



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

Appeal Number: PA/06167/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 11 October 2018**

**Decision & Reasons Promulgated
On 24 Oct October 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**E J
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Clark, of Counsel, instructed by B H T Immigration
Legal Services

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Both the Secretary of State and the appellant have sought and obtained permission to appeal against the determination of First-tier Tribunal Judge Sweet who dismissed the asylum limb of this appeal but allowed it on humanitarian protection and article 8 grounds. The determination was promulgated on 25 June 2018. For convenience, I shall refer to the parties as they were at the First-tier.

2. The appellant is an Afghan national born on 1 January 2000. He claims to have left Afghanistan in August 2015 and to have travelled across Pakistan, Iran, Turkey, Bulgaria, Serbia, Croatia, Hungary, Austria, Germany and France before arriving clandestinely in the UK in April 2016. He was encountered by immigration officials at Dover and he then claimed asylum.
3. Permission to appeal was granted to both parties on 15 August 2018 by First-tier Tribunal Judge Hollingworth. The matter then came before me on 11 ct 2018 when I heard submissions from Mr Clark and Mr Melvin. I deal with each of the challenges in turn.
4. The complaint made by the appellant is that he was a vulnerable witness as identified by a clinical psychologist and that the modifications set out in the psychologist's report were not followed by the judge when conducting the hearing. It is also argued that the judge did not factor in the appellant's vulnerability when assessing his evidence. Reliance was placed on AM (Afghanistan) [2017] EWCA Civ 1123. It was also argued that the judge failed to appreciate the guidance set out in JA (Afghanistan) [2014] EWCA Civ 450 as to the difficulties in interviewing without an interpreter being present and where an applicant is vulnerable. The judge's credibility findings are also criticized as being unfairly based on plausibility issues, as being inadequately reasoned and irrational.
5. Mr Clark in his submissions expanded on those criticisms. A full record is contained in my Record of Proceedings. Having considered the submissions and the evidence I reach the following conclusions.
6. Whilst it is plain that breaks were taken during the course of the evidence, and that was acknowledged by Mr Clark, it is unclear whether the judge had regard to the ground rules set out by Ms Rogers in her report. He certainly did not have the initial discussion as to how to proceed as urged by Counsel and recommended in the report. Whilst no problems appear to have arisen, the danger as Mr Clark submitted is that the appellant's evidence was not taken in the way advised which raises the concern that had the recommended procedure been followed the appellant may have been able to give his evidence more fully and coherently. It is also unclear what weight was given to Ms Roger's report when the appellant's evidence was assessed. The reference to an acknowledgment of vulnerability comes after the judge has made his adverse findings and conclusions on the asylum claim. Plainly that is the wrong approach. All the evidence should have been considered before a conclusion was reached. Although Mr Melvin appeared to argue that the report should not be given the same weight as a report from a psychiatrist, there is no reason for Ms Rogers' credentials and expertise to be questioned. Mr Clarke's closing submissions on the matter of procedural unfairness at the hearing could not have remedied that problem.

7. There are also issues with the judge's reasoning which is very brief and appears to be contained in a single paragraph 49. These reasons do not consider the evidence as a whole and do not explain why the account was rejected as implausible. The core claim has not been properly considered and the judge appears to have rejected the claim because the appellant had not faced risk on his way to the UK. The material issues were not addressed and material evidence not considered.
8. The respondent criticizes the findings and decision on humanitarian protection and article 8. It is argued that as the appellant was an adult at the date of the hearing, the judge had misapplied the case law on unattended children and Mr Melvin added the point that the appellant could not be described as unattended as he was still in contact with family in Afghanistan. Moreover, as the decisions were based on Ms Rogers' report which in turn was based on the appellant's account, they were unsafe as the accuracy of the account was debatable.
9. Plainly, the respondent's arguments have merit. As the judge's findings on the evidence and the appellant's account have been questioned and criticized by the appellant himself, it follows that what he said to Ms Rogers has to be carefully assessed and this was not done. The judge accepted that the appellant had family in Afghanistan and his assessment on return and the risks facing the appellant, now a young adult, should have been made in that context. There is also no consideration of section 8 matters and the article 8 claim has been allowed in a single assessment without any assessment of the evidence regarding health care and support available in Afghanistan. For these reasons, I conclude that the determination is entirely unsustainable and the decision is set aside.
10. **Decision**
11. The First-tier Tribunal made errors of law. The decision is set aside. It shall be remade by another judge of the First-tier Tribunal at a date to be arranged.
12. **Anonymity**
13. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 22 October 2018