Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11527/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On Wednesday 15 May 2019	On Thursday 13 June 2019

Before

UPPER TRIBUNAL JUDGE SMITH

Between

N A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Bedford, Counsel instructed by Central England Law Centre
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

BACKGROUND

The Appellant appeals against the decision of First-tier Tribunal Judge Dhaliwal promulgated on 7 March 2019 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 17 September 2018, refusing the Appellant's protection and human rights claims.

The Appellant is a national of Afghanistan. His age is disputed. That is a point to which I return later as it lies at the heart of the Appellant's challenge to the Decision. He claimed asylum on the basis that he would be at risk as the family member of an interpreter who had worked for the US Forces in Afghanistan, his brother [HA]. He also claimed to be at risk because he would be perceived as having been westernised.

The Judge accepted that [HA] had worked as an interpreter and had himself been kidnapped by the Taliban and released by them on condition that he acted as a spy for them against the international forces. [HA], having spent a short period at his home after his release, left Afghanistan. The remainder of the family including the Appellant left Afghanistan about six months later. The Appellant was separated from the rest of his family during the journey. The Judge found that the Appellant was not at risk in his home area and could return there or to Kabul.

The Appellant raises two grounds of challenge under the heading of "Age" and "Home Area Risk". I elaborate on those grounds below. Permission to appeal was granted by First-tier Tribunal Judge EM Simpson dated 4 April 2019 in the following terms so far as relevant:

> "2. Permission to appeal is granted because there was arguable that [sic]:
>
> (i) On a material matter live at the hearing, the appellant's age, the appellant claiming to be a minor born on 11/07/2002 whilst the respondent asserting his date of birth to be 01/01/2000, that the Judge erred in his treatment of the issue, both in respect of fair process at the hearing, including permitting the respondent to raise assertions concerning evidence relied upon on the matter, without requiring the respondent, if relying on that absent evidence to produce same, i.e. Council age assessment report and the raising by the HO Presenting Officer of there being another Taskera in respect of the appellant on the respondent's file, and furthermore in the overall assessment of the evidence on the matter, including failing to give the appellant the benefit of doubt, and provide a sufficient adequacy of reasoning for rejecting expert opinion;
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> (ii) In the Judge's treatment of the appellant's older brother's evidence, that there was misconceived the contents of that evidence when assessing the credibility of the appellant's claim of risks faced in the home area;
>
> (iii) There was overall disclosed an inadequacy of reasoning on material matters.

3. Arguable/No arguable material error(s) of law disclosed [sic].”

The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

DISCUSSION AND CONCLUSIONS

Age

The way in which this ground is pleaded is three-fold. First, it is said that the Judge erred in her treatment of the evidence of Dr Giustozzi who had provided a report about the authenticity of a taskira which the Appellant produced in support of his claimed age. Second, it is said that the Respondent should not have been permitted to rely on an original taskira held on the Respondent’s file but not produced. Third, it is said that the Respondent should not have been permitted to rely on the conclusions of a local authority age assessment where that age assessment was not before the Judge.

The way in which Mr Beckett developed his case went beyond those pleaded grounds. His submissions were that, stemming from the errors pleaded, the Judge should have accepted that the Appellant is an unaccompanied asylum-seeking child (“UASC”) and therefore vulnerable. He said that the Judge had taken the wrong approach when dealing with that vulnerability. Based on the Practice Direction ‘First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses’ issued on 30 October 2008 and what is said by the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 about the treatment of asylum claims by minors and other vulnerable applicants, Mr Bedford said that the Judge ought to have accepted the Appellant as credible and taken his case at its highest. Moreover, he said that the effect of the Appellant being an UASC is that the Respondent accepts that UASCs cannot be returned to Kabul and, if he cannot be returned to Kabul which is safer than other areas of Afghanistan, then he cannot be returned to Kunduz which is his home area as that would be riskier. In light of the way in which the case is put, it is necessary first to determine whether there is any error of law in the way in which the Judge approached the determination of the Appellant’s age.

Mr Kotas submitted that the Judge was entitled to take the conclusion of the age assessment as her starting point. He was not sure why the document on the Home Office file was not produced to the Judge as he had a copy. A copy was handed in and given to Mr Bedford. Mr Bedford said in reply that, if this were the totality of the age assessment, it is not “Merton compliant”.

In relation to the taskira, Mr Kotas pointed out that the issue was really one of fairness. He was unable to clarify the reference to there being another original taskira on the Home Office file. He had been unable to find one. However, he submitted that the Judge was entitled to reach the view she did based on her analysis of the evidence of Dr Giustozzi.

I deal first with the age assessment point. The document handed in by Mr Kotas is headed "Model Information Sharing Proforma". It shows that the age assessment was carried out by social workers from Warwickshire County Council and that the assessment was completed on 16 September 2016. It gives the Appellant's claimed date of birth as "11.07.2002". The document is not a full copy of the age assessment. It does however summarise the qualifications of the two social workers, gives the date of interview, summarises what occurred at the interview and provides the conclusion as follows:

> "Taking all evidence into consideration, [NA]'s account is not accepted as credible and he is not believed to be 14. Rather it is felt he is most likely to be an older teenager, probably between 16-19 years old, though potentially older. However, in the lack of concrete evidence to be more precise, workers have decided to exercise some benefit of the doubt and make [NA] 16".

That document therefore confirms the Respondent's position that the Appellant's date of birth was in 2000 and that therefore, by February 2019, he would have been aged over eighteen years.

The age assessment document shows that the age assessment was shared with [NA] on 16 September 2016. That is consistent with what is said in the Appellant's witness statement as follows:

> "4. … My lawyer, Megan Ward, who was looking at my case to see if I could challenge my age assessment, told me that there was a merit to challenge the local authority's decision about my age. But I understood that it may take a long time to go through the process. At the time I was already waiting for a long time to hear from the Home Office and I was getting very frustrated. I did not want to further delay. Therefore, despite my lawyer saying there was good reason for me to challenge the decision about my age, I did not go ahead with the challenge. But just because I did not challenge the age assessment, does not mean I accepted the age assessment done by the local authority. I confirm I am 16 years old according to the Taskira which is a genuine document verified by the expert."

The Judge dealt with this issue in the Decision as follows:

> "16. There still remains a dispute about the age of the Appellant.
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> 17. On the **Welfare Form: Unaccompanied children** on A1 of the Respondent's bundle, in the presence of his social worker and a Dari interpreter, the Appellant was asked questions. In response to question 7 on page 4 of that form, the Appellant's response to his date of birth was 20/04/1381 as he stated that was the date that was given to the Appellant by his mother, it further states *conversion states 11/07/2002*. This would make him 16 years of age and this is what the Appellant asserts is his correct age.
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> 18. As is the norm, an age assessment was carried out by the local council. I do not have the benefit of having sight of that age

> assessment but that age assessment gave the Appellant a date of birth of 1 January 2000, which presently makes him 19 years of age.
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> 19. In terms of assessing age, I note the historical case law seems to favour that an age assessment is carried out at the end of judicial fact-finding. The materiality in this case was to do with the conduct of the hearing and whether the case law of **LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005** applied. I also note more recent authority (**Rawofi (age assessment – standard of proof) [2012] UKUT 00197 (IAC)**). The situation before me is set out in a similar way in as much as the matter has not been put before me as a discreet preliminary issue. In that case, the Upper Tribunal approved of the age issue being addressed at the beginning of the judicial evaluation. The **Rawofi** case also confirms that in the context of age disputes in an asylum appeal the burden is on the appellant and the standard of proof is to the lower standard applicable in asylum appeals.
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> 20. I note **R (on the application of GE – Eritrea) [2015] EWHC 1406** that age is an issue of fact for the court and not other decision makers which "…involves the application of judgment on a variety of factors …". I also note the case of **VS [2015] EWCA Civ 1142.** In terms of the court's general approach to evidence in age assessment I note in particular paragraph 19 citing **R (AM) v Solihull Metropolitan Borough Council (AAJR) [2012] UKUT 00118 (IAC)** paragraphs 15,19,20 and 23. I note paragraph 20 goes on to consider **FZ v Croydon LBC [2011] EWCA Civ 59** which recites the *Merton* principles."

There is no error in the Judge's analysis of the case law. As she observed, the burden and standard of proof which applies to age assessments in the appeal context is to the lower standard on an appellant even though there is a higher standard and no burden in the context of judicial review challenges to age assessments. The Judge then directs herself that an assessment of age is to be carried out on all the evidence and that it is an issue of fact. She then goes on to consider that evidence in the paragraphs which follow as I come to below.

The Appellant's case is that, not having seen the age assessment, the Judge should have paid no regard to it at all. I cannot accept that proposition. As I pointed out to Mr Bedford, if anything, the law more generally would tend to pull in the opposite direction. In R (A) v Croydon LBC [2009] UKSC 8 ("A and M"), the Supreme Court held that whether a person is a child is a matter of jurisdictional fact, albeit I accept that this was in the context of a judicial review of a local authority's decision in relation to the need to provide support. The Supreme Court went on to say that "the public authority, whether the children's services authority or the UK Border Agency, has to make its own determination in the first instance and it is only if this remains disputed that the court may have to intervene".

In a somewhat closer context, the Administrative Court in R (on the application of PM) v Hertfordshire County Council [2010] EWHC 2056 (Admin) had to grapple with the question of the extent to which a local authority was bound to or entitled to rely on a finding of the First-tier Tribunal as to age. Although

Hickinbottom J (as he then was) rejected the local authority's submission that the Tribunal's finding was a judgment in rem (based on the reasoning in A and M) or one which gave rise to any form of estoppel between the parties, he nonetheless accepted that the finding of the Tribunal was a materially relevant factor to which the local authority was entitled to have regard.

The Judge in PM put forward a series of objections to the local authority simply adopting the finding of the Tribunal, some of which are based on the duty on that authority to determine age for itself when making a decision whether or not to support. Those objections do not apply in the opposite direction. The age assessment, determined over two years previously, had not been challenged. The Appellant accepted that he had seen the age assessment and had taken a decision not to challenge its conclusion even though he continued to dispute it. Given the potential implications for his support whilst in the UK, if he disputed the conclusion, he might be expected to challenge it. He could at the very least have produced the document he was given in order to dispute it before the Tribunal Judge. In response to Mr Bedford's point that the age assessment as now produced is shown to be not "Merton compliant", as I have already pointed out, the document on which the Respondent relies is not the full age assessment but merely a "sharing proforma" which provides a summary of the process, those conducting it and the conclusions. The Appellant has a copy of the age assessment given to him by the local authority. As I have already said, if he wished to challenge the compliance of that assessment with the "Merton" procedures (including before the First-tier Tribunal), he could have done so but did not. He was well aware that the Respondent had adopted the conclusion of the age assessment.

In summary therefore, the Judge was entitled to take the local authority's assessment of the Appellant's age into account. If the Appellant wished to dispute the validity or process of that assessment and to say that no weight should be attached or if he said that the conclusion was not as the Respondent asserted, he could have produced the document to make that argument. He did not do so. Similarly, if the document now produced had shown that the conclusion was not as the Respondent asserted it to be, I would have found an error of law. However, for the foregoing reasons and since the Judge treated the age assessment conclusion only as part of the evidence as to age, there is no error of law established in this regard.

I therefore now turn to the remainder of the evidence before the Judge and her treatment of it. That leads me on to the taskira as that is the evidence pointing in the opposite direction in support of the Appellant's claimed age.

The evidence about the provenance and production of the taskira was given by [HA] and the genuineness of it was supported by the report of Dr Giustozzi. It is necessary to look at what the Judge had to say about both aspects at [21] to [33] of the Decision as follows:

> "21. In making a determination of the Appellant's age, I bear in mind what the Appellant said in evidence to the tribunal, he stated that his brother held his original tashkira and he produced this in court.

22. Of concern was the Presenting Officer also appeared to have an 'original' tashkira on their file. I intend to return to this point later.

23. I also heard evidence from the Appellant's brother. He confirmed that when he left Afghanistan, he took the Appellant's tashkira with him as he thought he would make applications for both himself and his brother in due course. If this is correct, then it seems that the Appellant's brother had some future intention of meeting up with the Appellant in Europe. In cross examination, the Appellant's brother accepted that the tashkira appeared to be issued in 2012, it was made at that time, as the Appellant was required to have one as an Afghani citizen and that when he left in 2014, he took it with him.

24. This assertion by the Appellant's brother seems to make little sense to me, for the very fact, that if his evidence is to be accepted, he was leaving Afghanistan for good as he feared persecution from the Taliban. He was therefore leaving all of his family behind with no immediate or foreseeable prospect of return. There appears to be no reason for him to take the Appellant's tashkira, particularly as he knew this was a document that would be required by the Appellant in his home country as an Afghani citizen, as he said so, in his own evidence. The explanation from the Appellant's brother was not, in my view, plausible.

25. In any event, the Appellant relies upon the opinion of Dr Guistozzi, who confirms that the tashkira in the possession of the Appellant's brother is an authentic document. The Respondent states that no weight should be placed on this evidence as reliance was placed by Dr Guistozzi and others on what is essentially a scanned document.

26. As I go on to consider the authenticity of the document, I return to the point that both the Respondent and the Appellant's brother seemed to have what was said to be the 'original' tashkira in their possession during the hearing. They may well have been duplicates, but I was not told that. Suffice to say, that it did not become clear which was the original copy, if at all.

27. For the sake of my determination, I intend to move forward on the basis of the tashkira, that was in the Appellant's brother's possession. A scanned copy of this was sent to Dr Guistozzi, on which he was requested to give an expert opinion. Dr Guistozzi states that confirmation of authenticity of the tashkira was sought from the Central Civil Registration Authority department of Kunduz province where his colleague met up on his instructions with an employee of the office, that employee found a complete match of the tashkira with their records and confirmed that the tashkira is genuine. Furthermore, that the confirmation statement at the back of the tashkira is sought by government offices otherwise the tashkira is not accepted as being valid.

28. I carefully read the report from Dr Guistozzi. It was lacking in a number of different respects.

29. Dr Guistozzi's instructions appear to be that he was asked to *seek confirmation as to whether the tashkira can be verified as genuine or not.* It follows that the expert would then reasonably be expected to give an opinion on whether the tashkira could be verified or not.

> 30. In this instance, Dr Guistozzi appears to ask his associate researcher, Mr Rahimi to obtain confirmation of whether the tashkira was genuine. Mr Rahimi reported back to Dr Guistozzi that he met up with another employee in Afghanistan who made the necessary checks and confirmed that there was a complete match. Dr Guistozzi then reported what he was told by Mr Rahimi. It is therefore difficult to ascertain on what aspect Dr Guistozzi himself gives an expert opinion, other than reporting back what he was told by his researcher.
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> 31. It may well be that Mr Rahimi could have provided a report, if he falls within the definition of an 'expert'. On Dr Guistozzi's report, it states that Mr Rahimi's CV is attached but this did not seem to eb attached. In any event, I question the weight that I could attach to it, as the evidence of the authentication appears to come from an unidentified employee of the Central Civil Registration Authority department of Kunduz province and again, Mr Rahimi, is likewise not providing any 'expert' opinion.
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> 32. If I reach the view that I do not have before me an expert opinion, which is where I now seem to be at, it still does not prohibit me in any way from considering the evidence of Mr Rahimi and the unidentified employee from the Registration Authority. In that regard, there is a lack of continuity and depth of information from one stage to the next, for instance, there is no explanation as to what is meant by a 'complete match', no explanation as to what 'their records' consisted of and no explanation on what basis the employee was able to confirm that it was a 'genuine' document, particularly, in light of the fact that the information given by the employee also seemed to suggest that confirmation statements were sought by authorities, otherwise tashkira's were not accepted as valid. Finally, there is no explanation of the circumstances in which the confirmation statement at the back would be dated differently from the date of issue of the tashkira. It seemed to require much speculation on my part.
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> 33. I am not persuaded in the circumstances of this case, that for the cumulative reasons mentioned from paragraphs 21 to 32, that the tashkira in the possession of the brother is a document on which reliance can be placed."

I can deal very briefly with the point made about the unfairness of relying on what was said to be an original taskira on the Respondent's file. As I have already noted, Mr Kotas was unable to find such a document and could not assist. However, although the Judge mentions this point and, I accept, may place some limited weight on that issue, it is clear from what is said at [27] of the Decision that the Judge proceeded thereafter on the basis that the taskira on which the Appellant relied was that apparently authenticated by Dr Guistozzi's report and which [HA] had produced. Even if there is an error in that regard, therefore, it is not material.

Turning then to the taskira on which the Appellant relied, the evidence is a combination of the evidence of [HA] and the report of Dr Guistozzi. There is no challenge to the Judge's finding that [HA]'s evidence of how he came to have the taskira in order to give it to Dr Guistozzi or to him via the Appellant's

representatives is implausible. That is therefore the starting point to consideration of the genuineness of that document.

The Appellant's grounds are, in essence, that Dr Guistozzi is providing a report as an expert about the process of authentication which he says can be relied upon to determine the authenticity or otherwise of the taskira. That may be so. However, the authenticity still depends on the carrying out of that authentication process (as opposed to a verification on the face of the document based on the expert's familiarity with that type of document). The Judge's findings are a combination of giving little weight to Dr Guistozzi's evidence because he was not himself involved in the process and discounting the weight he could give to the evidence as reported by Dr Guistozzi because it was unsupported by evidence from those who conducted the process; in effect, that there was no audit trail.

The Judge has provided detailed reasons for not accepting Dr Guistozzi's evidence which, when combined with her finding about the implausibility of how the "original" taskira came to be in the UK in the first place, are sufficient to explain why she reached the conclusion she did. It cannot be said that the conclusion reached is perverse based on those reasons.

The Judge was therefore left in the position at this point of giving some weight to the age assessment conclusion and no weight to the taskira. That though was not the end of her consideration as to the Appellant's age. She went on to consider the other evidence and make her own assessment as follows:

> "34. I also read the Verification Report translation at page G1 of the Respondent's bundle, which confirms that the Appellant is not known in his village by the elders. However, I find that to be so vague, that I do not attach any weight to it.
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> 35. I am then back to my starting position where I am left with the Appellant asserting he is 16 years and an age assessment carried out by the Council, which confirms that he is 19 years of age.
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> 36. It was of course open to the Appellant to dispute the age assessment, if he did not agree with it, and the letter from Central England Law Centre dated 29 January 2019 on p99 of the Appellant's bundle states that advice was sought by him but ultimately the Appellant decided against appealing this decision on the grounds of expediency. This letter does not specify when such advice was sought, but as there is a mention of a tashkira, this presumably would have been after July 2017. It is unusual for the Appellant not to have disputed the age assessment when it has such a bearing on his case, but I bear in mind, that an explanation of expediency has been provided by those whom he instructed.
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> 37. I am then left with an assertion by the Appellant as to his age and an age assessment carried out by the local council. Whilst I have not had sight of that assessment and can make no detailed findings. Whilst the Appellant disagreed with the age assessment, it was not asserted that report was anything other than *Merton* compliant. I also remind myself that it is not open to me to speculate on what is not before me. However, what I am able to infer it that the age

> assessment by the council would have required a more rigorous process to have arrived at their decision.
>
> 38. Furthermore, as I am entitled to take a rounded view of all the evidence, in determining age, the detail given by the Appellant in his statement dated July 2017 appears to me, to be more consistent, with a child of 17 years of age, rather than one of 14 to 15 years of age. I also noted that in his evidence, he was able to give forthright answers, for instance, when asked why his brother had taken his tashkira, he was able to give an immediate and forthright reply that his brother should be asked that question rather than him. He did not give the impression of being someone who is vulnerable or a youth.
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> 39. Taking a rounded view of all the evidence before me, I arrive at the conclusion tht the Appellant is 19 years of age and an adult and not 16 years of age, as he suggests. I find that the evidence given by the Appellant at each stage of the proceedings was more akin to that of an older individual than the Appellant suggests. Whilst I do not have the age assessment before me, I have the conclusion from that assessment, which, in the absence of assertions to the contrary, is likely to have been Merton compliant, and thus would have involved a more rigorous process than the assertion made by the Appellant. I also bear in mind, the burden of proving age and that the Appellant ultimately chose not to dispute the age assessment. I therefore proceed on the basis that the Appellant is now an adult of 19 years of age".

As can be seen from that extract, the Judge made very similar points to those which I made earlier concerning the age assessment and the reliance which could be placed on that. The Judge did not consider herself bound by that assessment but reached a view on the totality of the evidence based on her earlier findings on the evidence and taking into account the burden of proof which was on the Appellant albeit to the lower asylum standard.

For the foregoing reasons, there is no error of law in the Judge's approach to the determination of the Appellant's age nor in her conclusion. It follows that she was entitled to treat him as an adult for the purposes of the hearing. Mr Bedford drew my attention to the Judge's remarks about vulnerability at [10] of the Decision. He said that the Judge had adopted the wrong approach by asking Counsel for the Appellant whether there were any vulnerabilities other than the Appellant's claimed age and for Counsel to draw any matters to her attention during the hearing if necessary. There is no suggestion in the evidence that the Appellant suffers from any mental health problems or is otherwise vulnerable. Given the Judge's conclusion that the Appellant is not a minor which I have found to contain no error of law, whether or not the approach she adopted was correct can make no difference.

Risk in Home Area

The Appellant's ground in this regard is that the Judge's treatment of an expert report of Mr Tim Foxley and her discounting of that evidence is based on a factually incorrect premise. The ground runs like this. The risk to the Appellant in his home area from the Taliban is said to arise because of [HA]'s failure to

carry out his promise to spy for the Taliban. The Judge placed weight on the fact that the family carried on living in their home area for six months following [HA]'s release by the Taliban. However, that failed to recognise that [HA] did not work for the international forces in his home area and it would therefore be some time before the Taliban in the local area would realise that [HA] had broken his promise and come looking for the Appellant and his family. It is said that the Judge's findings in this regard ignore [HA]'s own evidence. The Appellant also says that there is an apparent contradiction between the Judge's findings about this aspect of the case at [55] of the Decision and what is said at [58] of the Decision.

I deal with that latter point first. At [55] of the Decision, the Judge said this (having first referred to the background evidence that those working for the international forces were at risk – although lower in Kabul – and that family members may also be targeted):

> "This supports the fact that the Appellant's brother is likely to be at risk and likewise, family members may be targeted, however, when I consider the position of the Appellant, I note that
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> (iv) The Appellant's brother was at home for at least 20 to 25 days, during which, the family had no visits or problems from the Taliban,
>
> (v) Even after the brother left, the Appellant and his family remained at home for approximately 4 months, before the mother of the Appellant expressed concern that they would be targeted but they were still able to remain for another 2 months, before they left. Nothing before me suggests that the family were targeted generally or specifically due to the fact that they were the family of an interpreter and more so, the family of an interpreter who promised to spy for them but then disappeared after approximately 20 to 25 days. The Taliban are not known for their patience and I do not find that they would wait 20 to 25 days and take no action. More so, as I find as a fact that the Appellant's brother was approached and detained by the Taliban in their home village, it is reasonable to expect that the Taliban would know where their home address and thus the location of his family, yet there were no visits from the Taliban for up to 6 months.
>
> I infer from this the Taliban had no interest in pursuing the family of the interpreter who worked for the American Forces, namely, the Appellant, his mother or his youngest brother and to all intents and purposes, regardless of their familial relationship with an interpreter for the American Forces, they are deemed to be of 'low profile'. If there was no interest in pursuing the Appellant or his family then, there is not likely to be any interest in pursuing the Appellant now."

Having then set out an extract from Mr Foxley's report to which I will return, the Judge said this at [58] of the Decision:

> "On the basis that the Appellant's brother spent 20 to 25 days in his home before he left and the Appellant and his remaining family spent 6 months in their home village without adverse attention, I am of the

> view, as mentioned earlier than there there is [sic] indicative that the Taliban have no interest in the Appellant or his family. I cannot therefore accept Mr Foxley's conclusion which is based on the s*ituation in an area where his family appear to have been identified and targeted by the Taliban.* I do not accept that the family have been identified, the Appellant's brother was identified, detained and released. On the back of that, there was still no further adverse attention directed to either his brother or to the remaining family. I therefore reject Mr Foxley's conclusions as they are based on an incorrect premise."

The Appellant's ground regarding a conflict between those paragraphs does not withstand scrutiny. The Judge at [58] was clearly referring back to what she said at [55] and making the same point, namely that the Taliban would have no interest in the family because, in spite of knowing where the family lived, they had not targeted them following [HA]'s release. The Appellant's complaint appears to turn on the use of the word "identified". That word as used at [58] is used synonymously with the word "targeted". It is not used in the perhaps more natural meaning of recognising someone but rather as singling out a person. I anticipate that this is probably due to the way in which Mr Foxley had himself explained the risk in his report as set out in the extracts included at [57] as follows:

> "I read the report prepared by Mr Tim Foxley MBE dated 21 November 2018 on behalf of the Appellant in which he states that as far as the risk to the Appellant from his home area village of Kunduz is concerned:-
>
> *There are demonstrably clear risks to interpreters and their families…The Taliban still have a very active presence in Kunduz, so there will be a high likelihood that the Taliban will still be operating in your client's home area. He could be at risk of being targeted… (*paragraph 29*)*
>
> *I think the greatest risk to your client from the Taliban would eb on return to his home area. He will be at risk from a volatile security situation in an area where his family appear to have been identified and targeted by the Taliban, potentially bringing himself to the adverse attention of the insurgents* (paragraph 32)
>
> *Those loyal to the Taliban may identify him on his return and mark him for adverse attention*
>
> *…"*

There is therefore no conflict between the findings in the two paragraphs when read in context and as a whole.

I can deal quite shortly with the other part of this ground. The Appellant says that the Judge has misunderstood that [HA] did not work with the international forces in his home area and therefore the Taliban local to his home area would not have become aware as quickly that [HA] was not carrying out his promise to spy for them. It is said that the Judge failed to have regard to [HA]'s evidence on this point. I do not need to refer to [HA]'s evidence about this. It is evident from what the Judge said at [55] that she was considering the period during which [HA] was at his family home immediately following release when the Taliban locally would no doubt be keen for him to start his spying activities

on their behalf and in the four month period after [HA] left when he was away but they would become aware that he was not carrying out his promise. Moreover, the Judge was there considering not simply the risk based on [HA]'s failure to comply with his promise to spy for the Taliban but also the risk based on familial connection with an interpreter working for the international forces.

The Judge was entitled to reach the conclusion which she did based on the facts and evidence. She did not misunderstand the Appellant's case in this regard. Her conclusion is not irrational. There is no error of law in this regard.

Even if I am wrong about that, though, the Judge went on to consider whether the Appellant would be at risk from the Taliban elsewhere in Afghanistan. This is dealt with at [60] to [61] of the Decision as follows:

> "[60]As to the risk from the rest of the country, Mr Foxley states
>
> *Your client has a low profile and from his account does not appear to have come to the specific attention of the Taliban...*
>
> If the return was to Kabul,
>
> *It becomes less likely that he would present a profile for specific tracking and targeting...I don't feel that the Taliban as a movement would have any particular interest in or awareness of him, were he to move to a different region.*
>
> *If the Taliban came across him anywhere in the country, and his specific background became known, he would be at greater risk.*
>
> [61] Based on my findings thus far, for similar reasons, as the Taliban did not appear to have any interest in the Appellant or his family, after the brother was released by them, I find that, it is highly unlikely that he will come to the attention of the Taliban and his specific background is likewise unlikely to become known. The risk of this happening is negligible based on past conduct."

Having considered the country guidance cases relating to the situation in Kabul, the Judge concluded that return to Kabul would not be unduly harsh ([64] of the Decision). There is no pleaded challenge to that finding. As I have already noted, Mr Bedford's submission was that the Appellant could not be returned to Kabul because he is a minor. Having upheld the Judge's finding in relation to the Appellant's age, there is no error of law in the Judge's conclusions regarding risk on return. Even if she was wrong about return to the Appellant's home area (which for the reasons given above, I do not accept), she has also concluded that he could return without risk to Kabul and that it would not be unduly harsh to expect him to relocate there.

Mr Bedford also made the submission that, because the Appellant should have been accepted to be a minor and vulnerable on this account, the Judge fell into error by not taking the Appellant's claim at its highest or at least determining it on the basis of the background evidence rather than the Appellant's testimony. That submission is of course undermined by my conclusion about the determination of the Appellant's age. In any event, in seeking to make good his submission that the Appellant would in fact be at risk on return, Mr Bedford took me to a number of background documents which were not before the

Judge (as he accepted) and could only therefore be relevant if I found there to be an error of law on the two pleaded grounds which I have concluded is not the case. I intend no disrespect to Mr Bedford's able submissions by not dealing with them; they are not relevant as a result of my above conclusions. I should add though that, as Mr Kotas submitted, the Judge in fact largely accepted the credibility of the Appellant's claim ([52] of the Decision). Her conclusions are that, based on the accepted facts, there is a lack of current risk to the Appellant.

CONCLUSION

For the above reasons, there is no error of law in the Judge's findings concerning the Appellant's age or the risk to him on return to Afghanistan. I therefore uphold the Decision.

Notice of Decision

I am satisfied that there is no material error of law in the decision of First-tier Tribunal Judge Dhaliwal promulgated on 7 March 2019. I therefore uphold that decision with the consequence that the appellant's appeal remains dismissed.

Signed  Date: 4 June 2019

Upper Tribunal Judge Smith