicant to escape or indeed seek to recruit the uncle's son Azizullah. Seemingly, all were present at the home in 2010.
34. It is to be noted that although the applicant claims that that was the last time that he had spoken to his uncle, it is noted in paragraph 17 of the previous determination that the applicant indicated as at the hearing on 31st August 2011 that " he remains in touch by telephone with his maternal uncle. His mother is still living with his uncle. They are at home in Afghanistan".
35. In assessing the truthfulness of the claim it is perhaps instructive to note how the appellant expressed the matter to the persons conducting the age assessment. Clearly the quality of what is said is not such as a formal interview, and care must be taken not to place undue weight upon what was said. However, in this particular case it perhaps helps to throw some light on the issue of credibility. In the assessment conducted on 16 October 2008 where social history and family composition is recorded, it is said that his father died two months prior to him leaving and sibling Azir aged 9 also died two months previously. Members of the Taliban asked for him and his father to join them. One day the appellant found letters stating that they would not leave him alive, and one day they would be shot dead in their own country. His mother then took him to his uncle's home. It was a journey that took approximately two months but he was not very specific. In the assessment of 9th July 2009 he said that encountered after obtaining funds from the Americans to set up the school ,his father continued to work with the Americans. The cousins visited the family home and told the father to stop working with the Americans. When he refused to join the Taliban the cousins killed him. There is no mention of the killing of the brother at that stage.
36. In dealing with the social history and family composition he said that he had one brother Nazir aged 8. Once again mention is made only of the cousins killing his father and coming looking for him .

37. Thus there would seem to be some confusion about who had provided the funds for the school, whether it was the Americans or an NGO who was based in the country. The relationship with the Americans was of fairly long standing.
38. One of the grounds of appeal that had been directed against Immigration Judge White was the lack of reference to background material. In those circumstances, having regard to the bundle of background material of some 563 folios I invited Ms King to indicate to me those passages which related to the appellant's home area. She indicated that she could not, but was relying upon those reports for their general effect. In those circumstances it is somewhat difficult to assess by way of background material what was the situation so far as the Americans and the Taliban in the area of the appellant without embarking upon my own researches on the matter. Clearly if the Taliban had been prominent in that area the desire to recruit support would be understandable. It is also to be noted in general terms that the Taliban would clearly be unhappy with anybody working with the Americans and that education was also a matter upon which the Taliban have strong views.
39. The appellant claims to have been at school up until the time of his leaving Afghanistan. Only those reports up to 2004 are produced. I note that in his evidence before Judge White at paragraph 15 of that determination, the appellant had indicated that he did not have more certificates because he had repeated one year and left before completing the final year. This is said in the context of being the son of the headmaster at that school. It is perhaps surprising in those circumstances that there is a lack of details concerning his last few years in Afghanistan. It is perhaps reasonable to assume that his father as the headmaster would be particularly motivated to ensure the good education of his sons.
40. It is said by Mr Melvin that the appellant was unduly vague about the situation and circumstances of his father, the supermarket and the NGOs. As the appellant would have been 16 in 2007, it is perhaps a point to be made with some merit that it is reasonable to expect that at that age he has a little more understanding of what is going on in his family and in his village. Excepting that he was a relatively young man when he left, whether that be 2007 or 2008, nevertheless it is reasonable to expect that he would have had some awareness of the dramatic events which he describes.
41. It seems to me that it is a matter of very much relevance that there is a variation in his account as between his first statement and his second, these being possibly prepared more carefully than the interview. I find that his ability to maintain a lie as to his movements to the United Kingdom are relevant in undermining his credibility. I do not find it would be credible that the cousins, even were they to be Taliban, would be interested in killing a 9 year old boy. If they were as violent as claimed to gun down a member of their own family they would have shown little mercy to the uncle who enabled the appellant to escape their clutches, or indeed to his cousin. I do not find it credible that the appellant has ceased contact with his family in Afghanistan. There have been no police reports. That again is a matter of some concern, particularly

given the significant community profile that the appellant's father would have had as a school master and seemingly as a local entrepreneur working with the United Nations to create a supermarket.

42. Overall I do not find therefore that the appellant's credibility is such that his claim can be relied upon.
43. Equally, it is difficult without clear evidence to detect what is the current situation in his area. Clearly he would be at risk of recruitment to the Taliban should they be in the ascendant. The fact, however, that his cousin was still at home in 2010 is perhaps indicative that the power of the Taliban in that area is not as great as the appellant would now claim.
44. In the circumstances, without further detail it is difficult to conclude that the appellant's return to his home area would be unsafe. His cousin, mother and uncle reside there and would be able to offer him a home. I do not find it credible that he is wanted by the cousins as claimed.
45. In any event I find that relocation to Kabul in the circumstances of this case is entirely proper and open to be made. I have regard to **AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC)**.
46. It is noted in paragraph 212 of that decision that there is a significant level of support provided by the Afghan population by aid and humanitarian agencies, domestic and international. There is a high level of international support in money and in kind. There are return and reintegration packages available in Kabul designed to cushion against immediate difficulties on return. They can assist with skills training and assist returnees generally.
47. The conclusion of the Tribunal in that decision at paragraph 243 was that it was not unsafe or unreasonable to relocate to Kabul, nor that Article 15(c) was thereby engaged.
48. It is suggested that the appellant's father had connections with the US forces and that accordingly the appellant would be targeted as a consequence. Bearing in mind the age of the appellant and that he would have had no realistic contact with UN or US forces I find that it is not reasonably likely that he would be perceived to have had so. In that connection the case of **H and B v the United Kingdom - 70073/10 44539/11** was produced for my attention, particularly paragraphs 97 and 100 thereof, which indicate that there was insufficient evidence to suggest that the Taliban had the motivation or ability to pursue low-level collaborators in Kabul or other areas outside their control.
49. In that connection I do not find it credible that the cousins had the significance which are claimed, or that they would have any interest in pursuing the appellant who was, after all, a very young man when he left the country. There was no indication for

example that they have pursued any enquiries of the appellant through the uncle or through his mother. No doubt if that had been happening that would be evidence reasonably likely to have been given by the appellant in the course of his various appeals. As I have indicated I find the presence of the appellant's mother, cousin and uncle still in their family home, certainly in 2010 if not to the current time, to be indicative of the fact that the family is not the subject of targeting by the Taliban.

50. My attention was also drawn by Mr Melvin to the Operational Guidance Note on Afghanistan OGN v11 issued in June 2013, which further amplifies the current situation in Kabul.
51. The appellant is a person of some education and if it be right that he had spent nearly a year getting to the United Kingdom it shows a degree of resilience and initiative which will hold him in good stead were he to be returned to Kabul.
52. Looking at the matter overall therefore I do not find that the appellant is at risk were he to return, particularly were he to return to Kabul. I do not find that it would be unreasonable or unduly harsh to expect him to return to Kabul in all the circumstances.
53. Ms King seeks to argue also that the appellant's fundamental human rights would be breached were he to be removed. She accepts that the appellant has done very little during the five years that he has been in the United Kingdom other than attend college and had developed friendships and become more acquainted with life in the United Kingdom.
54. She prays in aid strongly, however, the delay on the part of the respondent in making a decision and the failure to trace the appellant's relatives in Afghanistan. She relies upon **EB (Kosovo)** to the extent that although the appellant has not been working in the United Kingdom, that was because he had not been granted status to do so and if that status had been granted at an earlier stage his private life would now be very much more advanced.
55. She stresses that the appellant in fact arrived in the United Kingdom on any view of his age as a minor, and in those circumstances Regulation 6(1) of the 2005 Regulations imposed a plain duty on the Secretary of State to endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum. In that connection she relies upon **DS (Afghanistan) v SSHD [2011] EWCA Civ 305** and in particular paragraph 44 of the judgment therein.
56. In her skeleton argument she also relies upon the moments made by Elias J in **HK and Others v SSHD [2012] EWCA Civ 315**, particularly those found at paragraph 39 thereof.
57. She also relies on **KA (Afghanistan and Others) v SSHD [2012] EWCA Civ 101**. She relies upon those matters in support of a contention that the appellant falls to be

granted asylum, but in the alternative that it is a matter properly taken into account in assessing the proportionality of return.

58. For my part I find it difficult to understand the relevance of the tracing requirement in the particular circumstances of the appellant's case. It is not his case that he had lost contact with the members of his family, but was indeed in contact with his mother, cousin and uncle. Little would have been served in trying to trace those members of the family when it was not suggested that the appellant was without family members.
59. Ms King relies upon the case of **Jabarkhail v Secretary of State for the Home Department [2013] EWHC 1798**. The court held that for the appellant to be entitled to any sort of leave as a result of the respondent failing to carry out her tracing obligations, he had to demonstrate a real rather than hypothetical disadvantage.
60. As I have indicated it was never in dispute that the appellant had family members in his village, rather that he was unable to return to them. He would not be returning to Kabul as a long vulnerable child. The uncle was able to provide assistance and presumably financial support to acquire an agent in the past. There was every reason to believe that at least financial support if not physical support could continue to be provided.
61. It is difficult to understand what detriment the appellant would face if returned to Kabul. He has not in fact built up any work pattern or work relationship or any other personal relationship other than friendship in the United Kingdom. He has not been studying and nor has he been working, but does very little. It is therefore difficult to understand that his lifestyle would be unduly changed were he to return.
62. Both parties seemingly seek to rely upon the decision in **EU (Afghanistan) and Others v SSHD [2013] EWCA Civ 32**.
63. Sir Stanley Burnton in the course of his judgment referred to the decision in **KA** and commented as follows:-

"To grant leave to remain to someone who has no risk on return, whose Convention rights will not be infringed by his return, and who has no other independent claim to remain here (such as a claim to be a skilled migrant) is to use the power to grant leave to remain for a purpose other than that for which it is conferred."

64. The Judge went on further in the passage to say:

"I do not think that the court should require or encourage the Secretary of State to grant leave in such circumstances either in order to mark the court's displeasure at her conduct, or as a sanction for her misconduct."

65. The court recognised, however, at paragraph 7 that the state's breach of duty may be relevant to a Tribunal decision, particularly in the assessment of risk on return and the availability or otherwise of familial support.
66. It may be that the appellant should have been granted leave to remain under the then-minors policy. If he had been then he would have been able to work lawfully. Similarly the failure to endeavour to trace may result in a failed asylum seeker, who may in consequence lose contact with his family putting down roots and establishing a valid Article 8 claim.
67. Mr Melvin submits that this was not a case of an untoward delay. The decision to refuse asylum was made on 9th June 2011 and it has been the court processes since that time that have resulted in yet further delay in the disposal of the appeal. It is to be noted that during that time the appellant was in fact attending college, seeking to better his language and learning qualifications.
68. Ms King submits that if the appellant had been found credible as to the circumstances of his claim when that claim was made, he would have been granted some form of protection and would have been therefore better placed to have developed his private life further.
69. Whilst recognising the force of that submission it is to be noted that the Secretary of State did not find the appellant to be credible as to the claim advanced, nor did the Immigration Judge, nor indeed do I. This would be to attempt to deal with the matter on a hypothetical basis rather than considering the reality of the situation. Clearly the appellant should not be disadvantaged in presenting his private life, having been deprived of the opportunity of further developing that private life by working. Clearly the greater the prejudice to the appellant by reason of a delay in the decision, the more important it is to reflect that in the consideration of his fundamental human rights.
70. Ms King also makes the point that although the appellant is now technically an adult he remains vulnerable. She submits that it is artificial to impose an arbitrary cut off point. He has never worked or lived wholly self-sufficiently. I have been asked to bear that matter in mind.
71. She asked me also to bear in mind the relative tranquillity and order in the United Kingdom and the difficult circumstances in Afghanistan.
72. I bear all such matters in mind. I remind myself of the principles set out in Razgar. It is not suggested in this case that there is family life but rather that there is private life and the potential to develop it further. The appellant has, however, had the opportunity of education in the United Kingdom and has matured further. As I have indicated before, he managed some 11 months in coming to the United Kingdom and is therefore someone of some resilience. I remind myself of the many agencies that are available in Kabul to assist him as was noted by the Tribunal in the decision of

AK. He will not be someone returning without support. There is no reason to suppose that his uncle who supported him financially at the very least at an earlier stage might not do so again.

73. I do not find therefore that the appellant's fundamental human rights would be breached by any return to Afghanistan, nor do I find that it would be disproportionate to expect him so to return.
74. In all the circumstances therefore, the appellant's appeal for asylum is dismissed. That in relation to humanitarian protection is dismissed. That in relation to human rights is also dismissed.

Signed

Date

Upper Tribunal Judge King TD