



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

Appeal Number: PA/11701/2018

THE IMMIGRATION ACTS

Heard at Field House

On 28 January 2019

**Decision & Reasons
Promulgated**

On 18 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MFG

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Avery (Senior Home Office Presenting Officer)

For the Respondent: Ms G Brown (Counsel)

DECISION AND REASONS ON ERROR OF LAW

1. It will be convenient to refer to the parties as they were before the First-tier Tribunal. MFG is the appellant and the Secretary of State the respondent. In a decision promulgated on 29th November 2018, First-tier Tribunal Judge Devittie (“the Judge”) allowed the appellant’s appeal against refusal of his protection claim. The appellant is a minor and a citizen of Afghanistan. In grounds in support of the application for permission to appeal, it is contended but the Judge erred in failing to give adequate reasons for his conclusion that the appeal fell to be allowed on asylum grounds and also on humanitarian protection grounds. The

reasons are described in the grounds as contradictory, the Judge accepting that there was a lack of detail in the appellant's case. It is contended that the Judge failed to explain how the appellant made out his case that he was at risk from the Taliban or ISIS. General reasons given at paragraphs 12 to 15 of the decision were conflated with reasons that might be more appropriate to a grant of humanitarian protection. Overall, the Judge failed to be precise in identifying the basis on which he allowed the appeal and failed to explain how the appellant made out his case.

2. In a Rule 24 response prepared on the appellant's behalf by Ms Brown, the decision is described as free from material error. The appellant faced problems as a result of men coming to his home after his father lost his job with the Afghan Government. The appellant's brother was taken away and killed. After the funeral, the men came on two more occasions to continue to harass and ill-treat the family. The appellant and close relatives left some two weeks later. He was 13 years old at the time and had no knowledge of the reasons for the visits or why they started after his father lost his job. The appellant lost contact with his family. He believes that he is from the Hazara ethnic group and that this may be the reason or part of the reason for the ill-treatment he and his family suffered.
3. The Judge correctly found that the appellant was 13 years old at the time of the events and was satisfied that he had established his account of the troubles that befell his family. Those findings were adequately reasoned. At paragraph 15 of the decision, the Judge turned to a different matter and considered the issue of the Refugee Convention reason that applied, rather than the lack of detail in the appellant's claim. There was no contradiction. The Judge's reasons for allowing the appeal were clear and obvious. Although he referred to the Refugee Convention reason not being formulated with any degree of certainty, he had in mind the appellant's lack of knowledge about the reasons for the persecution of his family.

Oral Submissions

4. Mr Avery said that the decision showed a lack of reasoning by the Judge. The appellant was unable to provide any specifics in relation to his account of events. The Judge accepted the general account but paragraph 15 of the decision was, with respect, hard to understand. The Judge appeared to be concerned that the Refugee Convention reason could not be identified but went on to find that one was shown anyway. There was no reasoning in relation to the risk of persecution.
5. Ms Brown responded that the decision was short but adequately reasoned. The Judge had the lack of detail clearly in mind. At paragraph 10 of the decision he referred to the skeleton argument which was before him and the paragraphs there stressing the importance of taking into account the appellant's young age. The appellant recalled that the men harassed his family and took his brother but he was unable to say why this happened.

The guidance referred to in the skeleton argument, including from UNHCR, shows that children might well have difficulties in recalling events. Those difficulties could not support a conclusion that they could not succeed in Refugee Convention claims. Children who could not articulate reasons for events might be simply unable to succeed in protection claims if that were so.

6. So far as paragraph 15 was concerned, the appellant's case was not expressly pleaded on the basis that he was entitled both to asylum and to humanitarian protection. The Judge properly took into account relevant guidance bearing on the assessment of the appellant's claims and found that he could fall within a "particular social group" as an unaccompanied minor.

Findings on Error of Law

7. The decision has been prepared by a very experienced Judge and Ms Brown is right to say that it does not suffer from prolixity or undue length. However, it is not possible to find in the decision reasoning which rationally supports the Judge's finding at paragraph 13 that the appellant "is a refugee in his home city of Samangan". The Judge properly took into account guidance regarding the care which is required in assessing asylum claims made by children. He accurately recorded the appellant's account of men harassing the family and killing his brother and his acceptance that he could not say what the reasons were for the harassment and ill-treatment. At paragraph 15, the Judge moved to consider which of the available Refugee Convention reasons applied in the case. The fundamental difficulty is this: missing from the decision are clear findings of fact supporting a conclusion that there is a real risk of persecution on return.
8. The Judge accepted the appellant's account as being reasonably likely to be true but there is no analysis of the nature of the threat from the men and no assessment of risk from them, or from anyone else, on return to the appellant's home area. Of course, the absence of any detail regarding the identity of the men, their motives or their influence would not of itself prevent a conclusion that a real risk was shown but more reasoning was required to explain how the asylum grounds of appeal were made out.
9. The Judge did not err in taking into account submissions from the appellant's Counsel regarding the need for a careful assessment and he properly took into account at least a part of the relevant case law, in paragraph 12 of the decision.
10. Even if the appellant were able to show a real risk of persecution in his home area, what would be required next is an assessment of the reasonableness of relocation, the destination of return being Kabul. The Judge recorded the appellant's case that he cannot not live in the capital as he has never been there and has no family in the city. When he first

arrived in the United Kingdom, he indicated that he is of Tajik ethnicity but Afghans he has met in this country have told him that he is Hazara. All of that would bear on an assessment of return to Kabul but the decision contains no clear findings or reasoning on this issue.

11. Turning next to paragraph 15 of the decision, Mr Avery drew attention to the Judge's view that the lack of detail in the case meant that it was not possible to identify the applicable Refugee Convention reason with any degree of certainty. Nonetheless, the Judge went on to accept a submission that the appellant is a member of a particular social group: unaccompanied minors from Afghanistan. However, even if the appellant does fall within this category, this is only one part of the overall analysis which is required. There is a lack of reasoned findings in relation to the risk of persecution in the appellant's home area and the reasonableness of relocation to Kabul.
12. The Secretary of State's grounds identify a further error in the Judge's conclusion that the appellant succeeds in relation to both his asylum grounds and his claim to be entitled to humanitarian protection. The last sentence of paragraph 15 shows that the Judge did indeed fall into error in this way. If a person succeeds in showing that he or she is a refugee, he or she is not entitled to humanitarian protection. Humanitarian protection is only available to a claimant who is not a refugee. This is made clear in the rules at paragraph 339C(ii).
13. Overall, the decision contains material errors of law and must be set aside. The appropriate venue for remaking the decision is the First-tier Tribunal, in view of the extent of the fact-finding that will be required. The remaking will proceed on a de novo basis, with no findings preserved.

Notice of Decision

The decision of the First-tier Tribunal is set aside as containing a material error or errors of law. It will be remade in the First-tier Tribunal, before a Judge other than Judge Devittie.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

Anonymity

The anonymity direction made by the First-tier Tribunal Judge shall continue, until discharged or varied by this Tribunal or another Tribunal or court.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed

Date: 12 February 2019

Deputy Upper Tribunal Judge R C Campbell