



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

Appeal Number: PA082372016

THE IMMIGRATION ACTS

**Heard at Field House
On 6 June 2017**

**Decision & Reasons
Promulgated
On 7 June 2017**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

ZKM

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs F Mustapha, solicitor, Wai Leung Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Lucas, promulgated on 23 March 2017. Permission to appeal was granted by First-tier Tribunal Judge Osborne on 24 April 2017.

Anonymity

2. No such direction was made previously, however given the appellant's young age and that he is seeking asylum, a direction is made below.

Background

3. The appellant entered the United Kingdom aged 11 in 2015. He applied for asylum on 14 December 2015. The substance of his claim was that he is from Laghman Province, his late father had an important role within the Afghan National Army and fought the Taliban. The appellant's mother died when he was aged 8. His uncle and brother arranged for him to leave Afghanistan accompanied by that brother. The appellant has lost contact with his brother during the journey to the United Kingdom. The appellant's uncle told him that the appellant's life was in danger from the Taliban owing to his father's previous role.
4. The Secretary of State refused the asylum claim on 19 July 2016, but granted the appellant leave to remain as an unaccompanied asylum seeking child (UASC). The appellant's identity and age were accepted, however his claims regarding his father's role and demise were considered unsubstantiated. The appellant was awarded the benefit of the doubt because he had not demonstrated any behaviour which damaged his general credibility under section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Nonetheless, it was not accepted that he would be at risk of ill-treatment upon return to Afghanistan; it was considered that national protection was available and that he could reasonably be expected to relocate away from Laghman Province. Mention was made of his uncle in Jalalabad.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant, then aged 13, was tendered for cross-examination. The judge concluded that there was no substance to the appellant's claims, other than his own "say so." He found that the appellant left Afghanistan for reasons entirely unconnected with persecution and was "*probably sent*" as a matter of choice.
6. The judge considered that the security situation in Afghanistan was not relevant because the appellant would not be removed, owing to having leave to remain until 2019. After 2019, the judge (erroneously) calculated that the appellant would no longer be a minor.

The grounds of appeal

7. The grounds of appeal argued that the judge erred in finding that there was no need for a consideration of any risk of return because the appellant was a minor with leave to remain in the United Kingdom at the time of the hearing; no caution was taken owing to the appellant's age or reference made to the various guidance produced before him; that the judge failed to give consideration to the background material regarding the risks to family members of those perceived as supportive of the Afghan

government and that the judge erred in failing to consider case law placed before him including LQ(Age: immutable characteristic) Afghanistan CG [2012] UKUT.

8. Permission to appeal was granted on the basis sought.
9. The respondent's Rule 24 response, received on 12 May 2017 indicated that the appeal was opposed.

The hearing

10. Neither representative had seen the Rule 24 response; however given its brevity it caused them no difficulty.
11. At the outset, Mr Jarvis stated that he could not defend the judge's failure to deal with the matter as at the date of the hearing but that he would be arguing that the judge's findings on credibility were not in error.
12. Mrs Mustapha made brief submissions on the appellant's behalf. She argued that the judge did not take into consideration the abundant guidance which was drawn to his attention and which was enclosed in the appellant's bundle. Furthermore, the judge failed to consider the objective evidence in relation to child-related risks. She stood by all the grounds raised.
13. Mr Jarvis relied on the authorities of MD(Guinea) v SSHD [2009] EWCA Civ 733 and JA (Ghana) v SSHD [2015] EWCA Civ 1031. With reference to [12] of MD (Guinea), he argued that the guidelines referred to did not carry the force of law and that there was no need for a judge to catalogue such documents. He contended that the judge was aware of the appellant's age, that the events relied upon occurred when he was a child and that the submissions made regarding the appellant's age were recorded. He further argued, with reference to JA (Ghana) at [31], that there was no need for a judge to make reference to practice statements and it is presumed that he would know what was the normal approach of the tribunal. Nonetheless, he described as "surprising" the judge's failure to address Article 15(c).
14. Mr Jarvis argued that the judge's credibility findings could stand, but that in any event he made alternative findings that the claim was speculative. Furthermore, had the judge applied the background material, it would not have made any difference.
15. Mrs Mustapha added little by way of response.

Decision on error of law

16. At the end of the hearing, I announced that I concurred with the parties and found that the judge erred in failing to assess any risk to the appellant in returning to Afghanistan as an unaccompanied minor, aged 13, as at the date of the hearing. The judge's conclusion at [40] that the current

security situation in Afghanistan was “*not especially relevant*” is a clear error of law given that the appellant was entitled to a reasoned decision in respect of his claim for humanitarian protection.

17. There was some discussion as to the future venue of the appeal. Mr Jarvis argued that if the credibility findings were upheld, the matter could be relisted before the Upper Tribunal. Mrs Mustapha invited me to remit the matter to the First-tier Tribunal.
18. I announced that the judge’s credibility findings should be set aside. My reasons are as follows.
19. Firstly, the judge rejected the appellant’s account of events primarily on the basis that they were uncorroborated. At [32], the judge states that “*other than the say so of the appellant himself, there is no evidence to show that his parents and sister are deceased or that his father had any role at all within or for the Afghanistan army.*” Also at [37] he comments on the absence of supporting documentary evidence. It is trite law that the appellant’s oral and written testimony is evidence and that there is no requirement for an account to be corroborated.
20. Secondly, the judge resorted to speculation at [38] by contending, without evidence, that the appellant had “*probably been sent to the UK as a matter of choice.*” Given that the respondent raised no section 8 matters and afforded the appellant the benefit of the doubt, the judge’s approach to the appellant’s credibility, which made no allowance for age, was erroneous.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Lucas.

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 20 July 2017

Upper Tribunal Judge Kamara