Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01654/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Date Sent**
On 1st October 2013	**On 4th October 2013**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

NA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Patel, Counsel instructed on behalf of Quality Solicitors
For the Respondent: Ms R Pettersen, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a national of Afghanistan whose age is in dispute seeks permission to appeal the decision of the First-tier Tribunal (Judge Shimmin) who dismissed his appeal against the Respondent's decision made on 6th

February 2013 to refuse his application for asylum and for leave to remain under the Human Rights Act.

2. 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.

3. The background of the appeal is as follows. The Appellant claimed that he was an Afghan national of the Pashtun race who came from a village in the Wardok Province. He is the eldest of five children. His father left Afghanistan in 2001 and claimed asylum which was refused but a grant of exceptional leave to remain was made on 7th July 2001. He was given indefinite leave to remain in 2005.

4. Since the Appellant's father left Afghanistan, it is said that he had returned to visit his family there and in Pakistan. The basis of the Appellant's claim relates to his fear of the Taliban. He gave an account that they would throw letters into the schoolyard advising children they should be attacking Americans rather than attending school. On one evening in August 2012, the Appellant was standing outside a mosque talking to two friends, and four armed Taliban tied their hands and took them on a short motorbike ride to a nearby house. Reference was made to the Appellant's father being in London and his uncle's employment as an interpreter for the Americans in Kandahar. The Appellant was told that he and his friends would be carrying out a suicide attack.

5. The next morning the Appellant and his friends were taken to the Taliban's mountain base close by. They were treated "very nicely" and "very kindly" by the Taliban and were given training in advance of a planned suicide attack on a police base in Kabul. The Appellant was told that he would be dropped off ten kilometres from his target and make his own way there. The Appellant made it clear to the Taliban he did not wish to carry out the suicide bombing and expressed this to the Taliban. He and his friends pleaded to be allowed to spend a final night with their families. The Taliban agreed and two of them returned to the village with the Appellant and his friends. They were given twenty minutes to say goodbye as the Taliban waited outside the Appellant's front door. The Appellant heard his friend being shot dead outside his property for refusing to take part in the suicide bombing and the Appellant's family pleaded with the Taliban to spare him. At that point he escaped from the rear of the house into the mountains.

6. It is said that the Appellant returned the next day to find out what had happened. The Taliban had beaten the Appellant's mother and grandfather and burnt the Appellant's uncle's guest room and vehicles. That afternoon the family raised US$15,000 to pay an agent for the Appellant to leave. He travelled by lorry passing through Greece, Italy and France arriving in the United Kingdom on 5th December 2012.

7. In a decision of 6th February 2013 the Respondent refused to grant asylum under paragraph 336 of HC 395 (as amended) and a decision was made to remove the Appellant from the United Kingdom by way of directions under the 1971 Act. The reasons for that decision were contained in a letter dated 6th February 2013. The Respondent did not accept that the Appellant had given a credible account concerning events in Afghanistan and furthermore that in the light of the age assessment report undertaken by the Liverpool City Council, the Appellant was not a minor but it was concluded that he was aged over 18 years.

8. The Appellant exercised his right to appeal and the matter came before the First-tier Tribunal (Judge Shimmin) on 8th July 2013. In a determination promulgated on 8th July, he considered the evidence before him and reached the conclusion that the Appellant was not a minor, he found the account given by the Appellant to be implausible and inconsistent concerning events in Afghanistan and dismissed his appeal on asylum and human rights grounds, including Article 8 of the ECHR.

9. An application was made to appeal that decision and permission was granted by the First-tier Tribunal (Designated Judge Shaerf) on 5th August 2013.

10. Thus the appeal came before the Upper Tribunal. Miss Patel appeared on behalf of the Appellant who had settled the grounds for permission to appeal and Ms Pettersen, Senior Presenting Officer appeared on behalf of the Secretary of State. Miss Patel relied upon the grounds that she had drafted dated 22nd July 2013. She supplemented them by way of oral submissions. In respect of the first ground advanced, it was submitted that the judge at paragraph 14 of the determination made a fundamental mistake of fact. It was set out in that paragraph that the Appellant's father had claimed asylum on 17th April 2002, which was refused on 5th August and the appeal dismissed on 3rd January 2003 but was granted indefinite leave to remain on the basis of the legacy provisions on 17th June 2011. Those facts related to an individual other than the Appellant's father and whilst the judge was reminded of this, he had recited that at paragraph 14 of the determination. In fact the Appellant's father came to the UK claiming asylum in February 2001, that claim was refused but he was granted exceptional leave to remain in July 2001 and then was granted indefinite leave to remain in 2005. Miss Patel submitted that this mistake of fact demonstrated that the judge had failed to give anxious scrutiny to the Appellant's case and in this respect invited the court to consider the decision of the Court of Appeal in **ML (Nigeria) [2013] EWCA Civ 844**. She submitted that a mistake of fact such as this constituted an error of law. She submitted further that it was a material error because it affected the judge's view of the Appellant's father and his general credibility as a witness. She submitted that the judge had made findings against the Appellant and that was based on paragraph 14.

11. In respect of the second ground, she made no oral submissions but relied upon what was set out in the grounds as drafted namely that as the judge

decided to make an anonymity direction that was contradictory because he found the Appellant not to be at risk.

12. In respect of the third ground, Miss Patel submitted that the judge erred in his assessment of the Appellant's age. She submitted that the Afghan ID card that had been submitted was given very little evidential weight because it was based on the observation of a registrar who had produced the ID certificate. However she submitted, the conclusions in the age assessment carried out by Liverpool Social Services was also based on the observations of the social workers and therefore could be seen as no different. The judge was wrong therefore to prefer the Liverpool Social Services assessment over the ID card. The judge also assessed the Appellant's age based on his own observations at paragraph 37. Furthermore in respect of his age, she submitted that the judge in reaching a conclusion on his credibility should have taken into account the fact that even if he was over 18 the difference between his claimed date and assessed age was small and therefore he should have considered him as a minor. She submitted that there was no "bright line" between suddenly turning 18 and failing to be treated as a minor.

13. As regards the country evidence, she submitted that the judge did not take into account the UNHCR report submitted at paragraphs 13 to 14 of the Appellant's bundle. She further submitted that he made an adverse finding under Section 8 of the 2004 Act on the basis that the Appellant could have claimed asylum in Greece, Italy or France. She submitted since Greece and Italy were not considered to be safe countries then they were not safe for the Appellant. His failure to claim asylum in France would not be determinative of the case. As to internal relocation, it was submitted that the Appellant's father had only lived in Kabul for a short period of time and that relocation would have been unreasonable in all the circumstances.

14. The last point raised in the grounds relates to Article 8. It was submitted that the judge was wrong in reaching the conclusion that the Appellant did not have a family life with his father and that the Appellant did have more than emotional ties with him because he was being financially supported to him and was living with him.

15. Ms Pettersen on behalf of the Respondent relied upon the Rule 24 response that had been sent to the Tribunal dated 15th August 2013. In that reply, it noted that whilst the judge did quote the incorrect immigration history at paragraph 14 it was not a material error because the immigration history of the Appellant's father did not infect his reasoning on the credibility of the Appellant or the issue of the assessment of the Appellant's age. Indeed the asylum interview upon which the judge relied when reaching a conclusion of assessment of age was in fact this Appellant's father's interview. Ms Pettersen invited the Tribunal to consider the factual elements of the decision of **ML (Nigeria)** (as cited) noting that in that case the decision of the First-tier Tribunal contained a number of serious errors but in this case the factual error at paragraph 14

could not be seen to be significant or material given that the judge did not refer to those facts when making any assessment upon the Appellant's age or on the credibility of the Appellant, relying on the evidence that had been produced properly in respect of the Appellant's father. She said it was significant that he had referred to the interview in May 2001 and there was no confusion that this referred to the Appellant's father.

16. In respect of the age assessment she submitted that the judge was entitled to place more weight upon the age assessment completed by Liverpool Social Services. She submitted that the judge did consider the ID card at paragraphs 33 and 34 but did not reject it based on the fact it was made on the observations of the registrar but dealt with the contradictions in the evidence as to how it had been obtained, its timing and production and also that it did not fit with the evidence given in the Appellant's father's asylum interview when he referred to his son at the time he arrived in 2001 as aged 9. She submitted the report should not be subject to criticism. It was a detailed **Merton** compliant report in which the social worker had taken a detailed history. The Appellant could have challenged the age assessment report but chose not to and the reasons for the findings of the social workers were such that the judge is entitled to place weight upon them.

17. As to the credibility or plausibility of the Appellant's account, the judge did consider the background evidence correctly. The refusal letter at paragraph 19 (page 6) summarised accurately the background material including the UNHCR report and evidence from Dr Giostuzzi. The report relied upon by Miss Patel did not differ from that evidence other than to make it clear that the definition of forced recruitment by way of fear and intimidation was too narrowly defined. Nonetheless that was not the Appellant's account. His account was that he had been kidnapped outside the mosque. Thus the Appellant's case did not sit well with the background material.

18. As to internal relocation, the Appellant had a number of relatives in Kabul and that his father had previously rented accommodation in Kabul for a period of three months to enable him to visit his family relatives including his wife and children for a three month visit when visiting from the United Kingdom. The Appellant was found to be an adult, fit and healthy and was therefore able to relocate. There was nothing that would be unreasonable on the findings of fact made for this Appellant to relocate internally.

19. As to Article 8, the judge found the Appellant was an adult and whilst he might live with his father, his father had been separated from him and outside of Afghanistan since 2001. There was no evidence that there was any dependency other than normal emotional ties and whilst he was being financially supported by him that was because he chose to live with his father. The Appellant's father had visited Afghanistan and Pakistan since he had been in the United Kingdom to visit his family members. Ms Pettersen reminded the Tribunal that when the judge heard the case the Appellant, on the judge's findings was 21 years of age and this was not the

case of someone living with his father having just turned 18. The Appellant had other family members in Afghanistan including his mother and siblings. His father was not a refugee having made visits back in recent years, the Appellant was not at risk when returned and thus it would be proportionate for him to return to Afghanistan.

20. Miss Patel by way of reply referred to the visits made by the Appellant's father namely one in Afghanistan and one in Pakistan. As to the identity document she submitted that the judge should have preferred the evidence of the Appellant and his father and that there had been no contradiction.

21. At the conclusion of the hearing I reserved my determination.

Conclusions:

22. The first ground advanced on behalf of the Appellant relates to a mistake of fact that the judge made at paragraph 14 of the determination. At paragraph 14 the judge recorded the following details.

> "The Appellant's father claimed asylum on 17th April 2002 and this was refused on credibility grounds on 5th August 2002. An appeal was dismissed on 3rd January 2003. ...The Appellant's father was granted indefinite leave to remain in the UK in the 'legacy' backlog clearance exercise on 17th June 2011."

It is common ground between the parties that the history recited at paragraph 14 in respect of the Appellant's father is incorrect. It appears that in the original bundle that evidence was exhibited at E1. A further bundle was then produced before the hearing which did contain the correct details of the Appellant's father including his asylum interview, and screening interview. It is plain from the Tribunal file before me that in respect of the enclosures at section E the judge has written "not this case – see separate letter" and across the determination the judge has written in large letters "not this case". The correct facts are that the Appellant's father came to the United Kingdom in February 2001 and claimed asylum. That application was refused but he was granted exceptional leave to remain which was then followed by indefinite leave to remain in 2005.

23. Thus it is submitted by Miss Patel that the judge made a mistake of fact that was so fundamental that the judge had failed to give anxious scrutiny to the Appellant's case and relies upon the judgment of the Court of Appeal in **ML (Nigeria) [2013] EWCA Civ 844**. She submits that the Appellant's father was a witness at the hearing and at paragraph 36 the judge assessed his evidence about the age of his son and that his assessment of that evidence was seriously impacted by the judge's consideration of the wrong immigration history of the Appellant's father.

24. I have considered the decision of **ML (Nigeria)**. It is clear from reading that case that the decision of the First-tier Tribunal in that appeal contained serious errors which were identified by the Court of Appeal in its

judgment. The description by the judge of the proceedings was in error; he identified the bundle but referred to a skeleton argument when none had been produced, he recorded the Appellant's case as set out in the screening interview, asylum interview and statement. However there was no screening interview or asylum interview setting out the case advanced on the basis of his homosexuality. The only interview that had been before him was an old one which did not relate to the present facts. There was a serious error where a paragraph was inserted (see paragraph 7 of the Court of Appeal decision) referring to the EPDP threatening the Appellant and him being attacked and a reference was made to the Sri Lankan authorities in that paragraph. That paragraph had nothing to do whatsoever with the Appellant and appears to have been inserted from another case. There was also reference to the Grounds of Appeal and the skeleton argument where there was no such document. In submissions, the judge referred to Counsel who in fact had not been Counsel in the case but someone else. It is entirely clear that there were a series of factual errors in **ML (Nigeria)** and that it could constitute an error of law if significant to the conclusion.

25. Whilst it is the position that a series of factual errors may constitute an error of law, it is plain that the errors must be material or significant to the overall conclusions (see paragraph 10 of the decision of **ML (Nigeria)**). It is common ground that the judge recorded at paragraph 14 some details in respect of the Appellant's father wrongly. However it is further plain from the determination that when reaching a decision upon the Appellant's father's evidence, his evidence was considered and assessed upon his correct history and evidence. Contrary to the assertions in the grounds, when the judge assessed the Appellant's age, he considered a number of pieces of evidence. At paragraph 36 he gave consideration to the Appellant's father's asylum interview which was undertaken on 15th May 2011. There is no dispute that this assessment of the evidence related quite properly to this Appellant's father. At paragraph 36 the judge recorded this:-

> "I find the most damning evidence against the Appellant's claim to be aged 17 comes from his father's asylum interview undertaken on 15th May 2001. At question 40 he was asked the ages of his children and he stated '9, 7, 4 and 1' (at that date he only had four children). As the Appellant is the eldest child that would make him aged 21 today. The Appellant's father attempts to blame his statement of ages in 2001 on incorrect interpreting but I find the questions put to him is short, simple and clear and unlikely to be misinterpreted. His answer is likewise very simple consisting of the most basic numerals. Furthermore, if the interpreter incorrectly interpreted 9 he must have incorrectly interpreted the other numerals as the age sequence and gaps are correct."

26. That evidence referred to and assessed at paragraph 36 was evidence which had been produced in a supplementary bundle prior to the hearing which included the Appellant's father's screening interview and the substantive interview. There is no dispute that the judge correctly

referred to the Appellant's father and the matters contained within his own asylum interview.

27. Contrary to the assertion made by Miss Patel that the mistake of fact at paragraph 14 coloured the judge's approach of the credibility of the Appellant's father, it is plain from paragraph 36 that the judge carefully assessed the evidence given by the Appellant's father during his asylum interview when he arrived in the United Kingdom in 2001 and when the family circumstances in Afghanistan would have been fresh in his mind. The judge quite properly looked at the contents of that interview when making an assessment of the Appellant's father's evidence in relation to his age and in particular his explanation for giving what he said was incorrect information. As noted at paragraph 36, the explanation given was that the ages of the children were incorrectly interpreted. The judge considered the interview itself and noted the nature of the questions put to him which were short simple and clear and the judge found that they were unlikely to be misinterpreted. He also considered that if that explanation was correct and that he had incorrectly interpreted the age 9 then he must have incorrectly interpreted the other numerals as the age sequence and the gaps were correct. There is no suggestion whatsoever that in that assessment the evidence was based on a wrong assumption of the history but on the correct evidence given by the Appellant's father. Thus I do not find that that ground is made out.

28. The second ground relates to the judge having made an anonymity direction in which it is said it was inconsistent with the finding that he subsequently made that he would not be at risk. There is no merit whatsoever in that ground. The contents of paragraph 2 are entirely clear and demonstrate no contradiction whatsoever.

29. As to Ground 3 this relates to the judge's assessment of the Appellant's age. The judge took into account the decision of the Tribunal in **Rawofi (age settlement – standard of proof) [2012] UKUT 00197 (IAC)** reminding himself that where age is disputed in the context of an asylum appeal, the burden is on the Appellant and the standard of proof is a reasonable degree of likelihood (see paragraph 31 of the determination). The judge took into account and analysed a number of pieces of evidence before him including the Appellant's own evidence, an Afghan ID card that had been produced, evidence of the Appellant's father and a **Merton** compliant age assessment carried out by Liverpool City Council. He said this at paragraph 32 – 38:-

> "32. The Appellant's evidence to me was that he was aged 16 years on arrival and is now 17 years old. He based this on what his mother told him when he was in Afghanistan and what his father told him after he joined his father in the United Kingdom.
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> 33. The Appellant also relies on an Afghan ID card dated which states, 'AGE: based on observation, he has been determined to be 15 years old, 1391'. The Iranian year 1391 is 2012 in the Gregorian calendar and so the Appellant will be 16 or 17 now in 2013. I give very little

evidential weight to this document because, from its face, it is based on the observation of the Registrar who produced the ID card. I find that the assessment of age based solely on the appearance of the subject is notoriously unreliable.

34. Furthermore, in his witness statement dated 24th June 2013 at paragraph 3 the Appellant's father said that the ID document was obtained when the Appellant was at school and that before admission the school pupils require a date of birth certificate. This indicates to me that the ID document was needed for the Appellant to start school but, inconsistently, the Appellant's oral evidence was that he had eight years of education which would mean that he started school long before the ID document was made. I find that this further adds to the Appellant's lack of credibility.

35. The Respondent relies on a '**Merton** compliant' age assessment dated 13th December 2012 carried out by two experienced social workers who have carried out a detailed assessment. They conclude that the Appellant is 18 years old. Because of the detailed consideration and assessment of many factors during this preparation I give this assessment evidential weight.

36. I find the most damning evidence against the Appellant's claim to be aged 17 comes from his father's asylum interview undertaken on 15th May 2011. At question 40 he was asked the ages of his children and he stated '9, 7, 4 and 1' (at that date he only had four children). As the Appellant is the eldest child that would make him aged 21 today. The Appellant's father attempts to blame his statement of ages in 2001 on incorrect interpreting but I find the questions put to him is short, simple and clear and unlikely to be misinterpreted. His answer is likewise very simple consisting of the most basic numerals. Furthermore, if the interpreter incorrectly interpreted 9 he must have incorrectly interpreted the other numerals as the age sequence and gaps are correct.

37. Whilst cautioning myself as to the unreliability of visual assessment I find from my observation of the Appellant during the hearing that it is conceivable that he is aged 21 as would be the case based on his father's 2001 statement in his asylum interview.

38. For the above reasons I am satisfied that the Appellant has failed to establish, even to the lower standard, that he is aged 17. I am satisfied on all the evidence before me that he is over the age of 18."

30. It is argued on behalf of the Appellant that it was wrong to place weight upon the Social Services age assessment report because that assessment relied upon the observations of the social workers as to his appearance and demeanour. The judge considered the ID card but gave it little weight because it was based on the observation of the registrar who produced the ID certificate. To that end both relied upon the same thing.

31. In my view it was entirely open to the judge to place weight upon the age assessment of the Liverpool Social Services. A careful consideration of the report demonstrate that it was carried out by two expert social workers

whose qualifications and expertise was documented at page 17. Both were experienced in working with young people and in particular unaccompanied asylum seeking children, one social worker had completed over 30 age assessments. The body of the report was detailed and concerned a number of pieces of evidence relating to different areas of the Appellant's life in Afghanistan in which he was able to give free form narrative evidence as well as answering questions. At pages 15 to 16 they analysed the evidence that they had gathered and having done so using their experience had reached the conclusion that the Appellant was over 18 and they gave him a birth date of 1st January 1994. This was a **Merton** compliant assessment. I would observe that there had been no challenge to this age assessment outside of these proceedings.

32. The judge gave careful consideration to the Afghan ID card (which had not been placed before the social workers) but gave it limited weight for a number of reasons. The reasons given were ones that were entirely open to him on the evidence before him. Whilst it is submitted that the judge gave little weight because he claimed it was based on the observations of the registrar, there are significant differences between the detailed observations and analysis made in a **Merton** compliant assessment compared with the ID card that was issued solely on the basis of the observation of a person who was working to unknown criteria and standards. I do not find that that point has any merit whatsoever.

33. Furthermore, it is incorrect to assert that the judge attached little weight to the ID card because it was based solely on observations of the Appellant. He dismissed it for other evidence based reasons. Firstly, the timing and production of the ID card (see the reasons set out at paragraph 34) and importantly at paragraph 36 what the judge described as the "most damning evidence" came from the Appellant's own father where he had given information in an asylum interview shortly after he had left Afghanistan when his family circumstances including the ages of his children would have been fresh in his memory. In the interview he gave the age of his eldest child, that is the Appellant, as being aged 9. As the judge correctly observed that would have made him 21 at the date of the hearing. Whilst it is unfortunate that the judge at paragraph 37 made a reference to his own visual assessment, it is plain from the terms of paragraph 37 that the judge expressed himself with the caveat that "whilst cautioning myself as to the unreliability of visual assessment..." making it plain that he understood the unreliability of such an assessment however I am satisfied that this was only a limited factor in his overall assessment which was otherwise based on sound reasoning. The judge's own visual assessment could not be read as being determinative of age and was only a limited factor in the assessment that the judge made considering a number of pieces of evidence. Thus I am satisfied that the judge considered the issue of the Appellant's age properly, in accordance with the evidence and reached the conclusion that he was entitled to reach on the evidence before him.

34. It is further submitted on behalf of the Appellant that the judge did not assess his credibility correctly nor did he do so in the light of the country evidence. Miss Patel relies upon the UNHCR report in the Appellant's bundle at pages 13 to 14. It is plain from the determination at paragraph 44 that the judge did consider the background material concerning forced recruitment to the Taliban. This had been set out at length in the refusal letter at paragraph 19 (citing the Danish Immigration Services Fact-Finding Mission in Afghanistan relating to the reporting of forced recruitment of the Taliban) which had made reference to there being no reporting of forced recruitment by the Taliban and that most recruits joined voluntarily. It also made reference to the UNHCR report about recruitment by the Taliban that they had no difficulties in recruiting people, they had many volunteers and there was a willingness to join the movement and that "forced recruitment is not widely taking place." At paragraph 20 the evidence of Dr Giustozzi was quoted in which it was said by him that there was no real evidence of forced recruitment of suicide bombers, referring to young boys being "trained and indoctrinated which takes them months to years. Many of them are madrassa students..."

35. The UNHCR document in the Appellant's bundle endorsed the above information at paragraph 3. However it went on to state that the report defined "forced recruitment" narrowly where individuals first joined the Taliban under the use of threat or immediate violence. The UNHCR report went on to state that the report did not include in the definition other Taliban recruitment mechanisms based on "broader coercive strategies" including the use of tribal mechanisms to pressurise individuals into joining the Taliban. Thus it concluded that the report's conclusion that the forced recruitment is the exception rather than the rule should not be taken to apply to other forms of coercive recruitment.

36. That background material has to be seen in the context of the factual matrix of this particular Appellant's claim. His case was that he was in effect kidnapped by the Taliban outside the mosque and was given duties and training the next day to carry out a suicide attack. As the facts set out earlier demonstrate, he pleaded to see his family for one night, the Taliban agreed and during which time he escaped. Thus the Appellant's account does not sit well with the background evidence referring to "broader coercive strategies". Nor did it fit well with the background evidence referred to by the judge at paragraph 44 and set out substantively at paragraph 60 of the refusal letter (the Danish Immigration Services Fact-Finding Mission and Dr Guistozzi's evidence) where it was recorded there was no real evidence of forced recruitment of suicide bombers, relying on the other forms of "coercive treatment" referred to in the UNHCR document at pages 13 to 14 of the Appellant's bundle. Thus the judge did consider the Appellant's claim quite properly against the background of the objective material as a whole.

37. Furthermore it is plain from the determination that he gave a number of reasons as to why he did not believe the Appellant had given a credible account of what had happened to him in Afghanistan set out at paragraphs

42 to 46, noting that he did not find it credible that the Taliban, renowned for their ruthlessness would allow the Appellant and his friends to return to the village to say goodbye to their families. The fact that the Taliban would have been aware that they were reluctant recruits and might escape on the Appellant's own evidence, it was not credible that the Taliban were waiting outside the Appellant's home while he said goodbye giving them the opportunity to escape. It was not credible that they did not carry out basic precautions of ensuring he did not leave by the back of the house. Nor was it credible that the Taliban would drop him off ten kilometres away from the target and allow him to walk with the heavy weight of the bomb. Thus giving him the opportunity to change his mind or risk of being stopped by the security forces. He did not accept the Appellant's explanation that he did not know what a kilometre was to be unlikely. Furthermore he found the Appellant had been inconsistent in his statement as to the period he was held by the Taliban; in the asylum interview at question 79 he indicated he was held for four days but in the witness statement he was held for a month.

38. Whilst it is submitted by Miss Patel that the judge should not have placed weight upon Section 8 of the 2004 Act because Greece and Italy are not seen to be safe third countries, it is plain from reading the determination that at paragraph 47, whilst the judge made a reference to Section 8 noting that the Appellant had failed to claim asylum in France, that that was only one factor and that was not determinative in any way in respect of this Appellant's case. The judge had identified a number of reasons based on this Appellant's account which demonstrated that he had not given a credible or consistent account without the necessity of relying upon that factor.

39. I have considered the submission made that the judge should have taken into account the fact that he was a minor or even if the assessment was right that he was over 18, that there was "no bright line" by which he suddenly became an adult. The difficulty with that submission is that at the date of the hearing the date of birth given to him by the Appellant's father would have made him 21 years of age well over the "bright line". Even using the date of birth given by the Social Services which would have been January 1994 would have put him over 19 years of age. Thus the judge is entitled not to accede to the submission that he should be treated as a minor when assessing his evidence and general credibility.

40. As to internal relocation, the judge did not find the Appellant would be at risk in his home area and thus the issue of internal relocation was entirely redundant. It is plain that the judge dealt with this on an alternative basis. It was further plain from the evidence that in making such an assessment, the Appellant had a number of links previously with Kabul. His own evidence was that he knew the city well and visited it "lots of times" (see question 8 of the interview). He had a number of relatives in Kabul including his paternal uncle and two paternal aunts and his father in the UK had previously rented accommodation in Kabul for a period of three months so that he could visit the Appellant and his family members to join

him on a visit from the United Kingdom (see question 23). In those circumstances and relying upon the fact that the Appellant was not a minor, was otherwise fit and healthy and was not at risk the judge was entitled to find on the alternative basis that it would not be unduly harsh for him to relocate to Kabul.

41. The last issue relates to Article 8. It is submitted that the judge was wrong to find that there was nothing more than emotional ties between the Appellant and his father with whom he lived. It is plain from the findings of the judge in respect of Article 8 which is set out at paragraphs 53 to 59, that the Appellant was not a child but an adult and that there was no evidence before the judge of any special dependency between him and his father above normal family ties of affection. Whilst it is submitted that the Appellant's father was supporting him financially, that was only on the basis that it was because he was living with him. Had he chosen to live alone, he would have been eligible for support. Nonetheless there has been no evidence identified to the Tribunal that there was anything more than normal emotional ties between the father and the Appellant. The history itself demonstrated that his father had left Afghanistan in 2001 and there had been a significant period of time when the parties had lived apart. The Appellant's father had visited Afghanistan since being granted leave to remain on a number of occasions. There has been some dispute about this; Miss Patel submits that there was one visit to Afghanistan and one to Pakistan. However the Appellant in his interview at D9 and D10 (questions 23 and 24) put the number of visits made by his father as between six to seven times. Whether it was two visits or more, what is clear is that the Appellant's father had maintained his relationship with his adult son and the other close family relatives including his wife and other children by visits to Afghanistan. The Appellant's father is not a refugee and there are no reasons advanced as to why he should not be able to visit in the same way as he has done before. In those circumstances, it was entirely open to the judge to make those findings on Article 8 that he did and it has not been demonstrated in my judgment that there was any error of law identified in his approach.

42. Thus I am satisfied having considered the determination of Judge Shimmin that the determination does not disclose any error of law and thus the decision shall stand.

Decision

The decision of the First-tier Tribunal does not disclose an error of law. The decision stands.

Signed Date 4/10/2103

Upper Tribunal Judge Reeds