Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07406/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6 December 2018	**On 13 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

M Z M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss H Short, Counsel instructed by Elder Rahimi Solicitors (London)
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant is a citizen of Afghanistan born on 12 March 1995. He appealed to the First-tier Tribunal against the decision of the respondent dated 25 January 2016 to refuse the appellant's protection claim. In a decision promulgated on 28 August 2018, Judge of the First-tier Tribunal Abebrese dismissed the appellant's appeal on all grounds.

Grounds

2. The appellant appeals with permission on the grounds that:

   Ground 1: the judge required corroboration including concerning his father being a commander of the Taliban;

   Ground 2: the judge misunderstood and misapplied the importance of the psychological reports before him;

   Ground 3: the judge failed to make an assessment of the security situation in the appellant's home province of Parwan and his findings in relation to relocation to Kabul were misconceived and unsustainable.

Background

3. The appellant arrived in the UK on 5 June 2011 and claimed asylum the following day. That claim was refused on 12 December 2012. The appellant's appeal was allowed and his case remitted to the respondent for further consideration on 20 November 2015. Subsequent to that reconsideration the respondent made the decision dated 25 January 2016. The appellant claims asylum on the basis that if he were returned to Afghanistan he would face mistreatment due to his imputed political opinion and a fear of recruitment to the Taliban.

Error of Law Discussion

4. Mr Avery accepted that the judge had incorrectly required corroboration in respect of whether the appellant's father was a commander of the Taliban but submitted that this was not material. He also accepted that the judge had not specifically considered whether the appellant faced an Article 15(c) risk in his home area of Parwan but again submitted this was not material given his substantial findings in relation to relocation to Kabul.

5. Although Miss Short submitted that the judge required further corroboration at [29] where the appellant had said that it was not unusual for the government authorities to pursue matters even after a significant period had elapsed, the judge finding it not plausible as it was not supported by evidence that this is how the authorities conduct the investigations, this is not on all fours with the judge's erroneous requirement for corroboration in respect of whether his father was a commander in the Taliban.

6. The judge's findings at [29] relate to something that the appellant stated occurred in Afghanistan the judge was entitled to find that no background information had been invited that might support such a claim. The judge was more than entitled to find that there was nothing in the background information before him to support such a claim. and that it was an unsupported assertion. The fact that corroboration is not required does not mean that a First-tier Tribunal cannot take into account the absence of documentary evidence which might reasonably be expected (see **ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119**).

7. The judge went on to find that he did not find it credible that the appellant's mother would have been able to prevent the authorities from taking the appellant away with them if they were of the mind to do so. The judge made findings, at [30], that it was not credible that the appellant managed to stay for a period of two weeks undetected and then managed to leave the country without coming to the attention of the authorities and the judge took into consideration that the appellant's mother and uncle were able to find funds for him to travel within a very short period which, considered in the context of the appellant's evidence that he came from a poor family, led the judge to question whether or not the appellant's departure from the country had been planned over a longer period. Those findings were available to the First-tier Tribunal.

8. The judge was also entitled to take into consideration, as he did at [31], that the background country information referred to suggested that the Taliban do not have an issue with recruitment and that they have ample volunteers and that although the report suggested that employment and poverty may be a factor in recruitment the judge was not satisfied that the appellant fell into these categories and the judge was entitled to take into consideration as he did at [32] that the appellant's family were able, at very short notice, to arrange and fund his departure.

9. It was submitted that the judge's findings, at [32], where he stated that he did not find that the appellant had "provided evidence" that he satisfied the judge that he fell into the categories of unemployment or poverty in respect of a factor in recruitment to the Taliban, again erred in requiring corroboration of the appellant's poverty Whilst the judge might have worded this differently, the First-tier Tribunal was taking into account all the factors including the appellant's own witness statement: although the grounds for permission note that the appellant had not claimed that he was of interest to the Taliban because he was poor, the appellant stated at paragraph 16, in response to paragraph 17 of the refusal letter (where it stated that the appellant had not made any suggestions that he lived in poverty) the appellant stated that he and his mother had enough food to feed themselves but they were not rich and had a small house made of mud and were not educated with the appellant's mother completely illiterate and the appellant's "reading and writing is very bad".

10. It was evident that the judge was considering all the evidence, including the background country information about recruitment factors and the appellant's claim that he was not rich, as well as taking into consideration that the family had been in a position to arrange an agent to take the appellant out of Afghanistan at very short notice.

11. The judge also took into consideration that in the appellant's previous claim the refusal letter noted that the appellant had asserted that he had managed to stay in his maternal uncle's area without facing any difficulty but that he would have had difficulty if he had remained there for a longer time. The judge considered that in the circumstances if the appellant was

wanted by the authorities they would have looked for the appellant in his maternal uncle's area.

12. In the context of all of those findings there is no material error in the judge erroneously requiring corroboration in relation to the appellant's claim that his father was a commander of the Taliban. Although that is part of the appellant's claim the judge notes that the core of the appellant's claim was that he was informed by his mother that his father had disappeared and that after a period of ten years the appellant was a person of interest. The judge's key findings were that the appellant's claim that it was not unusual for the government's authorities to pursue matters even after a significant period of time was not supported by background country information or otherwise where it might be reasonable to expect such evidence; that it was not credible that the authorities would not have taken the appellant if they had been minded to do so (and the appellant gave confusing evidence in relation to whether uniforms were worn); that it was not credible that the appellant managed to stay at his maternal uncle's property for two weeks; and that there was no adequate explanation as to why the family were able to find funds in such a short period of time particularly taking into consideration the appellant's evidence that he was not from a rich family.

13. It was Miss Short's submission that the judge did not give adequate consideration to the appellant's documented learning difficulties, the judge noting on two occasions (in relation to one issue) that the appellant's evidence had been confusing (about the Taliban uniform). However, the judge took into consideration the evidence of the appellant's learning difficulties and poor memory as set out in Mr Selwood's 2012 report and reminded himself, at [20] of Mr Selwood's report, in the conduct of the hearing. This was not the principal reason for finding against the appellant which was the unlikelihood of the authorities being interested in the appellant's family after ten years on from his father's disappearance and the finding that it was not credible that the appellant would have been a target for recruitment by the Taliban and that even if he had been, the judge did not accept that his mother would have been able to prevent the Taliban recruiting him if they had so wished.

14. The judge made the findings he did in the context of all the evidence including the background country information in respect of the Taliban not having difficulties with recruitment, that the appellant did not fall into the two factors which might be a factor in recruitment of individuals and I note that this is in relation to recruitment rather than forced recruitment which is the appellant's claim. The judge was entitled to find that it was not credible that the appellant's mother would have been able to prevent the Taliban from recruiting the appellant if that was what they wished to do.

15. It cannot be properly said that the judge would have come to any other conclusion even if he had accepted that the appellant's father was a commander in the Taliban, given the weight of the other factors and findings against the appellant. In any event the judge went on, in the

alternative to find that there was sufficiency of protection available to the appellant. No material error of law is disclosed in ground 1.

16. In respect of the medical evidence Miss Short relied on the reports from Mr Selwood in 2011 and 2012 and it was not disputed that he is a chartered psychologist. He had provided reports and undertook an assessment in 2011 and gave IQ figures indicating that if the appellant had been educated in the UK he would almost certainly have been made the subject of a statement of special educational needs and probably placed in a special school for children with moderate learning difficulties. The judge took that into consideration, at [35], including that there was an assessment that the appellant had a poor working memory. The judge took into consideration the submissions including that the appellant had tried his best with his evidence and also took into consideration the respondent's view in the refusal letter that the appellant had managed to provide evidence to support his claim to his legal representatives.

17. It was the judge's ultimate conclusion, at [35], that the appellant does have learning difficulties and that he may have had some difficulties, as expressed in the report, in managing information and responding to questions but that this would not render the appellant unable to cope if he were to return to his own country. Although the grounds and Miss Short criticised the judge for taking into account the fact that six years have elapsed since the last report was made, the Tribunal could only make findings on the evidence before him.

18. Although it was submitted that the judge misunderstood the evidence and the grounds argued that the judge had made an assumption and that such difficulties would "simply disappear" that is not what the judge found. It was incumbent on the First-tier Tribunal to take into account all the evidence, including the age of the reports. The fact, as relied upon by Miss Short, that the reports might have been prepared specifically for the original hearing is irrelevant to that assessment. It was not argued that there was anything to prevent the appellant's representatives obtaining a further report in relation to any difficulties that he experienced including at the date of the second hearing, if that was the case.

19. The judge gave weight to Mr Selwood's report, but was entitled to find that during the time that the appellant had been in the UK since that report he would have learnt more skills which had enabled him to cope better in the UK including resilience which he had shown and the judge also took into consideration, at [48], that the appellant had been able to show resourcefulness and determination in coming to the UK. The judge will have had in mind all the evidence including the appellant's witness statement that he was at the time of the hearing living on the street and occasionally stayed with a friend but most of the time slept on the street. The appellant also stated that he had tried his best to study English and had had difficulties progressing and listed a number of other difficulties. It was clear that the judge had taken into account the appellant's resilience, notwithstanding that he was living in poor conditions on the street, in

finding that he had improved and learnt more skills which had enabled him to cope better in the UK. No material error is disclosed in ground 2.

20. In relation to ground 3, as noted Mr Avery accepted that the judge had not considered the appellant's home area and whether there was an Article 15(c) persecution issue in Parwan. However it was also submitted that the judge considered safety in Kabul as opposed to considering whether relocation would be unduly harsh and had not adequately considered **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC).**

21. The judge at [40] to [45] considered the issue of return to Kabul, including in light of **AS (Afghanistan)** and took into consideration all the factors, including that the particular circumstances of an individual must be taken into account (at [41]). The judge was entitled not to find that the 2012 report from Mr Selwood was conclusive as to the appellant's abilities and any difficulties he might have at the date of the hearing on the basis of all the evidence before him.

22. Contrary to the grounds the Tribunal was aware of and considered the issue of undue harshness, beginning at [41]. Given the appellant's age and the lack of any up-to-date medical evidence it was open to the judge find, at [42] that the appellant would not have significant problems. It was also open to the judge to find as he did that limited weight could be attached to the 2013 Red Cross letter, replying to the appellant's tracing request in respect of his family, given that it was five years old. What the judge was saying was that there was no further evidence of any steps that had been taken to follow up the letter from the Red Cross in 2013 (although the appellant referred in his witness statement to the Red Cross no longer being in Afghanistan no further details were provided to the First-tier Tribunal including that might confirm this assertion and provide dates) and that the production of the Red Cross letter did not mean the appellant would not be able to contact his family on return to Afghanistan. Those findings were available to the First-tier Tribunal.

23. The judge also took into consideration the support that the appellant would be offered on return that all Afghans are offered (at [49]) in terms of the integration programmes in addition to vocational training and business support and it was the judge's findings that the appellant who was currently of no fixed address would be provided a "platform" by these programmes to re-establish himself in Afghanistan which is a country where he speaks the language The First-tier Tribunal took into consideration at [43] the background material and did not consider that the appellant would be at risk in Kabul. Although complaint is made that undue harshness is not specifically considered the judge did consider those factors including the appellant's potential vulnerability and was well aware, at [41], that this was a factor but concluded for the reasons that were available to him that this appellant could internally relocate. The judge's findings could not be said to be irrational and were adequate. No error of law is disclosed in ground 3.

24. I have reminded myself what was said in **MD (Turkey) v SSHD [2017] EWCA Civ 1958** that adequacy means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why he has lost.

25. Any error therefore in the judge's credibility findings which I am not satisfied in any event is significant, and in not specifically considering return to the appellant's home area, is not material given both the weight of the credibility findings and the alternative findings on internal relocation.

Notice of Decision

The First-tier Tribunal does not disclose an error of law and shall stand. The appellant's appeal is dismissed.

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 their 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 Dated: 28 December 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

As no fee was paid I make no fee award.

Signed Dated: 28 December 2018

Deputy Upper Tribunal Judge Hutchinson