



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03831/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 8 May 2018

Decision & Reasons Promulgated
On 16 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

M. N.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Boyle, Solicitor, Halliday Reeves Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan, who entered the UK illegally, and claimed asylum at a police station on 1 April 2016 asserting that he was a child. Social workers from Leicestershire County Council attended, and assessed that claim to be untrue, and that he was in reality an adult of between 25-27 years. In due course the Appellant's protection claim was refused on 7 April 2017. His appeal against that refusal came before the First-tier Tribunal at North Shields when it was heard by First-tier Tribunal Judge Hands. The appeal was dismissed on all grounds in her decision promulgated on 25 July 2017.

2. The Appellant's out of time application for permission to appeal was refused by First tier Tribunal Judge Adio on 7 November 2017. The application was renewed to the Upper Tribunal on lengthy grounds drafted by Ms Cleghorn of Counsel, who had not represented the Appellant at the hearing before Judge Hands. Those grounds were not supported by any witness statement from either the Appellant, or, Mr Boyle as the representative who had appeared below, in order to provide any evidential support for the assertions made therein as to what had occurred during the hearing.
3. When the hearing of this appeal was called on before me, Mr Boyle confirmed that no application to introduce evidence under Rule 15(2A) of the Upper Tribunal Procedure Rules had ever been made on behalf of the Appellant. Nor was such an application to be advanced late. Thus the matter comes before me.
4. There are four grounds, as drafted, although the third ground itself raises complaints about four different passages in the decision, and, as advanced by Mr Boyle the first ground was made up of three complaints.
5. The first ground contains the assertion that the social workers' age assessment was conducted without the use of an interpreter. This was a complaint that the Appellant had made to the Judge in evidence when he had claimed that no-one had spoken to him, but that they had just looked at him [20]. That complaint was obviously inconsistent with the record of the age assessment in evidence [A1-], which recorded that two social workers had questioned the Appellant using a Farsi interpreter, and had then put their conclusions and observations to the Appellant inviting his response to them. The Judge plainly preferred the contemporary written record of what had occurred as being rather more reliable than the Appellant's evidence as to what his recollection of it was [36]. Indeed that written record is so inconsistent with his oral evidence as to what had occurred, as to clearly indicate an issue with the reliability of his evidence generally.
6. The first ground goes on to complain that if the Appellant was interviewed by social workers during the course of their age assessment, then it was in a language that was not his own, because the written record recorded Farsi as having been used rather than Dari. There is no merit in this complaint either. The Appellant had earlier on the same date confirmed that he spoke both Farsi and Dari, indicating then that Farsi was his preferred main language [B2]. It was no doubt on this basis that a Farsi interpreter was arranged for the age assessment.
7. The first ground goes on to then complain that if Farsi were indeed the Appellant's main language, then it must follow that the wrong interpreter was provided by the Tribunal for the hearing of his appeal, so that *ab initio* he was deprived of a fair hearing of that appeal. There is no merit in this aspect of the complaint either. A Dari interpreter was requested for the hearing of the appeal by the solicitors who have acted for him throughout, in both the Notice of Appeal, and again in the Reply form lodged for the PHR. Moreover no request was made when the hearing was called on, for either an adjournment, or, for a different interpreter, because a mistake had been made. At

no stage during the hearing did the Appellant assert that he did not speak Dari fluently.

8. This latter aspect of the complaint is not improved by the assertion (unsupported as it is by any evidence) that the Appellant was in fact deprived of a fair hearing because the Appellant and the interpreter did not in reality understand one another properly. Before me Mr Boyle (who had been present at the hearing) accepted that the Judge had accurately recorded what had occurred during the hearing [2-3]. He accepted that the interpreter had herself raised a number of occasions when there had been a difficulty in her understanding the Appellant because he was mixing Dari and Farsi phrases. Mr Boyle accepted that he had also raised a request for clarification on a couple of occasions during the course of the Appellant's evidence. Mr Boyle accepted that those difficulties had been properly dealt with at the time, so that answers were clarified there and then, before the questioning moved on to another topic. Mr Boyle also accepted that he had had the opportunity to go back over any answer in re-examination, but had elected not to do so. Pressed then as to what precisely was the basis for his application to the Judge for an adjournment at the time (and thus what the basis of the complaint was now), Mr Boyle suggested that there must be a lingering doubt over the accuracy of all the interpretation of the Appellant's oral evidence. There is in my judgement no substance to this, and no merit in this complaint. Minor difficulties of understanding occur frequently with the use of an interpreter, and they do not without more give rise to a need to abort the hearing and begin again with another interpreter. Absent any evidence to the contrary I am satisfied that the Judge dealt perfectly properly with the taking of the Appellant's evidence at the hearing, and that she satisfied herself appropriately, that she had properly understood what the appellant's evidence was, so that the Appellant enjoyed a fair hearing of his appeal. If Mr Boyle felt at the time that the Appellant had said anything that he was not expecting, or, had failed to say something that he was expecting, then as an experienced advocate he knew full well that his opportunity to remedy that was through the medium of re-examination. His failure to take that opportunity was no doubt a tactical professional decision – but his decision not to do so did not render the hearing of the appeal unfair.
9. The second ground, as drafted, complains that the Judge placed undue weight upon the age assessment by the social workers. As set out above it is plain that the Judge preferred the contemporary documentary record of this event to the Appellant's evidence as to what had occurred, and there is no proper challenge to that advanced within the grounds. It is an assessment of weight that she was obliged to undertake, and a conclusion that she was perfectly entitled to reach, which was adequately reasoned [36].
10. The age assessment in question was conducted by two social workers, assisted by an interpreter in the language that the Appellant had that same day indicated was his principal language (even if he altered his stance on this subsequently). Contrary to the assertion to this effect in the grounds, the social workers did not assess the Appellant's age simply on the basis of his physical presentation, although the presence of body hair, facial hair, and in addition partially grey hair upon his head, undoubtedly (and

quite properly) played its part in their assessment. The Appellant was questioned by them, and an assessment was made that he understood at least some English, and that he was presenting himself during their interview as an adult rather than as a child. He was told that he was assessed as being between 25-27 years old, and the reasons for that conclusion. The second ground, as drafted, and in my judgement quite wrongly, asserts that only a physical examination was conducted.

11. In the circumstances Mr Boyle was pressed as to why, in the light of the Judge's unchallenged findings as to what had occurred, the social workers' age assessment was said to be flawed. His response was that the entire process was flawed as a result of the absence of an "appropriate adult" to safeguard the Appellant, although the decision of Stanley Burnton J (as he then was) in B v London borough of Merton [2003] EWHC 1689 makes no reference to the need for one. Indeed it was stressed in that judgement that the Court should be careful not to impose unrealistic and unnecessary burdens on those required to make such decisions, and that the range of decisions will vary from those in which the answer is obvious to those in which it is very far from being so, and the level of enquiry unnecessary in one type of case will be necessary in another. In my judgement it is quite clear that this was an age assessment decision that was at one end of that scale, and the criticisms of the assessment process are not such as to render it procedurally unfair, or, inaccurate in its outcome.
12. Mr Boyle accepted that even if the age assessment decision was not entirely Merton compliant the Judge was still entitled to take it into account as part of a holistic assessment of the evidence, and that she had done so. In my judgement he was right to do so because that is precisely what was done [41]. Quite properly that assessment of the evidence included reference to the age ascribed to the Appellant in Greece in October 2015, either upon his own admission or upon assessment by others. Thus, whether the age assessment did comply with the Merton guidance (as in my judgement it did), or, did not, becomes immaterial.
13. The third ground asserts that the Judge's assessment of the weight that she could give to the evidence was flawed, with four limbs to that assertion, based upon paragraphs 38, 42, 43, and 44 of the decision. Mr Boyle accepted that the complaint raised in relation to paragraph 38 was a minor point, and not "fundamental" as the draftsman had asserted. He did not seek to withdraw it, but he offered no argument in relation to it. Nothing turns on it in any event, because I am satisfied that as set out elsewhere in this decision it is plain that the Judge conducted a holistic assessment of all of the evidence relating to the Appellant's true age and gave entirely adequate reasons for her conclusion that he was not the age he has claimed to be.
14. The complaint in relation to paragraphs 42 and 43 as advanced by Mr Boyle was that no adequate reason had been offered by the Judge for why a child could be expected to know more about their betrothal, and no adequate reason had been offered by the Judge for her approach to the inconsistency between the Appellant's claim that Maryam was brought up in a strict Shia culture, and yet permitted the freedom to use a mobile phone as she chose (so that she could supposedly contact the Appellant at will although only a child). I disagree, the reasons given were entirely adequate; MD

(Turkey) [2017] EWCA Civ 1958. The reality is that this complaint is no more than a disagreement with the Judge's assessment of the weight that could be given to the evidence.

15. As to paragraph 44 Mr Boyle accepted that in reality the complaint the Appellant wished to advance was not that the reasons offered were inadequate, but that they were perverse. That was not of course the complaint advanced, or the complaint for which permission had been granted. Complaints of perversity face a very high hurdle; it is a demanding concept: Miftari [2005] EWCA Civ 481. This complaint falls well short of that. The point the Judge was clearly making was that the Appellant's evidence described behaviour by himself and Maryam that fell well outside social norms in conservative Shia Iranian families, such as he had claimed hers were.
16. The fourth ground complains that the Judge's approach to the weight that she could attach to the existence and content of the document that he had claimed was a genuine and legitimately issued *taskera* was materially flawed. As drafted, the ground asserts that it was not open to the Judge to decline to place weight upon this document in the absence of any evidence from the Respondent to suggest that it was a forgery, or any formal allegation to that effect. Mr Boyle accepts that as such the draftsman went too far. It was for the Judge to assess what weight she could attach to the document, and that obligation arose whether or not the Respondent had asserted, or sought to evidence, that the document was a forgery. In this case the Judge noted that the Appellant accepted that he had been sent this document from London, and not directly from Afghanistan, although he claimed to have spoken to his mother in Afghanistan and requested her to send it to him. There was no explanation for why this had occurred, and the individual who was said to have sent the document to the Appellant from London did not give evidence. (Although the index to the Appellant's bundle suggests that written evidence from him may have been contemplated, none was provided, and the individual identified by the Appellant as having sent him the *taskera* did not attend the hearing). The Judge noted that it was accepted that the format of the document had been superseded by the Afghan authorities well before the date of issue it bore, and she did look at the explanation offered for that. She could, but did not expressly, have also borne in mind that no attempt had been made by the Appellant to have the document verified by the Afghan Embassy in London.
17. In my judgement the complaint advanced in ground four in relation to the Judge's treatment of the *taskera* is inconsistent with the proper approach of the Tribunal to documentary evidence, as emphasised by Ouseley J in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, when stressing the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant. The same can properly be said for oral evidence.

18. In this case the Judge clearly did undertake a holistic assessment of all the evidence that was placed before her upon the issue of the Appellant's true age. That included the age assessment undertaken in Greece, the age assessment undertaken in Leicestershire, the lack of any expert professional opinion evidence to suggest that he was the age he claimed to be, the unreliability of his evidence generally, and, the document that was said to be a genuine *taskera*. It was well open to her to conclude, as she did, that the *taskera* had not been sent to him from Afghanistan as had initially been claimed. Indeed it was accepted before her that it had not been sent to him directly from Afghanistan. The individual who was identified by the Appellant as having sent him the document, was said to live in London, but he did not provide evidence in support of the appeal. In my judgement the Judge was perfectly entitled to conclude for the reasons that she gave (which were entirely adequate) that the Appellant was not the age he claimed to be.
19. In the circumstances, and notwithstanding the terms in which permission to appeal was granted, I therefore dismiss the Appellant's challenge, and confirm the decision to dismiss the appeal on all grounds.
20. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 25 July 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

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.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 8 May 2018