Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA001642016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 June 2017	**On 21 June 2017**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

ZN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson, of Counsel instructed by Fisher Jones Greenwood
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission against a decision of Judge of the First-tier Tribunal Rayner who in a determination promulgated on 24 January 2017 dismissed the appellant's appeal against a decision to refuse asylum.

2. The appellant is a citizen of Afghanistan who claimed to have been born in March 2000 but had not appealed an age assessment placing his date of birth in 1998. He claimed to come from the Helmand Bazaar area of Helmand Province and to be illiterate. He had lived with his parents, two brothers and a younger sister. He asserted that the Taliban had visited his family home and had taken his brother and then returned the body three days later and then, twelve months later, they had taken the appellant's father returning his body after four or five days. Six months thereafter the appellant his mother and his remaining siblings had left Helmand travelling to either Kabul or Charaka Bazaar in Parwan Province before the appellant travelled to Britain. While travelling he had been fingerprinted in Hungary.

3. The Secretary of State did not consider that the claim was credible. The judge heard evidence from the appellant and in his determination he set out a detailed note of the submissions made before correctly setting out the burden and standard of proof in both asylum and humanitarian protection claims as well as in issues under the ECHR.

4. In paragraphs 41 onwards the judge set out his decision and reasons. He noted that the appellant had given a date of birth of 1 January 1998 when stopped in Hungary, that that was the age given after the age assessment and he stated that that was the date he would use when assessing the appellant's claim. He stated that he did not find credible the appellant's assertion that his mother had given him a date of birth from the Gregorian calendar before he left Afghanistan.

5. He noted that it was not specifically accepted or contested that the appellant came from Helmand Province despite the appellant's lack of knowledge of Afghanistan - in particular the fact that he did not know the currency despite having worked in a shop there - and that the appellant had failed to show knowledge of matters he might reasonably be expected to know, such as the names of Afghan rivers, the names of other places in Helmand Province, and the distance or time taken from travelling from Helmand to Kabul.

6. He referred to various inconsistencies in the appellant's story of travelling from Helmand Bazaar to Charaka District and concluded that the appellant's lack of knowledge of Afghanistan and of the journey damaged the appellant's credibility.

7. He went on to state that he did not accept the appellant's claim that his father and brother had been murdered by the Taliban. He referred to the expert report which stated that the Taliban had no need to practice forced recruitment, although he accepted that the expert, Dr Giustozzi, had stated that local leaders might mobilise a tribal militia – known as lashkars - to fight alongside the Taliban and might punish those for not complying with the dictates of the tribal elders by banishing them from the community, but that the killing of non-complying individuals would be an

extreme measure. He pointed out that Dr Giustozzi's report did not carry any footnotes or references to show provenance. Having considered the background documentation he concluded that there was no need for the Taliban to recruit either directly or by "lashkar" mobilisation in Helmand, but that even if "lashkar" mobilisations was practised there, the killing of non-complying individuals would only be an extreme measure, which he took to mean would only rarely happen.

8. He noted that the appellant had never been directly approached by the Taliban to join them and stated that:-

> "In light of the overall inconsistency of the appellant's account, and that this element of it is not consistent with what both the respondent and Dr Giustozzi acknowledge – that forced recruitment directly by the Taliban does not happen in Helmand – the appellant's account that two members of his family have been killed in lashkar mobilisation, or directly by the Taliban, is not made out to any degree of likelihood."

9. He went on to state that what is written in the report did not add to the credibility of the appellant's claim which was otherwise unsupported by objective evidence.

10. In paragraph 55 he stated:-

> "In relation to the alleged murder of the appellant's brother and father, the appellant's account is that his brother was taken first and murdered. At that stage no effort was made to relocate. As this event cannot be explained by direct Taliban recruitment, Dr Giustozzi suggests it as possibly being part of lashkar mobilisation. If that were the case, it is not credible that the appellant and his family would remain in Helmand Province. They would know the purpose of the killing, and that the appellant was at risk of recruitment. They had family in Kabul. They did not support the Taliban. It is not plausible that they would remain in Helmand Bazaar when at such risk. Again, when the appellant's father was allegedly taken a *(sic)* murdered a year later, if this were part of lashkar mobilisation, it is entirely inconsistent that the appellant and his family would wait a further six months before relocating, when they had the capacity to do so. The appellant's account of the Taliban taking and murdering his brother and father is not made out to any degree of likelihood."

11. In paragraphs 56 onwards the judge dealt with the issue of recruitment to the Taliban noting that in his witness statement the appellant had not made any reference to this, although when interviewed he had said that the Taliban wished to recruit him. Having stated that the appellant's differing accounts of his travels on leaving Helmand Bazaar damaged his credibility, the judge went on to say that the appellant had claimed that he had left Kabul immediately on his uncle finding out that the Taliban were

aware of his presence, but in his witness statement he had said that he had initially moved to a different location.

12. The judge stated that certain issues were minor, taking into account the appellant's age, and would not significantly damage his claim, but however in a claim which otherwise lacked consistency and plausibility they did damage the appellant's credibility.

13. He concluded that the appellant had never been approached directly by the Taliban and that the alleged threat had to be seen against the dearth of evidence, including the Danish Report which confirmed that forced recruitment was unlikely in any event. He stated that it was implausible therefore that the Taliban would seek the appellant out and threaten him, via his uncle or agent, in Kabul or in Charaka.

14. Having emphasised that he was applying the lower burden of proof he stated that he made no adverse findings that the appellant had given the wrong age or that he had failed to claim asylum in safe places before arriving in Britain, but he indicated that his conclusions was that the appellant's account was implausible, inconsistent and lacking in credibility because his account of living in Helmand was unsupported by knowledge of the town or area, his account of the murder of his brother and father was implausible, and his contradictory accounts of his journey from Helmand to Kabul and/or Chakara also damaged his credibility. Moreover, the assertions that the Taliban had made threats in Kabul were, at best, based on hearsay evidence and were not consistent with the objective evidence that the Taliban would not be interested in him.

15. The judge emphasised again that he had taken into account the appellant's youth when reaching his findings on credibility.

16. Turning to the issue of family tracing the judge referred to the guidance in **EU & Others (Afghanistan) v SSHD [2013] EWCA Civ 32** to the passage which referred to the motivation for asylum seekers not to co-operate with family tracing because they would not wish to return to Afghanistan, nor indeed would their parents wish to co-operate as that would mean a waste of their investment in the child's journey to Britain. He quoted from the determination in **HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC)** and concluded that the appellant had not established "to any degree of likelihood" that he faced or faces any personal individual danger from any of the various authorities in Afghanistan or from the Taliban. He stated the appellant had family support in Afghanistan and that he could in any event return to his home area, whether that was Helmand Bazaar, Chiraka or Kabul.

17. He considered in the alternative the issue of internal relocation, noting what Dr Giustozzi had written in that regard but relying on the

determination in **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**. He stated that it was evident that the appellant had family in Kabul, an aunt and uncle, who were plainly supportive as they had financed his journey to Britain. He was not undergoing any health treatment and spoke Pushtu and would receive financial and other support to help establish himself in Kabul. Given that the appellant was now 18 and approaching 19 internal relocation would be open to him.

18. He therefore dismissed the appeal.

19. The grounds of appeal argued that the judge had erred in paragraph 55 of the determination (which I have set out above) when he found that the murders of the appellant's father and brother were not credible because the appellant had remained in the family home after the death of his father. It was stated that the appellant would not have been able to leave because he would only have been 15 when his father was killed and he had not been in charge of the family and therefore could not reasonably be expected to make a decision to leave then. It was argued that the judge had imposed his own expectation that anyone who had suffered in the way the appellant and his family had would have got out of Helmand Province. It was stated that that was not a conclusion open to the judge as it was subjective – it did not comply with the recommendation of the UNHCR at paragraph 40 of the Handbook and Guidelines on Procedure and Criteria for Determining Refugee Status.

20. The grounds went on to argue that the judge had made a factual error in that he considered that the appellant and his mother had waited for six months after the death of the father, but in fact it was the case that the family had left the day after the Taliban told his mother that the appellant was wanted by them. The evidence was therefore not that the appellant and his mother had been aware for six months that the Taliban wanted the appellant.

21. The second ground argued that the judge had erred in applying the wrong standard of proof to the issue of the availability of internal relocation when he had stated that he found that it was likely that the appellant could return to family in Afghanistan that he could contact. It was further stated that the judge had erred in law in his application of the standard of proof indicating that the judge had not shown that he had a level of certainty of the evidence that there would be no real risk to the appellant or that he would be in danger as he claimed.

22. Before the hearing Mr Jarvis submitted a short skeleton argument in reply. Mr Nicolson asked for the appeal to be adjourned so that he could consider that and when I refused to adjourn the appeal he stated that he would need five hours to consider the skeleton argument. Given that the skeleton argument merely set out a reply to the grounds of appeal, did not refer to any information that was not before the judge in the First-tier and

merely referred to cited case law I refused to adjourn the appeal but gave Mr Nicholson twenty minutes to collect his thoughts.

23. Mr Nicholson first turned to the argument in the ground of appeal that the judge had erred in what he had said in paragraph 55 of the determination and in the following paragraph stating that the judge had erred in considering that he was entitled to conclude that a boy of 15 could persuade an entire family to relocate.

24. However, I consider that that is clearly not what the judge wrote in paragraph 55 of the determination. What he wrote therein is perfectly clear. Given that the appellant's brother had been forcibly taken by the Taliban the family would surely have been likely to consider that the appellant might similarly be taken. It was not suggested by the judge that it would have been the appellant who would have made the decision that the family should flee and indeed nowhere does the judge state that that could have been the case. He merely draws the inference which he was clearly open to draw that given that the appellant claimed that his brother and his father had been killed by the Taliban the family would surely have been likely to have been in fear and would have wished to leave Helmand. Moreover, in the following paragraph the judge was entitled to set out the discrepancies in the appellant's statement and what he had said at interview.

25. Secondly, Mr Nicholson argued that the judge had been wrong to conclude that the appellant would be able to trace his family on return or using the Red Cross. He then produced a Red Cross form, which was undated which he indicated was a family tracing form. It gave the names of the appellant's sister and brother, but merely stated that they and his mother, whose name is not given, were in "Afghaistan" (sic). There is no indication that the document had been given to anybody or indeed that it had originated at any time other than the date of the hearing.

26. Although Mr Nicholson pointed out that the letter of refusal did not state that the appellant had frustrated attempts to trace he argued that the judge was wrong to quote from the Court of Appeal decision in **EU** and drawing the appropriate inference from them.

27. Mr Nicholson went on to argue that the judge had applied the wrong standard of proof regarding the age of the appellant when finding that he had been born in 1998.

28. He then went on to state that it was necessary to be certain that the appellant's family would be there to receive him on return – he referred to a map which showed the distance between Charikar and Kabul.

29. In reply Mr Jarvis stated that the determination was solid and the judge had properly considered the report of Dr Giustozzi and applied the correct standard of proof.

30. I consider that there is no material error of law in the determination of the Immigration Judge. This is indeed a detailed and thorough determination. The judge properly weighed up all the evidence including the expert report. He was entitled to find on the basis of that report that there was no reasonable likelihood that the appellant's father and brother had been murdered by the Taliban, or that the Taliban would wish to take the appellant for forcible recruitment. The judge had clearly considered the expert report and based his conclusions thereon.

31. I have referred above in paragraph 24 to my conclusions that the ground of appeal which asserted that the judge had erred when considering the delay by the appellant and his mother in leaving Helmand was based in a misreading of what the judge had actually said.

32. Moreover, given the appellant's lack of knowledge of his home area, let alone the currency of Afghanistan, I consider that the judge was entitled to be sceptical of the appellant's claim. Throughout I consider that the judge properly considered the appellant's claim.

33. I consider that he applied the correct standard of proof which he set out in paragraph 37 of the determination. He was also entitled to use the date of birth that the appellant had given in Hungary and which was the date of birth assessed when he arrived in Britain and which was not challenged.

34. He was entitled to conclude that not only would the appellant not face persecution in his home area but also that internal relocation was open to him and gave clear and cogent reasons for his conclusions.

35. While Mr Nicholson made much of the assertion that the judge had applied the wrong standard of proof when considering the issue of internal relocation in that he had stated that it was probable that the appellant's aunt and uncle could be traced, the issue of internal relocation does not require that an appellant has family to whom he could return. The reality is that the judge was entitled to find that the appellant would be safe and free from persecution in Kabul.

36. I consider therefore that the determination of the judge of the First-tier contains no material error of law and therefore the determination shall stand.

Notice of Decision

This appeal is dismissed.

Signed Date: 21 June 2017

Upper Tribunal Judge McGeachy

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.