



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/01175/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons**

**On 30 July 2015**

**Promulgated**

**On 7 August 2015**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MR N K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms E King, Counsel (instructed by JD Spicer Zeb)

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Grant-Hutchison on 19 June 2015 against the decision of First-tier Tribunal Judge Veloso made in a decision and reasons promulgated on 27 May 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

2. The Appellant is a national of Afghanistan, whose date of birth was stated as 1 January 1998. He had appealed against his removal from the United Kingdom. He stated that he feared to return to Afghanistan because of his father's involvement with Hizb-i-Islami, his forced recruitment into the Taliban and current conditions there.
3. When granting permission to appeal, First-tier Tribunal Judge Grant-Hutchison considered that it was arguable that Judge Veloso had failed to (a) give due weight to the previous determination for the Appellant's older brother, (b) to take into account the ages of the Appellant and of his brother at the material times and (c) had taken into account irrelevant matters. It was also arguable that the judge had erred in her treatment of Article 15(c) of the Qualification Directive. (There was no challenge to the judges' dismissal of the Article 8 ECHR private life claim.)
4. The Respondent filed notice under rule 24 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

### *Submissions*

5. Ms King for the Appellant relied on the grounds of onwards appeal earlier submitted, together with the grant of permission to appeal. Counsel submitted that the judge had erred in numerous respects, such that the decision and reasons could not stand. The determination of First-tier Tribunal Judge Watters in the appeal of the Appellant's brother should have been Judge Veloso's starting point, as Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* [2002] UKIAT 00702, Ocampo [2006] EWCA Civ 1276 and AA (Somalia) [2007] EWCA Civ 1040 showed. Moreover there had been insufficient engagement with the brother's evidence. The judge's whole sequence of reasoning had been illogical and defective.
6. Ms King developed those submissions in dialogue with the tribunal. The judge had failed to take into account relevant evidence and had at the same time considered irrelevant matters. It was quite wrong and unfair of the judge to have drawn an adverse inference from the absence of any evidence from a witness the judge had

identified as present in the United Kingdom. Counsel's submission was that the judge had failed to take account of the respective ages of the Appellant and his brother at material times, and the impact of their ages on their recall and understanding.

7. Ms King further submitted that Judge Veloso's approach to Article 15(c) of the Qualification Directive was wrong and self contradictory. The country guidance for Afghanistan was out of date and the situation was now within Article 15(c) terms. The judge's credibility assessment had contained misunderstandings and errors, with undue weight being given to minor matters. The decision and reasons should be set aside and the appeal reheard by another judge in the First-tier Tribunal.
8. Mr Whitwell for the Respondent relied on the Respondent's rule 24 notice. He submitted that the decision and reasons disclosed no error of law. The current objective evidence did not support the claimed error of law in relation to the Article 15(c) claim, which the tribunal should note was supported by a large volume of material produced on the morning of the hearing. Despite that ambush, the judge had given full, text book consideration to that material. The judge gave proper reasons for departing from the earlier determination of the First-tier Tribunal, as she was free to do. There had been ample consideration of the age factor. TK (Burundi) [2009] EWCA Civ 40 showed that the judge was entitled to draw an adverse inference from the absence of corroboration which was readily and safely available. The Appellant's complaints at most were just a disagreement with the judge.
9. In reply, Ms King reiterated her client's case. Chiver [1994] UKAIT 10578 remained relevant. The judge had failed in her duty to consider the core of the claim. The decision and reasons should be set aside.
10. The tribunal reserved its determination, having indicated that its finding in principle was that no material error of law had been shown.

*No material error of law*

11. The tribunal accepts Mr Whitwell's submissions. In the tribunal's view, the grant of permission to appeal was overly generous. As always, the judge's decision and reasons needed to be read as a whole, which it has to

be said Ms King's grounds of appeal and subsequent submissions conspicuously failed to do. Indeed, her submissions at times seemed premised on the basis that the judge had set out to dismiss the appeal, which no fair reading of the determination can support. On the contrary, there was a meticulous examination of what was a case with numerous documents, to which the judge devoted ample hearing time and subsequent consideration. There can be no sensible doubt that the judge fully understood the context of the claim and had the current country background firmly in mind at all times.

12. It was incorrect to assert that Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka \* [2002] UKIAT 00702 applied to the determination of the Appellant's brother's asylum appeal which it was contended had to be the judge's starting point. The earlier determination was simply evidence which had to be taken into account, alongside the Appellant's brother's subsequent evidence given at the appeal hearing, which the judge demonstrably did. The law is as stated by Hooper, LJ in AA (Somalia) [2007] EWCA Civ 1040 at [29]: "[W]here the parties are different, the second tribunal should have regard to the factual conclusions of the first tribunal, but must evaluate the evidence and submissions as it would in any other case. If, having considered the factual conclusions of the first tribunal, the second tribunal rationally reaches different factual conclusions, then it is those conclusions which it must apply and not those of the first tribunal. That is precisely what Judge Veloso did.
13. As to Judge Veloso's concern as to the absence of potentially relevant evidence from a witness present in the United Kingdom, if authority were needed, TK (Burundi) [2009] EWCA Civ 40 supports her approach. The judge explained in detail at [32] to [34] of the determination why an adverse inference was drawn from the absence of the witness. That inference was open to her as part of her "in the round" assessment.
14. The judge gave close attention to the issue of the Appellant's age: see [27] to [31] in particular of the determination. The Appellant's age and vulnerability were noted as central issues: see [9]. There was no challenge to the Tower Hamlets report and it was accepted that even on the Appellant's own account he was now over 18. The tribunal considers that Judge Veloso took full account of the Appellant's (and his

brother's) claimed age(s) in reaching her credibility assessment.

15. It is very difficult indeed to see what more the judge could have done in examining the article 15(c) claim. As was pointed out by Mr Whitwell, this was raised without regard to the tribunal's standard directions and without proper notice. Nevertheless, the judge dealt with the relevant evidence meticulously at [41] onwards of the determination, see especially [44] onwards. The judge examined the evidence presented and gave sustainable reasons for finding that any deterioration in the security situation was insufficient to warrant a departure from AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC).
16. In the tribunal's judgment, the multi layered adverse credibility assessment which the judge reached was open to her. Her decision was a comprehensive and thoughtful reflection on the various issues raised in the appeal. There was no error of law. There is no basis for interfering with the judge's decision to dismiss the Appellant's appeal, which dismissal must stand.

### **DECISION**

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**