



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

Appeal Number: PA/11118/2018

THE IMMIGRATION ACTS

Heard at Field House

On 5 April 2019

**Decision & Reasons
Promulgated
On 1 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**[R A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Smyth, Solicitor, Kesar & Co Solicitors

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

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan. He was born on 1 January 2004.
2. He appealed against the respondent's decision to refuse asylum and humanitarian protection dated 5 September 2018.
3. In a decision promulgated on 8 November 2018, Judge Paul (the judge) dismissed the appellant's appeal. He did not find him to be a truthful witness regarding events in Afghanistan.

4. There were four grounds which I will address in turn:

- (i) **Failure to take account of relevant matters and/or making a material misdirection of law on a material matter - incorrect approach to assessment of credibility.**

The grounds claim the judge identified the issue of the appellant's evidence concerning contact with his family as determinative of the entire application. He decided that the appellant's account of losing contact with his family was not credible and as a result the entire account was not credible.

- (ii) **Failure to make findings on material matters: humanitarian protection.**

The grounds claim that even if the appellant was found not to be credible on the specific facts of his asylum claim, given he was an Afghan from Baghlan province, the issue of humanitarian protection in terms of Article 15(c) should have been considered by the judge. Even if the finding that the appellant would be accompanied upon return remained undisturbed, the grounds claim that an assessment of the risk the appellant faced in his home area was still required.

- (iii) **Making irrational/unsustainable findings.**

Ground (i) considered the judge's general approach to credibility. This ground claims that the judge erred further in relation to his specific findings concerning the appellant's contact with this family. The complaint is with regard to the judge's two general assumptions that it is claimed impacted on his approach to the evidence. At [22] he said "*It is almost impossible to imagine how a child could be sent across some of the most dangerous parts of the world without very careful monitoring.*" Further, at [24] the judge said "*In my view it is inconceivable that once that contact had been made (with a family), they would have been broken off and would not have continued.*" The ground claims that this approach by the judge showed a failure of imagination on his part which made the statements unsustainable. It is claimed that whilst the judge was entitled to consider whether the appellant was giving a truthful account, he approached the issue of the appellant's contact with his family from a starting point of scepticism, not backed up by objective evidence which had infected his approach.

- (iv) **Procedural error: failing to have regard to judicial guidelines on vulnerable witnesses.**

The judge mentioned the guidelines but the ground claims that he showed a lack of regard for them.

5. Judge Andrew granted permission on 22 February 2019. She said inter alia as follows:

“3. I also find there are errors of law in the decision. As to ground 1, the judge does not appear in the decision to have made findings of fact in relation to the appellant’s claim. What he has done is concentrate on one aspect of the claim and not gone on to make any further findings. No consideration is given to the appellant’s return to Kabul, bearing in mind he continues to be a minor, or Article 15(c). (Ground 2). Further, the judge does not appear to have considered any of the background information in relation to Afghanistan. In addition to this although the judge refers to guidelines in dealing with a vulnerable witness it appears he has not considered that the appellant may have had some difficulties with interpretation (see paragraphs 8 and 21) and that the judge did not take these difficulties into account when making his findings.”

6. There was no Rule 24 response.

Submissions on Error of Law

7. Mr Melvin conceded the error of law as contained in the grounds and the grant of permission to appeal.

Conclusion on Error of Law

8. I find that the grounds are made out. There is no need for me to repeat them here. Suffice to say briefly that having referred to the guidelines with regard to children, the judge failed to have regard to them in making his adverse credibility findings, in particular with regard to the obvious interpretation problems. Further, the judge was obliged and failed to make findings with regard to the appellant’s claim set against the background evidence and case law. There also remained the issue of Article 15(c) and **AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC)**.

Notice of Decision

9. The judge materially erred. His decision is set aside and will be remade in the First-tier Tribunal following a de novo hearing.

No anonymity direction is made.

Signed

Date 29 April 2019

Deputy Upper Tribunal Judge Peart