



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

Appeal Number: PA/06160/2017

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 19 October 2018**

**Determination
Promulgated
On 09 November 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**N A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, Counsel, instructed by Fountain Solicitors
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Afghanistan born on 1 January 2003. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 13 June 2017 refusing his application for asylum.
2. The judge set out the appellant's claim, which was on the basis that his father had been killed by the Taliban and he was at risk from the Taliban as a consequence. The judge considered that the appellant relied on sketchy and contradictory information relating to his claim. His account about what happened in Afghanistan was no more than speculative. On

his own account, his uncle had told him his father might have been killed by the Taliban but it could be somebody else and the appellant at interview alternated between saying it might have been, could have been or was the Taliban. He did not even know whether the Taliban were in his village. He gave a generic answer with reference to fighting. He had not seen people killing other people.

3. He also stated that at interview he had initially said that he had seen his father's death with his own eyes but then said he had not witnessed the killing. He claimed that after the death of his father he was at his paternal uncle's house when "people" came looking for him and alternatively referred to the people as the Taliban but then indicated he did not know who they were. He said that his mother did not even know whether they were the Taliban. He surmised that his father was probably giving information to the government about the Taliban or other people that came out of the area.
4. The judge went on then to note that the appellant was a child and as such his evidence should be approached with caution. She went on thereafter to find it implausible that, having come from a background of tending to sheep and cattle with little or no education and no contact with the outside world, his family were able to afford the services of an agent who had been used to get him out of Afghanistan and to Europe. He had not claimed asylum anywhere else although he had lived in Calais for four months. The judge went on then to say that, having taken account of his age, background and education and having approached his evidence with caution, she did not find that he was credible in his claim. She did not accept that the police had taken his family telephone numbers written on a piece of paper from him in Calais. She found that he had been sent to the United Kingdom at considerable cost and that that had been for his economic betterment.
5. She did not find it plausible that, having embarked on such a journey, he had no means of contacting his family to let them know once he had arrived in the United Kingdom. Nor did she find that his circumstances in Afghanistan were consistent with his uncle being able to afford to pay for his migration out of Afghanistan. With regard to family tracing, he had contacted the Red Cross and they had confirmed in writing that their enquiries were ongoing but she noted that any enquiries they made would rely on the information he gave them about his family's address or whereabouts.
6. She referred to AK [2012] UKUT 00163 (IAC) to the effect that relocation to Kabul remained a viable option for the appellant. She considered that Kabul was a viable option for the appellant. He would be returning as a failed asylum seeker with no family in the UK but continued to have family in Afghanistan including his mother, siblings and uncle, who would no doubt assist him on his return.

7. The appellant sought and was granted permission to appeal on the basis that the judge had not had sufficient regard to the appellant's age in assessing credibility and in focusing on his family's ability to raise money to pay for the agent the judge had speculated as to the costs and implausibility of the family being able to raise the funds to pay for an agent. It was inadequate to find implausible the claim that the French authorities had taken the paper with his family's telephone numbers on it from him. The judge had also erred, it was argued, in placing reliance on AK rather than considering AA [2012] UKUT 00016 (IAC), which, unlike AK, was concerned with the position of unaccompanied minors, and noting the risk on return in that regard.
8. At the hearing before me Mr Pipe relied on and expanded on the points made in the grounds. He argued that the judge had in her determination already come to conclusions about credibility in stating at paragraph 11 that the appellant lacked credibility and relied on sketchy and contradictory information and was speculative before coming on to note the fact that he was a child and as such his evidence should be approached with caution. He argued that she had not properly taken into account the appellant's vulnerability. She had not considered if the discrepancies arose out of vulnerability and that he was repeating what he had been told as a young child. On examining the interview notes it could be seen that he had not clearly said that he had seen his father being killed and that was an illustration of the need not to consider that there was a discrepancy in the case. There was also a lack of reasons as to why he would not have had an agent. The conclusions at paragraphs 14 about the telephone numbers lacked the proper care needed.
9. The judge had also erred in failing to consider risk on return as an unaccompanied child. The point had been made in the skeleton before the judge and was not considered properly or at all.
10. In her submissions Ms Aboni argued that the judge had directed herself appropriately and came to adequate findings with proper reasons. Account had been taken of the appellant's age and background. The evidence had been treated with caution. His evidence was sketchy and contradictory, as the judge found, and it was implausible that his family could send him to the United Kingdom if his circumstances were as he claimed. His family could travel to Kabul to receive him, so he would not be there as an unaccompanied minor.
11. By way of reply, Mr Pipe argued that the judge should have set out and taken into account the Joint Presidential Guidance on child and vulnerable witnesses at the outset rather than considering the matter subsequently. The findings on credibility were flawed.
12. I reserved my determination.
13. I see force in the submissions made on behalf of the appellant. It would have been proper for the judge at the outset to set out, if not in full detail

then at least in outline and preferably the former, the relevant parts of the Joint Presidential Guidance on child and vulnerable witnesses rather than as she did, setting out elements of the evidence and commenting on the sketchy and contradictory nature of that evidence at paragraphs 11 and 12 before coming on at paragraphs 13 and 14 to note the fact that he was a child and the need to approach his evidence with caution. What is necessary in a case such as this is to consider whether the defects as they are perceived to be in the evidence are ones which can properly be explained by the vulnerable nature of the witness rather than simply noting the fact of their vulnerability and then commenting on the discrepancies and other problems with the evidence. Clearly, there are problems with the appellant's evidence. There are contradictions and discrepancies but my understanding of the guidance is that there has to be factored into an evaluation of the evidence a proper assessment of whether it can be explained on the basis of the vulnerability of the witness or whether despite that vulnerability concerns remain about the evidence. That was not done in this case.

14. I am also concerned that the judge did not consider the relevant case law on risk as an unaccompanied minor. The judge clearly had concerns about the credibility of the claim that he did not have his family's phone numbers with him any longer since they had been taken away by the French authorities. She did not investigate how contact with his family could be made, as she made no clear finding that he had retained contact details. This was again a matter that required more careful evaluation on the part of the judge. As a consequence, I find a material error of law in that regard also.
15. The nature and extent of the judge's errors in this case, and particularly bearing in mind that the appellant is a child, are such that in my view the matter will have to be reheard in its entirety before the First-tier Tribunal and therefore I allow the appeal on the basis that it is to be remitted for a full hearing before a different judge at Birmingham.

Notice of Decision

The appeal is allowed to the extent set out above.

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 30 October 2018

Upper Tribunal Judge Allen