



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL
APPEAL NUMBER: PA/05297/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 4 September 2018

Decision and Reasons Promulgated
On: 25 September 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

[N P]

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

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

DECISION AND REASONS

1. 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.
2. The appellant appeals with permission against the decision of First-tier Tribunal Judge R L Walker promulgated on 5 June 2018, dismissing the appellant's asylum, humanitarian protection and human rights appeal.

3. Judge Walker summarised his findings at [37]. He found that the appellant employed deception when he had earlier claimed an incorrect age and the deception extended to his having an elder brother in the UK and not having any contact with the family in Afghanistan.
4. He found that the appellant would be returning as an adult. He had already shown considerable personal fortitude in relocating to a country where he did not have any ties or speak the language, and when a minor. He has so far spent at least 12 years living in Afghanistan as opposed to the six years in the UK. He has acquired language skills and is able to speak very good English. He will not have lost his ability to speak Pashtu. He has been educated and has acquired skills here. He would be able to use them to his advantage in gaining lawful employment [41].
5. He found that even if his former foster carer's property in Kabul was not available to the appellant, it is clear that his former foster carer, Mr Muzafry, has contacts and friends in Kabul and these would be used to assist the appellant [42]. With regard to the problem of appearing to be Westernised, he found that the appellant is an intelligent young man who will have the common sense as to how to act and dress in various parts of Kabul. He will not have forgotten his culture and customs and will not be returning as a single individual with no support network, family or otherwise.
6. On 29 June 2018, First-tier Tribunal Judge Grant-Hutchison granted the appellant permission to appeal to the Upper Tribunal on the basis that it is arguable that the Judge misdirected himself by making adverse findings in respect of the appellant's credibility based partly on an age assessment report of November 2015, when there was no dispute between the parties that he was a minor at the time, without giving him an opportunity to address any concerns that the Judge had. As a result, this may have affected his findings in respect of paragraph 276ADE of the Rules and the country guidance decision in AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC).
7. Before the Upper Tribunal Ms Mustapha, who represented the appellant before the First-tier Tribunal, sought to introduce a new ground of appeal. In her written application for the "additional ground", she submitted that the Judge erred at [11] in applying the wrong standard of proof applicable to an asylum appeal. Mr Whitwell did not oppose the proposed additional ground and contended that it was without any merit.
8. I find that the application is misconceived. It is clear that the Judge has properly set out the burden and standard of proof applicable in this case at [10]. He expressly stated that the lower standard of proof should be applied. At [11] he stated that in immigration cases the burden of proof lies on the appellant on the balance of

probabilities. Ms Mustapha subsequently conceded that the Judge had properly directed himself.

9. Ms Mustapha relied on her written grounds in support of the appeal. She noted that the 'matter of the appellant's age was never an issue in the appeal'. The appellant accepted his assessed age at the time of his assessment in 2015, some three years after he arrived in the UK.
10. She submitted however that the Judge erred in relation to his credibility findings which "are perverse and/or irrational and/or procedurally unfair." She also contended that the findings in respect of paragraph 276ADE were inadequately reasoned. Nor did the Judge have any regard to the country guidance decision in AS, supra: in particular, he failed to give effect to paragraph 230 of that decision in his assessment and failed to give reasons why it was not applicable to the circumstances of the appellant.
11. She submitted that although the appellant's age was not at issue in the appeal, the Judge had had regard to the asserted inconsistencies arising from the report. She complained that neither the appellant's nor the respondent's representatives at the hearing made any submissions regarding the report at the hearing. Nor was the appellant cross-examined on the contents of the report. The Judge did not address any questions to the appellant relating to its content. Nevertheless, the Judge made copious reference to the report in the decision in his assessment of the appellant's credibility relating to the claims on appeal.
12. Ms Mustapha referred to an article by Pat Munro – Age Assessment; Practice and Pitfalls, where the author noted that the role and purpose of an age assessment, as opposed to eliciting and testing the asylum grounds, is to take a life history, including a history of persecution which may be relevant to establish the chronological age. The practise of testing unaccompanied asylum seeking children's credibility, based in part on the asylum claim and in particular drawing inferences about the UASC's age from the perceived credibility of the asylum claim, is plainly not within the social worker's competence.
13. She submitted therefore that before relying on the content of that report the appellant should have been given an opportunity to deal with the adverse points raised in the report. General credibility as assessed by others is not determinative, as the primary jurisdiction of the Tribunal is to determine the asylum, human rights and humanitarian protection claims.
14. She also submitted that the finding at [42] that the appellant can be supported in Afghanistan by his former foster carer is 'irrational'. The carer is not a blood relative. He is a registered foster carer with the Kent local authority. He has no legal

responsibilities towards the appellant. He has accordingly made unwarranted assumptions which constitute a material error.

15. She submitted that the Judge's findings in respect of paragraph 276ADE(vi) were inadequately arrived at. The appellant could only succeed by reference to that paragraph if he demonstrated that there were very significant obstacles to his integration on his return.
16. The Judge's findings in that respect are set out at [50] and contain a bare assertion, unsupported by any reasoning that the appellant has failed to demonstrate that there are very significant obstacles to his integration. However, the appellant arrived in the UK in 2012 as a child of 12 years old - his assessed age - and has been in the UK for almost six years after that. There was significant evidence of private life established in the UK. Further, there were very significant obstacles to his integration on his return.
17. Ms Mustapha submitted that the Judge did not have regard at all to the country guidance decision in AS, supra. She referred to the appellant's bundle where the full decision in AS was produced from pages 209-210. She informed the Tribunal that she had made submissions relating to AS and had referred to paragraph 230 of the decision.
18. She also referred to paragraph 47 of her skeleton argument before the First-tier Tribunal in which she set out at the various factors identified by the panel at [230] of AS. Those factors include the age at which a person left Afghanistan; the nature and quality of connections to Kabul and/or Afghanistan; physical and mental health; language, education and vocational skills. The country information indicated that to relocate to Afghanistan, one requires social and financial support in the area of potential relocation. She had submitted to the first-tier tribunal that in Kabul the appellant would be unemployed and has no family in Kabul to whom he can look to for the necessary support. He has no skills; he was barely educated in Afghanistan, having had just two years of basic primary school education before he fled Afghanistan.
19. She submitted that the Judge was required to consider whether, having regard to the appellant's circumstances, it would be unreasonable or unduly harsh for him to relocate to Kabul. That assessment was not properly carried out.
20. Mr Whitwell submitted that the Judge has given sustainable reasons for his findings. He referred to a Rule 24 response by the respondent. It is contended that whilst age was not an issue in the appeal, the Judge was entitled to consider the observations contained within the age assessment as it formed part of the evidence. Accordingly, the Judge was able to find that there were a number of other credibility issues [31-37] which cumulatively led the Judge to find that his account was not credible.

21. It was further submitted that the principles set out at paragraph 230 of AS have been applied. The Judge considered that he was a minor when he left Afghanistan. He also had regard to the relevant factors set out in the internal relocation consideration.
22. In reply, Ms Mustapha referred to paragraphs 43-51 of her skeleton argument before the First-tier Tribunal. She submitted that there was merely a 'sweeping statement' in relation to paragraph 276ADE (1)(vi). She repeated that the findings in relation to relocation to Kabul were also flawed.

Assessment

23. The Judge was satisfied, having regard to the age assessment report, that the appellant purposely claimed that he was younger than his correct age and it also called into question other aspects of his claimed history. In that respect the Judge identified in detail relevant extracts from the report at [29].
24. There was before the First-tier Tribunal detailed submissions set out in Ms Mustapha's skeleton argument, including the UNHCR guidelines on policies and procedures in dealing with unaccompanied children seeking asylum, as well as the respondent's own policy guidance. The effect of the authorities is that a child may well give what is essentially a true account of past events, which may appear to an adult to be false because it does not satisfy adult notions of narrative chronology, plausibility and consistency.
25. Notwithstanding these submissions before the First-tier Tribunal, the appellant was not given any opportunity to deal with what was said to be important adverse points arising from the report. Nor was the appellant ever cross examined on the report. Nor did the Judge himself put any questions to the appellant relating to the content of the report.
26. I find in these circumstances that the reference to and use made of the report in the decision - which also informed the Judge's credibility findings - was procedurally unfair.
27. I also find that the Judge's consideration of internal relocation with reference to the decision in AS, was inadequate and not properly reasoned. Although the Judge referred to the country guidance decision in AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163, it does not appear that he considered the more recent country guidance case in AS which was referred to him and which was set out in some detail at paragraph 43 and 44 of the skeleton argument before him. In particular, as already noted, paragraph 230 was referred to and set out at paragraph 47 of the skeleton.
28. There has been no proper consideration or assessment of the factors set out at paragraph 230. In particular, it had been contended that the appellant has lived all of

his teenage years in the UK. He came here as a child when he was pre-adolescent. He continued to live here during his adolescent years and is now a young adult.

29. Those factors were relevant to the assessment of whether or not it would be unreasonable or unduly harsh for the appellant to relocate to Kabul or whether he would face very significant obstacles to integrating into Afghanistan pursuant to paragraph 276ADE(1)(vi) of the Immigration Rules.
30. I accordingly find that the decision of the First-tier Tribunal resulted in the making of material errors of law. I set it aside.
31. The parties agreed that in those circumstances, the case should be remitted to the First-tier Tribunal for a fresh decision to be made.
32. I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be re-made is extensive. I accordingly find that it is a proper case to remit to the First-tier Tribunal.

Notice of Decision

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

The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made before another Judge.

Anonymity direction continued.

Signed: Deputy Upper Tribunal Judge Mailer

Date: 22 September 2018