



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/04645/2017

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8th January 2018**

**Decision and Reasons Promulgated
On 12th February 2018**

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE PARKES**

Between

**K R S
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Akindele (Solicitor, A and A Solicitors)
For the Respondent: Ms N Willocks-Briscoe (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the refusal of his asylum claim was heard by Judge Andonian at Taylor House on the 16th of June 2017 and allowed for the reasons given in a decision promulgated on the 10th of July 2017.
2. The Appellant's claim for asylum was on the basis that his father had run a money exchange shop in a Taliban controlled area and had been abducted and killed by the Taliban when he refused to hand over gold. The matter was reported to the Police and the Appellant threatened by letter. The Appellant came to the UK with the help of an agent through a number of European countries and France before making his way to the UK where his uncle lives.
3. The Judge dismissed the Appellant's asylum claim for the reasons given in paragraphs 26 to 33. At the time of the hearing the Appellant was still only 15. The Judge gave the Appellant's date of birth in paragraphs 1 and 21 and stated he would be assessed on the basis that he is a child of

15. At paragraph 29 the judge stated “I consider the appellant [sic] statement from the eyes of a minor but I did not find incredible [sic] nevertheless.”

4. The grounds of application argue that the Judge did not apply the correct standard of proof, did not make adequate allowance for the Appellant being a minor and in respect of his assessment of the future risk. Other grounds included a failure to give adequate reasons for findings made in rejecting aspects of the Appellant's claims and giving weight to immaterial matters.
5. In assessing the decision we have taken account of the guidance of the Court of Appeal. Burnett LJ in EA v SSHD [2017] EWCA Civ 10 at paragraph 27 made the following observations:

“Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention *dicta* from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding.”

6. Minors are by definition vulnerable and there is considerable guidance on the appropriate approach to be taken when dealing the evidence of claimants who are or may be vulnerable. It is not necessary that Presidential guidance be set out in full but there needs to be some indication that the Judge has had regard to the substance of the guidance and to the relevant case law including AM (Afghanistan) [2017] EWCA Civ 1123.
7. Regrettably there is nothing in the First-tier Tribunal decision that shows that the Judge had regard to or applied the relevant guidance. The only references to the Appellant’s age were brief and there is no discussion of the relevance of his age at the time of the claimed events or of his age at the date of the hearing and no consideration of how that might have affected what his knowledge would have been, his understanding of events or his ability to recall what had taken place.
8. The self-directions on the burden and standard of proof in paragraph 39 contain no reference to the Appellant's age or its relevance. Having regard to the guidance set out in paragraph 5, and the final line in particular, it cannot be said that the Judge did apply the correct legal test to the issue of the Appellant's age when considering the evidence in relation to events in Afghanistan and his age when he was giving evidence. That alone is an error which so fundamentally undermines the findings made that it amounts to an error of law which undermines the decision and which cannot stand.
9. There are a number of other features of the decision which cause concern. The decision is affected by a number of typing errors. These do not go to the heart of the decision but they do not inspire confidence. It would appear that the Judge dictated the decision using software but did not read the decision afterwards. In addition to the typing errors in the line quoted in paragraph 3 above there are several references to the “second state” in paragraph 37. Presumably the Judge was referring to the Secretary of State.

CONCLUSIONS

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

We set aside the decision.

The appeal is remitted to the First-tier Tribunal with no findings of fact preserved. The appeal is to be heard by a Judge other than First-tier Tribunal Judge Andonian.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

We make no fee award which remains a matter for the First-tier Tribunal at the conclusion of the appeal re-hearing

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 22nd January 2018

