Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05803/2018

THE IMMIGRATION ACTS

Heard at Field House
On 11 April 2019

Decision & Reasons Promulgated
On 30 April 2019

Before

Deputy Upper Tribunal Judge Pickup

Between

HS
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms F Clarke, instructed by Fadiga & Co
For the respondent: Ms L Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

1. *Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).*

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lawrence promulgated 13.12.18, dismissing his appeal against the decision of the Secretary of State, dated 19.4.18, to refuse his protection claim.

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3. First-tier Tribunal Judge Chohan refused permission to appeal on 8.1.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Finch granted permission to appeal on 8.3.19.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.

5. In granting permission, Judge Finch found it arguable that in assessing credibility the First-tier Tribunal Judge failed to adequately take into account the appellant's age and learning difficulties. In particular, the judge did not acknowledge that "a person with learning difficulties would have a range of intellectual and conceptual difficulties which may militate against them giving a coherent and consistent account of past events." Further, the judge "failed to take into account any difficulties a child may have in properly analysing events and repeating a clear account of an incident which had caused him trauma." Judge Finch suggested that these failures undermined the conclusion at [24] that the appellant had fabricated the incident underpinning his protection claim.

6. I have carefully considered the decision and note that at [10] the judge accepted that the appellant, who was only 16 at the date of his asylum claim and still under the age of 18 at the date of hearing and promulgation of the decision, had learning difficulties, and possible mental health difficulties. The decision noted the submission that the judge should view the claim through the prism of the fact that the appellant had been so traumatised that he was suffering mental health issues, for which he would likely not receive treatment on return to Afghanistan. The judge also bore in mind the Presidential Guidance Note 2 of 2010 in relation to vulnerable witnesses. At [11] the judge noted the evidence that the appellant was not unfit to give evidence. However, despite the availability of the various arrangements (reasonable adjustments) and protections to better enable such a person to give evidence, as set out in the Guidance, the appellant chose not to give oral evidence at the appeal hearing. It follows that the judge had only the other evidence and documents before the tribunal, and the oral submissions, on which to decide the appeal.

7. It is clear from a reading of the decision between [12] and [23] that the judge identified four differing versions of the crucial claimed confrontation between the appellant's father and his uncle, which allegedly led to the death of his uncle by shooting at the hands of the appellant. The judge made a very detailed analysis of the evidence, finding what was concluded to be irreconcilable material and significant discrepancies or inconsistencies between the various accounts, given at different times. The judge assessed the appellant's ability to give a coherent account and noted at [22] that he was able to give a very detailed narrative of some parts of his account, such as his journey from Afghanistan to the UK, an account which the judge described as having 'fluency.' In fact, each of the four accounts was found to have fluency in narration, each flowing smoothly. Implicitly making allowance for the

appellant's youth and learning disability, at [23] the judge considered the circumstances of the making of each of the four accounts, one of which had been given to his 'friendly' solicitor, in other words not in a hostile environment. The judge also considered the possibility that the appellant might have viewed the respondent as hostile, so that "in the intensity of formal interview settings he could have become confused or confusion resulted." However, having considered the interview record, the judge did not accept that the interview was conducted in a hostile environment or one which might have intimidated the appellant from giving a coherent account. For example, he was given breaks during the interview, throughout which he was legally represented, and apparently the interpreter said that the appellant was speaking too fast so that he had to be advised to slow down.

8. Having considered these factors, the judge was satisfied at [24] that it was not the young age, learning difficulties, or claimed mental health issues, which accounted for the different versions of events, but concluded that they stemmed from the retelling at various times of an incident which had been fabricated to support a false asylum claim. At [29], after considering the medical evidence, the judge concluded that had the appellant participated in the incident claimed there ought to be consistency in the core elements of the accounts. In this regard, the judge took into account that the appellant was not describing an incident witnessed from a distance but at close quarters.

9. In the subsequent paragraphs of the decision, [30] onwards, the judge also considered the other oral and documentary evidence, giving cogent reasons for the credibility findings made.

10. In assessing the risk on return, taking into account AK and AS to note that the security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh, the judge concluded that the appellant could relocate there, if he chose not to return to his home area. It is submitted that the judge failed to take into account the appellant's age and learning difficulties when considering the risk on return. Ms Clarke drew my attention to AS (Safety of Kabul) Afghanistan CG [2018] UKUT —118 (IAC) and (iii) of the headnote: "However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above."

11. MS Clarke drew my attention in some detail to the Education, Health & Care Plan at A49 of the appellant's bundle, including passages such as that at A54 to the effect that the appellant is slower than average at processing information, and that he has difficulties concentrating. At A55 is it said that he has PTSD and suffers nightmares. It was submitted that the judge had ignored the care plan and other similar evidence. Much of Ms Clarke's submissions appeared to be an attempt to reargue the appeal, taking me to the evidence of the appellant's difficulties, and little more than a disagreement with the decision.

12. It is clear from the decision that this evidence had been considered by the judge in the First-tier Tribunal and the care plan and diagnosis are referenced. The judge had the relevant points made by Ms Clarke in mind. However, after taking all the evidence into account the judge rejected the factual account, did not accept that the appellant's parents were dead, and concluded that he left Afghanistan specifically to join his aunt in the UK as an economic migrant. At the date of the tribunal's decision the appellant was already an adult having reached 18 years of age and was approaching 19, which he now is. He was fit to give evidence but chose not to do so. It is difficult to see what more the judge could have done to accommodate the appellant as a vulnerable witness; the judge did not hold it against him that he failed to give evidence. However, the upshot of his failure to give evidence is that the inconsistencies in the accounts could not be explored with him in oral evidence. The judge also considered the medical evidence in relation to risk on return, concluding at [44] that he had no medical impediment that would prevent his integration in Afghanistan. It is further noted that despite having learning difficulties the judge found that he had been able to undertake studies in the UK and could do so in Afghanistan. In the circumstances, it was implicit from those findings that the appellant would have family support on return to Afghanistan and will not be at any particular risk as a lone minor with difficulties in Kabul.

13. The difficulty for Ms Clarke's arguments is that the judge took into account the appellant's difficulties in assessing the credibility of his account and specifically looked to see if those difficulties could explain the discrepancies in the four accounts, as well as the appellant's claimed circumstances on return. The judge did not accept that the appellant, even with the difficulties described in the reports and other evidence, would be at an enhanced risk on return, as he would have the support of family in his integration in Kabul.

14. I am also satisfied that the judge was entitled to assess the evidence of the supporting witness and conclude that he was not credible.

15. I also reject the argument that the judge applied a criminal standard of proof by referring to the claim being prosecuted. That is no more than a turn of phrase. There is no evidence that the wrong standard of proof was applied.

16. In the circumstances, I find no material error of law in failing to take the appellant's vulnerability by age or learning disability into account. The remaining grounds are in the main minor criticisms of the judge's findings and little more than a disagreement and an attempt to reargue the appeal by alleging perverse and irrational findings, neglecting to consider the evidence in full.

17. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law.

Decision

18. For the reasons outlined above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require it to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed *DMW Pickup*

Deputy Upper Tribunal Judge Pickup

Dated

Direction Regarding Anonymity

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.

Fee Award **Note: this is not part of the determination.**

I make no fee award.

Reasons: The appeal has been dismissed and there was no fee payment so there can be no fee award.

Signed *DMW Pickup*

Deputy Upper Tribunal Judge Pickup

Dated