



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

Appeal Numbers: AA/07185/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 February 2015**

**Decision & Reasons
Promulgated
On 23 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**AMIR AGHAEI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson of Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr P Nath Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge M A Khan promulgated on 8 December 2014 dismissing the appeal of Mr Amir Aghaei against a decision of the Secretary of State for the Home Department dated 4 September 2014 to remove him from the United Kingdom following rejection of his application for asylum.

Background

2. The Appellant is a national of Afghanistan. Whilst there has been some dispute as to his age, he has most recently been age-assessed by Kent Social Services in November 2010 when it was concluded that he had a date of birth of 28 March 1993. That date of birth has, since November 2010, been accepted by the Respondent. It is germane to note that there was an earlier age-assessment at the end of June 2009, in which Kent Social Services assessed the Appellant's date of birth to be 27 March 1991 - that is to say two years earlier, thereby on that assessment creating the perception that he was two years older than he is now considered to be.
3. The Appellant's immigration history is summarised in the cover sheet to the Respondent's bundle before the First-tier Tribunal and is also set out in the 'reasons for refusal' letter dated 4 September 2014. I do not propose to rehearse in detail that immigration history, suffice to say at this time that it has some quite unusual circumstances which in some part were accepted by the Respondent. In particular it was accepted by the Respondent that the Appellant had effectively been abducted at the age of 7 and from that time for a number of years had lived with a family, described as an 'adoptive family', in Iran. It appears from the Appellant's account that that family themselves then experienced difficulties in Iran, and over time the Appellant made his way across Europe before arriving in the United Kingdom on 16 June 2009.
4. A screening interview was conducted on 3 July 2009 (when the Appellant was 16) but it was not until February 2014 (when the Appellant was just short of 21) that a substantive asylum interview was carried out by the Respondent.
5. The Respondent refused the Appellant's application for asylum for reasons set out in a 'reasons for refusal' letter dated 4 September 2014. As I have already indicated that refusal accepts certain aspects of the Appellant's history: that in itself is an indicator of the manifest care and consideration that has been given to evaluating different aspects of the Appellant's case within the body of the 'reasons for refusal' letter. Removal directions were issued in consequence of the refusal of asylum, and it is against those removal directions that the Appellant appealed to the IAC.
6. The First-tier Tribunal Judge dismissed the Appellant's appeal for reasons set out in his decision.
7. The Appellant sought permission to appeal to the Upper Tribunal which was granted by Designated First-tier Tribunal Judge Zucker on 6 January 2015.

Consideration

8. At the core of the Appellant's claim for protection is his assertion that he fears that he will be killed if returned to Afghanistan by the same persons

- unknown - who killed his family. This assertion was entirely based on information said to have been imparted by the Appellant's cousin, Mr Asmet Ibrahim, whom the Appellant met after his arrival in the United Kingdom.

9. The Respondent did not believe this aspect of the Appellant's account: see in this context in particular paragraphs 27-32 of the 'reasons for refusal' letter. I note in this regard the contents of paragraph 28 which is in these terms:

"This aspect of your account is considered to be internally inconsistent. You make no claim that your cousin was with you when you left Afghanistan for Iran. Therefore your claim that you were introduced because your stories were similar is inconsistent. Furthermore, you state that your cousin had been looking for you. Given that the last contact the family had with you was 14 years ago in Iran, it is considered inconsistent that your cousin was looking for you in the United Kingdom."

10. The first part of that paragraph makes reference to an explanation offered by the Appellant as to how he had come to meet his cousin. It was said by the Appellant that a mutual acquaintance had introduced them because the Appellant's story was similar to that of his cousin. As I have already indicated there is a distinct peculiarity to the Appellant's particular back story. There is nothing in the evidence anywhere that remotely suggests that the Appellant's cousin ever had such similar experiences. It seems to me that the matter raised at paragraph 28 of the 'reasons for refusal' letter remained unanswered across any of the witness statements provided for the First-tier Tribunal or the oral evidence before the First-tier Tribunal.
11. Be that as it may, it is on the basis of the cousin's account of the murder of the Appellant's family that the Appellant advances the core of his asylum claim. In this regard the Appellant's cousin provided a supporting witness statement and also attended the First-tier Tribunal hearing. The witness statement was signed on 3 November 2014.
12. At paragraph 10 of his witness statement (page 9 of the Appellant's bundle before the First-tier Tribunal) the cousin says this:

"In around 2002 while my family were still in Pakistan I heard news from my mother about the appellant's mother, my aunt. My mother told me that her sister had been killed along with her husband and children. She did not say who had killed them but that it happened about six months before she had been told by her paternal cousin who had travelled from Afghanistan. This cousin lived in Kabul. My aunt's neighbours had told my mother's cousins that my aunt, her husband and three children had been shot dead by unknown assailants in the night. My mother has never told me anything more than this."

So, on that evidence the information as to what had happened to the Appellant's family was known to the cousin in 2002.

13. In sharp contrast to the contents of his witness statement Mr Ibrahim imparts different information to Kent Social Services during their conduct of the Appellant's age-assessment in November 2010. The age-assessment is included in the Respondent's bundle. My attention has been directed to it by reason of complaint made in the grounds of appeal challenging the decision of the First-tier Tribunal that the First-tier Tribunal Judge did not have due and proper regard to the age-assessment which contained considerable information relevant to the Appellant's claim, or at least indicated support in that much of what was supposedly recorded in the age-assessment chimed with the core of the Appellant's claim: ('Ground Four', paragraph 12, "...the FTJ has also failed to consider the detailed report at all in terms of evidence concerning what the appellant said had happened to him and his circumstances as relayed to Kent Social Services. At the very least the FTJ ought to have looked at and considered this report before arriving at sweeping adverse findings concerning any vagueness or inconsistencies in the appellant's account"). However the following appears at page 7 of the age-assessment in relation to a telephone enquiry made by the assessor of the Appellant's cousin:

"I spoke on the telephone to Amir's cousin, Asmet Ibrahim, with whom he currently resides. Amir stated that prior to his arrival in the UK he had not previously met Amir."

(I interject to note that that in itself is not entirely consistent with materials that appear elsewhere in the documents).

"He stated that he had been contacted by a friend who had met Amir in Liverpool and subsequent enquiries with Asmet's family in Afghanistan suggested that Amir was a maternal cousin. Asmet stated that his family told him that Amir's parents had left Afghanistan many years ago to travel to Iraq because of local tribal conflict. He stated that his family had no knowledge of what had become of Amir's parents or siblings."

14. It may readily be seen that the complaint based on the Judge's failure to have any or any more detailed consideration to the contents of that age-assessment is not a matter that would have resulted in any particular overall support for the Appellant's claim, but instead would have reinforced the element of inconsistency identified by the Secretary of State in the 'reasons for refusal' letter in respect of the core element of the claim.
15. The First-tier Tribunal Judge dealt with the Appellant's evidence from paragraphs 42 of the decision. The primary complaint that is made in the grounds of appeal is that the Judge was in error in misunderstanding the age of the Appellant as assessed in November 2010. Whilst it is the case that the Judge correctly stated the Appellant's date of birth as 28 March 1993 at paragraph 1 of the decision, that is to say entirely consistently with the November 2010 assessment, at paragraph 43 the Judge states this, having had regard to certain inconsistencies:

“In coming to my decision on the appellant’s credibility, I remind myself that the appellant was age assessed by the Kent Social Services at the end of June 2009 and he was assessed to be an adult.”

Necessarily that assessment is the one that was subsequently overturned on the second assessment (which was made pursuant to a judicial review application made by the Appellant).

16. The Judge’s comment quoted at paragraph 15 above, is, set as it is in the context of paragraph 44, in regard in particular to the events of the Appellant’s journey to the United Kingdom. Mr Nath on behalf of the Secretary of State acknowledges the factual error on the part of the First-tier Tribunal Judge as to age, but submits that the discrepancies identified elsewhere in the determination by the Judge are such that ultimately this particular error cannot be, or should not be, considered material to the overall outcome in the appeal. Mr Hodson - notwithstanding some good reason - says that this matter was material because the Judge made express reference to it.
17. I have reached the conclusion that this error - which might have been relevant to a consideration of the screening interview which was conducted at a time when the Appellant was a little past his 16th birthday - was not a matter that was material to the Judge’s rejection of the Appellant’s cousin’s evidence.
18. The Judge’s assessment of credibility is taken forward from the erroneous observation with regard to the age-assessment at paragraph 44, to paragraphs 45 and 46. The initial two sentences of paragraph 45 do indeed relate to the screening interview. However the remainder of that paragraph are concerned with events surrounding the Appellant’s accommodation in Liverpool, the meeting of his cousin’s friend, and in due course the contact with the cousin. These are not matters that were covered in the screening interview and therefore the Judge’s misunderstanding as to the Appellant’s age at the time of the screening interview is not directly relevant. Whilst it may be said that the Appellant was only 16 at the time of the relevant events that he subsequently recalled in relation to the circumstances of meeting his cousin, there is no reason to think that his age would have affected his ability to recall such events, or that his age would have affected his ability in presenting or recounting those events at a later stage.
19. Paragraph 46 refers to an overt contradiction in the testimonies of the Appellant and his cousin. The paragraph is in these terms:

“There are contradictions and inconsistencies between the appellant’s evidence and that of his cousin. The appellant said that he has never spoken to his aunt (his cousin’s mother). The witness said that the appellant has recently spoken to his mother, exchanging greetings. I do not find the appellant or his cousin’s evidence credible or consistent.”

20. Mr Hodson properly accepts that it was open to the Judge to make that observation.
21. Looked at in the round the conclusion at paragraph 49 - "He made up his story with his cousin and has over exaggerated his claim" - was open to the Judge, and indeed realistically the only obvious conclusion in light of the various contradictions and inconsistencies. In those circumstances I find that there was no material error.
22. For completeness I should observe that the judge in the alternative in any event considered the case, at paragraph 48, on the basis that even if the Appellant's account was to be accepted there was not sufficient to identify a current risk to the Appellant based on events that had happened to his family in or about 2002 in the circumstances where it was not possible for the Appellant to particularise those events. In effect there was insufficient reason to think that there would be any adverse interest in the Appellant in consequence of what had happened to his family bearing in mind that the Appellant could not actually put that in any particular context.
23. It may well be that the level of reasoning in the First-tier Tribunal's decision is not all that it could be, but in my judgment overall it was open to the First-tier Tribunal Judge to conclude that the contradictions in the testimonies of the Appellant and his cousin were such that their evidence was not credible for the reasons given by the Judge.
24. The necessary inference to be drawn was that the Appellant's claim, being based entirely on what his cousin had supposedly said, was to be rejected.

Notice of Decision

25. The decision of the First-tier Tribunal contained no material error of law and stands.
26. The appeal is dismissed.

The above represents a corrected transcript of an ex-tempore decision given at the hearing on 18 February 2015.

Signed

Date: **23 February 2015**

Deputy Upper Tribunal Judge I A Lewis