



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

Appeal Number: PA/02887/2015

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Decision & Reasons
Birmingham On 1st June 2017 Promulgated On 14th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**A M
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Wilkins, Counsel instructed by Paragon Law
For the Respondent: Mrs M Aboni, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Afghanistan born on [] 2001 and therefore still a minor. He first entered the UK illegally on 30th April 2015 and applied for asylum on the same day. That application was refused for the reasons given in the Reasons for Refusal Letter dated 22nd October 2015. The Appellant appealed and his appeal was heard by Judge of the First-tier Tribunal Row (the Judge) sitting at Birmingham on 19th July 2016. He decided to dismiss the appeal for the reasons given in his Decision dated

23rd July 2016. The Appellant sought leave to appeal that decision, and on 23rd February 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge decided to dismiss the appeal because he found his evidence to be lacking in credibility and he did not believe his account of events in Afghanistan. Indeed, the Judge found that the Appellant was an economic migrant. The Judge also found that the Appellant was not an orphan without relatives in Afghanistan.
4. At the outset of the hearing before me, Mrs Aboni confirmed that it was now accepted that the Appellant was born on 25th April 2001 and as a consequence he had been granted discretionary leave to remain until 25th October 2018.
5. At that hearing, Ms Wilkins argued that the Judge had erred in law as to his finding as to credibility. It was now established that the Appellant had told the truth about his age. The Judge's finding as to the contrary had infected his overall finding as to the credibility of the Appellant. Further, the Judge made mistakes as to fact. There was no discrepancy in the Appellant's evidence concerning the rape of his mother, which went to the core of the Appellant's claim, and the Appellant had claimed from the outset that pupils from his school had been abducted. The Appellant had given explanations for the criticisms of his evidence made by the Judge which the Judge had ignored. It was only speculation by the Judge that the Appellant had embellished his account. Finally, the Judge had erred in not treating the evidence of Mr Foxley as that of an expert.
6. In response Mrs Aboni referred to the Rule 24 response and submitted that there had been no such errors. The grounds of application amounted to no more than a disagreement with the decision of the Judge. The Judge had come to a conclusion about the Appellant's credibility which had been open to him on the evidence and which he had adequately reasoned. It was now accepted that the Appellant was a minor, but the Judge had not erred in law in finding to the contrary. He had made a finding as to the Appellant's age open to him and for which he had given adequate reasons. This was not a material error of law because it was apparent from what the Judge wrote at paragraphs 12 and 46 of the Decision that he had treated the Appellant as being very young and a vulnerable witness. The Judge had given many other reasons for his adverse finding as to credibility. It may have been an error for the Judge not to treat Mr Foxley as an expert witness, but again this was not a material error because Mr Foxley's report was based upon the premise that the Appellant had no family in Afghanistan whereas the Judge had found to the contrary.

7. I find no error of law in the decision of the Judge which I therefore do not set aside. I agree with the submission of Mrs Aboni that the Judge made an adverse credibility finding as regards the Appellant, which was open to him upon the evidence and which he fully explained. As Mrs Aboni said, the Judge treated the Appellant as being very young and a vulnerable witness and therefore any error made by the Judge in respect of the Appellant's age was immaterial. Likewise, any error in the status of Mr Foxley is immaterial as the expert report relates mainly to the Appellant's status in Afghanistan and it was found by the Judge that the Appellant was not an orphan without relatives in Afghanistan.
8. I further agree with the submission of Mrs Aboni that the Judge came to a conclusion open to him as regards the credibility of the Appellant's account of events in Afghanistan and which he fully explained. The Judge dealt with the issue of credibility at paragraphs 24 to 38 inclusive of the Decision. Therein the Judge identified a number of discrepancies in the Appellant's evidence and explained how that evidence had changed over the course of events. The Judge also explained why he found relevant parts of the Appellant's evidence to be implausible, and referred to the absence of documentary evidence. The Judge took into account and accepted the evidence of Dr Kumar as to the Appellant's mental health, and also took into account the relevant objective information. The Judge was entitled to conclude that the Appellant's journey to the UK indicated that he was an economic migrant.
9. For these reasons I find no material error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an order for anonymity which I continue for the same reasons as those given by the First-tier Tribunal and which relate mainly to the Appellant's age.

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 their 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.

Signed

Date 12th July 2017

Deputy Upper Tribunal Judge Renton