Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01964/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 30 October 2013	**On 7 November 2013**

Before

LORD BOYD OF DUNCANSBY
SITTING AS A JUDGE OF THE UPPER TRIBUNAL

UPPER TRIBUNAL JUDGE GLEESON

Between

BH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Chirico of Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity throughout these proceedings and after their conclusion, absent any order to the contrary by the Upper Tribunal or any other Court seised of relevant proceedings. No report of these proceedings, in whatever form, either during the proceedings or thereafter, shall directly or indirectly identify the appellant. Failure to comply with this order could lead to a contempt of court.

1. The appellant, an Afghan citizen born in 1996 (now almost 17 years old) appeals with permission against the determination of the First-tier Tribunal Judge Abebrese, who dismissed his challenge to the Secretary of State's decision that he is not entitled to the protection of the Refugee Convention or to humanitarian protection.

2. This is an upgrade appeal: the appellant has discretionary leave to remain, because of his age, and has been in the United Kingdom for since he was about 12 years old.

3. The challenge to the determination is to the reasoning, principally in paragraph 19. Permission was granted on that basis.

4. The Secretary of State's case is contained in a Rule 24 Notice in which she submits that the reasoning at paragraph 19 is adequate.

5. That was the basis on which the appeal came before us for hearing.

Upper Tribunal hearing

6. At the hearing, after a discussion with the parties, Mr Avery for the respondent relied on the Rule 24 Notice, and made no further submissions.

7. For the appellant, Mr Chirico made submissions in line with his pleaded grounds of appeal; it is not necessary to set them out in full.

Discussion

8. The analysis of the evidence and findings in the determination begin at paragraph 9 thereof, by setting out the respondent's case. At paragraph 15, the determination notes that the appellant was not called, then sets out the evidence of Miss Antonia Cohen, and the submissions made to the First-tier Tribunal. The respondent, despite not having sought to cross-examine the appellant, submitted that his account lacked credibility and had not been corroborated.

9. Paragraph 19, which covers almost two pages of the determination, is the only place where the judge makes any findings. It contains broad negative credibility findings based on the appellant's lack of knowledge of his father's position in Hizb-i-Islami before his death when the appellant was about 11 years old, and the appellant's flight to the United Kingdom, assisted by an uncle. The appellant's account is dismissed with the formula 'I do not find it credible', although the respondent chose not to cross-examine him at the hearing. In the decision at the end of his determination, the judge dismissed the asylum appeal, the humanitarian protection appeal, and also appeals under Articles 2 and 3 ECHR, although given his discretionary leave, the ECHR is not engaged.

10. The determination contains no reference to the *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*, in particular paragraph 10:3 thereof, which reminds judges that children may give less clear accounts of the factual circumstances surrounding the index events in their younger lives.

11. The determination contains no consideration of the best interests of this child pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009.

12. In addition, the judge relied upon outdated country guidance in *HK and Others (minors-indiscriminate violence-forced recruitment by Taliban - contact with family members) Afghanistan CG* [2010] UKUT 378 (IAC), failing to take account of modification to that guidance in *AA (unattended children) Afghanistan CG* [2012] UKUT 16 (IAC), the head note to which reads as follows:

> "*(1) The evidence before the Tribunal does not alter the position as described in HK and Others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC), namely that when considering the question of whether children are disproportionately affected by the consequences of the armed conflict in Afghanistan, a distinction has to be drawn between children who were living with a family and those who are not. That distinction has been reinforced by the additional material before this Tribunal. Whilst it is recognised that there are some risks to which children who will have the protection of the family are nevertheless subject, in particular the risk of landmines and the risks of being trafficked, they are not of such a level as to lead to the conclusion that all children would qualify for international protection. In arriving at this conclusion, account has been taken of the necessity to have regard to the best interests of children.*
>
> *(2) However, the background evidence demonstrates that unattached children returned to Afghanistan, depending upon their individual circumstances and the location to which they are returned, may be exposed to risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. Such risks will have to be taken into account when addressing the question of whether a return is in the child's best interests, a primary consideration when determining a claim to humanitarian protection.*"

13. We are quite satisfied that the findings at paragraph 19 do not meet the rationality standard set out in *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982. They are inadequate as to reasoning, and we are unable to understand from them why the Tribunal reached the conclusion which it did.

Decision

14. Accordingly, we set aside this determination for error of law and it will be remitted to the First-tier Tribunal (Taylor House) for re-making afresh with a time estimate of two hours and no interpreter booked. All other necessary directions will be made by the First-tier Tribunal when it receives the file.

Signed Date 6 November 2013

Judith Gleeson
Judge of the Upper Tribunal