



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/00329/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 October 2015**

**Determination Promulgated  
On 19 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**SA  
(An anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J. Heybroek, of counsel, instructed by Kothala & Co  
For the Respondent: Mr. S. Walker, Home Office Presenting Officer

**DECISION AND REASONS**

**History of Appeal**

1. The Appellant, who was born on 1 December 1996, is a national of Afghanistan. It is his case that his family moved to Pakistan when he was a young child and that from around the age of ten he started to attend the Ma-az Bin Jabal madrassa. It is also his case that in or around January 2011 he was abducted by the Taliban. He escaped after a month and an agent arranged for him to flee from Pakistan around two months later.

2. He entered the United Kingdom on 26 May 2011 on a passport in the name of MA, who had been granted entry clearance as a student on 12 April 2011. The Appellant applied for asylum on 21 December 2011 and was interviewed about his application on 26 January 2012 and 27 February 2012. On 9 March 2012 the London Borough of Croydon assessed his age to be over 18 and on 23 March 2012 the Respondent refused his application for asylum. She accepted that he was a national of Afghanistan but did not accept that he was at risk there or in Pakistan.
3. A further decision was made to refuse him asylum on 14 November 2013 after it had been accepted that he was born on 1 December 1996. He was granted discretionary leave to remain as an unaccompanied asylum seeking child until 31 May 2014. He applied for further leave to remain on 20 May 2014. This application was refused on 1 December 2014. He appealed against this decision on 29 December 2014.
4. First-tier Tribunal Judge Rimington dismissed his appeal in a decision and reasons promulgated on 6 May 2015. The Appellant appealed on 20 May 2015. He asserted that the interpreter, who was used at the appeal hearing, was not sufficiently proficient in English and spoke a different dialect of Pashto to the Appellant. This led to the interpreter misunderstanding questions and misinterpreting the Appellant's answers. He also submitted that the errors in interpretation undermined the credibility findings made by the First-tier Tribunal Judge.
5. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 8 June 2015 who said that there was an arguable error of law and that First-tier Tribunal Judge Rimington needed to be given the opportunity to comment on application.
6. In her Rule 24 response the Respondent submitted that First-tier Tribunal Judge Rimington had directed herself appropriately and disclosed the Home Office Presenting Officer's minute, which included a passage which stated that "in cross examination there was an issue about the interpretation. IJ intervene & Appellant confirm that he was happy with the translation. PS - Appellant is also able to speak English & chose to give evidence through the interpreter".

#### Error of Law Hearing

7. On 2 October 2015 the Appellant's solicitors had written to the Tribunal requesting permission to adduce further witness statements. These were an additional statement by the Appellant, dated 2 October 2015, which stated that during the hearing he realised that the interpreter spoke a different dialect of Pashto, possibly from Peshawar, which he was not familiar with. He went on to say that as a result he did not fully understand the questions he was being asked and believed that this led to him not adequately answering these questions. He also stated that the errors were so apparent that his friend, AS, who had attended the appeal hearing, stood up and pointed out that the interpreter was making mistakes. He added that the First-tier Tribunal Judge had asked him

whether he was an interpreter and, when he said that he was not, he was asked to sit down. He also said that his friend subsequently put up his hand when further errors were made but was not permitted to speak. This account was confirmed in a witness statement by AS and a further statement by another of the Appellant's friends, NS.

8. At the start of the hearing, counsel for the Appellant explained that it had not been possible to serve these witness statements at an earlier date as the Appellant was raising funds to pay his solicitors. I gave the Appellant permission to adduce these statements under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as proper notice had been given to the Tribunal, a reasonable explanation had been provided for the delay and it was in the interests of justice to do so. The Home Office Presenting Officer made no objections to my doing so.
9. Counsel for the Appellant then addressed me and argued that the First-tier Tribunal Judge should have put the matter back in her list in order to make further enquiries or, in the alternative, should have adjourned the hearing so that it could be heard using a different interpreter. She also submitted that the decision and reasons should now be set aside. The Home Office Presenting Officer accepted that it was a question of fairness and accepted that although the Appellant was able to speak English, this was not his first language. He also stated that he would not resist the appeal being remitted.
10. I have also taken into account the comments submitted by First-tier Tribunal Judge Rimington. She said that she recollected someone at the back of the courtroom raising questions about the interpreter on one occasion. She went on to assert that he had said that the interpreter had misinterpreted the word "airport" but that the Home Office Presenting Officer had told her that he had not asked about an airport. However, as counsel for the Appellant correctly pointed out, as the First-tier Tribunal Judge and the representatives could not speak Pashto, it was possible that the interpreter had mistakenly referred to an airport when speaking Pashto to the Appellant.
11. First-tier Tribunal Judge Rimington also confirmed what was said by the Respondent, which was that the Appellant had agreed to continue with the hearing. However, I accept the observation by his counsel that, as he was still a very young man at the date of the hearing, he may have been influenced by the fact that she was a person in authority and not pursued any objections at that time.
12. I looked at the Judge's record of proceedings but there was only a very brief reference to the interpreter and the intervention by the Appellant's friend.
13. There was no reference on the file to any specific interpreter being requested. However, I asked my clerk to check with those responsible for booking interpreters at Taylor House. They informed her that a Pashto

Afghani interpreter had been requested. They also told her that the interpreter was a national of Pakistan.

14. Therefore, it is clear that the Appellant's suspicion was correct and the interpreter was not an Afghan national and that he had requested a particular dialect. It is also the case the Appellant and two of his friends, who all spoke Pashto, believed that the interpreter was not speaking the same dialect as the Appellant, was not proficient in English and was making mistakes. With all due respect to the First-tier Tribunal Judge this was an assessment which it was very difficult for her to undertake without making further enquiries.
15. I have reminded myself that in *MM (unfairness; E & R) Sudan* [2014] UKUT 00105 (IAC) the Upper Tribunal found that "where there is a defect or impropriety of a procedural nature in the proceedings at first instance, this may amount to a material error of law requiring the decision of the First-tier Tribunal (the "FtT") to be set aside"
16. I have also reminded myself of the need to apply anxious scrutiny in an asylum case.
17. In paragraphs 50 - 52 of her decision and reasons the First-tier Tribunal Judge relied on what she believed with inconsistencies when coming to an adverse view of the credibility of his account. If these were caused by poor interpretation, they undermined her findings. The three witness statements now relied upon by the Appellant, the fact that the Judge and the Respondent accept that interpretation was in issue at the hearing and the fact that the interpreter was a national of another country all indicate that there is a serious possibility that the interpreter may not have interpreted accurately at the First-tier hearing.
18. For all these reasons I am satisfied that for procedural reasons the First-tier hearing was not conducted fairly and that this amounted to a material error of law. I am also satisfied that, as there will need to be a complete re-hearing, this is a proper case for remission to the First-tier Tribunal.

#### Directions

1. The appeal is remitted to the First-tier Tribunal for a *de novo* hearing.
2. The appeal should re-listed before a First-tier Tribunal Judge other than First-tier Tribunal Judge Rimington.

#### **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.

Date 9th October 2015

A handwritten signature in black ink that reads "Nadine Finch". The signature is written in a cursive style with a large initial 'N'.

Upper Tribunal Judge Finch