



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04124/2016

**THE IMMIGRATION ACTS**

Heard at: UT(IAC) Birmingham  
On: 03 September 2018

Decision & Reasons Promulgated  
On: 10 September 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HK  
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr B Bedford, instructed by Sultan Lloyd Solicitors  
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his protection and human rights claim.
2. The appellant is a citizen of Afghanistan whose date of birth is recorded as 1 January 2002. He claims to have arrived in the UK on 29 September 2015, aged 13 years, having left Afghanistan in April/ May 2015 and travelled through Iran, Turkey, Serbia, Bulgaria, Hungary, Italy and France. He claimed asylum on 29 September 2015 and was interviewed

about his claim. His claim was refused on 14 April 2016, although he was granted limited leave to remain as an unaccompanied minor until 13 October 2018.

3. The appellant appealed that decision and his appeal was heard in the First-tier Tribunal on 24 October 2016 and was dismissed in a decision promulgated on 31 October 2016. That decision was subsequently set aside by Deputy Upper Tribunal Judge Juss on 22 June 2017 and the case was remitted to the First-tier Tribunal to be heard afresh before another judge.

4. The appellant's appeal was then heard by First-tier Tribunal Dhaliwal on 4 December 2017.

### **The Appellant's Case**

5. The appellant claimed that he was forcibly taken by the Taliban when he was looking after the family's goats in the mountains and was held for four days and mistreated until one man helped him escape. He returned home and his parents sent him to his uncle's house outside his village. The Taliban then took his father when they came to his home and he had not heard from his father since then. He returned home 15 to 20 days after his father was taken, but four months later the Taliban came to his home looking for him. He was looking after the goats at the time but his brother found him and told him, so he went to his uncle's house and subsequently left the country with his uncle's help.

6. In refusing the appellant's claim the respondent accepted that he was an unaccompanied asylum-seeking child and accordingly granted him limited leave until the age of 17½ and advised him that he would not be returned to Afghanistan until he was 18 years of age. However the respondent did not accept that the appellant or his father were taken by the Taliban and did not accept that the Taliban had any interest in him. The respondent considered that the appellant was at no risk in his home area but that he could, if he felt unsafe there, relocate to Kabul and was therefore not at risk on return. It was not accepted that the appellant's removal to Afghanistan would breach his human rights.

7. In her decision promulgated on 8 January 2018 dismissing the appellant's appeal, First-tier Tribunal Judge Dhaliwal noted various inconsistencies in the appellant's account and did not find his claim to be a credible one. She concluded that the appellant was at no risk on return to Afghanistan, that he was not entitled to humanitarian protection and that his removal from the UK would not breach his human rights.

8. The appellant sought permission to appeal Judge Dhaliwal's decision to the Upper Tribunal on the grounds that the judge had failed to direct herself properly with regard to the burden and standard of proof; that the judge had erred by rejecting the appellant's claim on the basis that he was an economic migrant without the matter being put to him in cross-examination; that the judge had erred by failing to consider the appellant's claim to be a member of a targeted group, namely men and boys of fighting age from a disputed province; that the judge had failed to apply the guidance in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 with respect to the appellant's vulnerability; that the judge had failed to explain how the appellant could return to his home area which was in a disputed province; and that the judge had erred by finding that the appellant was likely to have a family network on his return.

9. Permission to appeal was granted by the First-tier Tribunal on 24 January 2018 on all grounds.

### **Appeal hearing and submissions**

10. Both parties made submissions.

11. Mr Bedford relied and expanded upon the grounds of appeal. He submitted that there were three areas of concern in the judge's decision in relation to her assessment of his claim as a child. With regard to the first matter, he submitted that the judge had erred in law by finding that the appellant came to the UK as an economic migrant, since the respondent had never suggested that to be the case in the refusal decision and further since a child could not be described as such. He submitted that such an allegation should have been put to the appellant. The judge's comment at [11], that the appellant's answers in response to the respondent's credibility concerns would not take matters any further given his age, was troubling. The second matter in which the judge erred was her failure to follow the Joint Presidential Guidance Note on vulnerable persons in accordance with the findings in AM (Afghanistan). Mr Bedford submitted that the judge had failed to apply the lower standard of proof and had failed to consider whether the discrepancies in the appellant's evidence could be explained by his vulnerability. He relied upon the decision of the Grand Chamber of the ECHR in the case of JK v Sweden (Application no. 59166/12) in submitting that the judge had failed to apply the correct burden and standard of proof and submitted that the judge had failed to consider the UNHCR guidelines when assessing the risk to the appellant as a person of fighting age who came from a contested area. As to the third matter, the judge had misapplied the standard of proof when considering whether the appellant had family to return to in Afghanistan.

12. Mrs Aboni accepted that the judge had erred by finding that the appellant had decided to come to the UK for economic betterment but she submitted that that was not a material error as the judge had provided proper reasons for rejecting his claim and finding it to be lacking in credibility. The judge had applied the presidential guidance on vulnerable persons, she had considered the UNHCR guidelines when considering risk on return and she had directed herself appropriately when considering whether the appellant had family to return to in Afghanistan.

13. Mr Bedford reiterated the points previously made in response.

### **Consideration and findings.**

14. It was Mr Bedford's submission that the judge had rejected the appellant's claim on the basis that he was an economic migrant and had come to the UK for economic betterment. He submitted that in doing so the judge had erred in law because the respondent had not made such an allegation in refusing his claim, he was not given an opportunity to respond to that allegation and a child could not be considered as having made a decision to come to the UK for economic betterment.

15. I agree that, in so far as the judge at [19] and [20] considered the appellant to have made a personal choice to come to the UK for economic betterment, that was an error, given that he was a child of 13 years of age and therefore could not be held responsible for making such a decision. However I also agree with Mrs Aboni that that was not a material error. The error

lies in the judge's unfortunate choice of words in those paragraphs, whereas she was perfectly entitled to reach a conclusion that the appellant had been sent from Afghanistan due to the unsettled state of affairs in that country and to seek a better life in the UK. Such a conclusion was fully and properly open to the judge on the basis of the significant inconsistencies and discrepancies in the appellant's evidence which she identified at [18(iv)] of her decision and which led her to find that he had not provided a credible account of his reasons for leaving Afghanistan and coming to the UK. Plainly, it was on the basis of those inconsistencies that the judge rejected the credibility of the appellant's claim and I do not accept Mr Bedford's submission that her reason for rejecting his claim was simply because he was an economic migrant.

16. Mr Bedford submitted that the judge erred by failing to ensure that it was put to the appellant in cross-examination that he was an economic migrant. He relied on the case of Markem Corporation v Zipher Limited [2005] EWCA Civ 267 in that respect. However not only is that case dated and has nothing to do with protection issues and the rules of evidence in this jurisdiction, but it ignores the acknowledged principles that it is not necessary for each and every adverse credibility point to be put to the appellant. The appellant was plainly given a full and proper opportunity to present his case in full through examination by his own representative and through cross-examination. Clearly that was what the judge was saying at [11] when she rejected the suggestion by Mr Bedford that it was necessary for the respondent, in cross-examination, to put to the appellant that his account was untrue when it was otherwise clear from the refusal letter that his account was not accepted. Neither do I find any merit in Mr Bedford's reliance on JK v Sweden as support for an assertion that the appellant had made out his claim owing to the respondent's failure to meet the burden of dispelling any doubts. That is clearly a misreading of the Grand Chamber's observations on the burden of proof. It is clear from [102] of that case that the Grand Chamber was discussing the burden of proving risk on return in cases in which an applicant had provided a consistent and credible account, whereas the appellant in this case had been found, for reasons cogently given, not to have provided a consistent and credible account.

17. As regards the challenge to the adverse credibility findings made by the judge, it is clear that those were made on the basis of a proper application of the lower standard of proof and a full and careful assessment of the evidence in light of the appellant's age and vulnerability. Mr Bedford submitted that the judge failed to consider whether the inconsistencies and discrepancies in the appellant's evidence could be explained by his young age and vulnerability, but that is plainly not the case. On the contrary the judge gave careful consideration to the matter, as is clear at [18(iv)]. It is plain that she not only correctly directed herself in relation to the Joint Presidential Guidance at [8], but that she properly applied the guidance in assessing the appellant's evidence, in line with the principles set out in AM (Afghanistan). There were indeed significant problems with the appellant's evidence and, as the judge properly concluded, they could not simply be explained by his age. By way of example, the appellant's evidence in his statement was that he was taken by a group of Taliban men and walked with them for a long way to their camp, yet he was unable to state at the hearing how many Taliban men had kidnapped him. The judge considered the matter at length at [18(iv)(a)] and provided cogent reasons for concluding that the appellant's age was not an adequate explanation for his inability to say how many men had kidnapped him.

The judge was fully entitled to draw the adverse conclusions that she did from that matter as well as from the other matters detailed at [18(iv)].

18. With regard to Mr Bedford's submission that the judge had failed properly to assess the risk on return to the appellant as a targeted group, namely men or boys of fighting age from a disputed area, and failed to have regard to the UNHCR guidelines in that respect, it is clear that the judge gave full and proper consideration to all claimed risks on return in line with the relevant guidance and case law. At [36] the judge considered the situation in the appellant's home area of Kunar and had regard to country information post-dating the UNHCR guidelines. In any event the focus of the judge's decision was on a proposed return to Kabul and to the reasonableness of relocation to that area and, in that regard, the judge gave full consideration to the expert report, UNHCR guidelines, background evidence and relevant case law, in assessing risk on return. The assertion, at [9] of the grounds, that the judge failed to explain how the appellant could safely travel to Kunar to find his family, ignores the fact that the judge's finding at [29] to [32] was that the appellant's family would be able to meet him in Kabul and provide support for him.

19. As to the challenge to the judge's findings on the appellant's ability to contact his family, the judge provided full and cogent reasons for rejecting his claim to have lost contact with them. At [30] the judge considered the respondent's duties in regard to tracing family members and provided cogent reasons for her conclusions in that regard. She was perfectly entitled to have regard to the absence of evidence of efforts made by the appellant to locate his uncle. The only evidence of tracing appears to be that at pages 8 and 9 of the appellant's supplementary bundle, a letter from the Red Cross in relation to his father. The grounds assert that the judge applied the wrong standard of proof in concluding that the appellant remained in contact with his family, but that is plainly not the case. The judge had regard to the appellant's evidence as a whole and, given the credibility concerns already identified in his account, was perfectly entitled to conclude that he had not provided a truthful account of his family contact.

20. For all of these reasons I find that the judge was fully entitled to reach the conclusions that she did and to dismiss the appeal on the basis that she did. I find no errors of law in the judge's decision. I uphold the decision.

## DECISION

21. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring the decision to be set aside. The decision to dismiss the appellant's appeal therefore stands.

### **Anonymity**

The First-tier Tribunal made an order for anonymity. I maintain that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed



Upper Tribunal Judge Kebede

Dated: 4 September 2018