**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/10282/2012

**THE IMMIGRATION ACTS**

| **Heard at Glasgow** | **Determination Sent** |
|---|---|
| **on 3 September 2013** | **on 6 September 2013** |

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**ZS**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr T Ruddy, of Jain, Neil & Ruddy Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1) The appellant identifies himself as a citizen of Afghanistan. An anonymity order is in place. He made his asylum claim and underwent a screening interview on 26 October 2009, when he gave his age as 16. However, an age assessment by the local authority stated that it was very obvious that he was then over 18, and he was assigned a date of birth for record purposes of 1 January 1991. He was advised at that time of the dispute over his age and that he had a right to submit further evidence of his claimed date of birth, but no such evidence has been forthcoming.

2) Consideration of the substantive claim was delayed because of the time the appellant had spent in Greece, which should therefore have been the country responsible for a substantial determination. The claim was eventually decided in the UK and was rejected for reasons explained in the respondent's letter dated 31 October 2012. The

claim was not found to be credible, but it was held that in any event the appellant could relocate to Kabul.

3) First-tier Tribunal Judge Watters dismissed the appellant's claim by determination dated 20 December 2012. The judge did not find the appellant's evidence reliable, and did not deal with the alternative of internal relocation.

4) Mr Ruddy relied on the grounds of appeal, set out at length in 7 paragraphs. They are all challenges to the adverse credibility findings. The internal relocation issue is again not mentioned.

5) Mr Matthews submitted as follows. The respondent's position had clearly been from the outset that there were very serious inconsistencies between the appellant's statement at screening interview and what he said subsequently. These went well beyond matters which might be explained away by misunderstandings or interpretation difficulties. The appellant said at screening interview that his father had died years ago and that he came to the UK because of his uncle's cruelty. This bore no resemblance to his later account that his brother joined the army and his father joined the police, that the Taliban kidnapped his brother and when a rescue attempt was made the Taliban killed his father, his two brothers, and others, and then tried to recruit him as a suicide bomber. These allegations were made years after the screening interview. The delay in deciding the claim was due to the record of the appellant having been in Greece, but that did not explain why he would not have addressed these discrepancies much earlier. It was correctly pointed out at Ground 1 that the appellant did challenge a matter put to him at the screening interview and denied having said that he met an agent in Peshawar, but that was a long way from showing misunderstanding over the whole nature of his statements. While a simple error in interpretation or a misunderstanding could arise, the discrepancies here went much further. The judge had not dealt directly with every aspect of the appellant's purported explanations, but his statement only amounted to a repeated insistence on his later account, and there was no need for the judge to set it out in any further detail. Ground 2 was only disagreement with the judge's negative finding on what the appellant said about the Taliban not harming women. Ground 3 goes to the finding at paragraph 23 that the appellant's father's bodyguards would not have left the family at the mercy of the Taliban when threatening letters had been received. That Ground was simply disagreement on the facts. It was reasonable to infer that bodyguards would be made aware of an existing threat and of good reasons to stay at the house to provide protection. That is what bodyguards are for. There was no obligation to put such a finding to the appellant for additional comment, and in any event the appellant did not now offer a further explanation. The finding at paragraph 24 (Ground 4) that the appellant was not a likely candidate as a suicide bomber was not essential to the case, and was a view the judge was entitled to take. Ground 5 was another submission that the judge failed to take account of all the appellant's evidence, and was subject to the same answer. At Ground 6, the judge was entitled to form doubts around the late production of the documents. Ground 7 added nothing of substance.

6) Mr Ruddy in response accepted that substantial credibility issues had been raised from the outset, based on discrepancies. He argued that the judge's error was in overlooking the appellant's explanations given throughout his statement and his evidence-in-chief. The judge was not entitled to follow the lines of the refusal letter without considering those explanations. The appellant did not just deny what he was recorded as having said at screening interview, he explained what he did say at the screening interview. While the judge did not have to deal with each and every point of evidence, it was a material error to overlook such an explanation, and there was nothing to show that the appellant's statement was considered in relation to the essential issues in the case. As to Ground 2, there was background evidence of a risk to women who engaged directly in activities not approved of by the Taliban. That did not support the respondent's side of the case, and the judge misinterpreted the appellant's evidence that the Taliban did not generally harm women. At paragraph 23 of the determination, regarding the bodyguards, this was not only a matter of fair notice to the appellant. The judge made a mistaken and unjustified assumption that the bodyguards would know about the threatening letters and the risk. As to Ground 4, the appellant was saying that he was being forced to become a suicide bomber, and that was an issue distinct from whether he was an obviously suitable candidate. It was accepted that Ground 5 covered points similar to those arising under Ground 1. As to Ground 6 and the documentary evidence, the appellant gave evidence that he had only recently been in touch again with his sister, an explanation which had to be taken into account, and the judge also failed to consider the terms of the documents themselves. Taking the grounds as a whole, the judge had failed to consider what the appellant said in his statement and at the hearing. The determination was of a nature which could have been arrived at without the appellant providing a statement or a hearing taking place. The whole point of an appeal to the First-tier Tribunal was to enable an appellant to put his case and to have it considered.

7) I reserved my determination.

8) At Ground 3, the appellant says he did not have fair notice of the point about the bodyguards. In general, a judge is entitled to consider the case put to him without airing concerns for further submissions, particularly where an appellant has been represented. I detect no unfairness. In any event, as made plain at paragraph 15 of HA and TD v SSHD [2010] CSIH 28, procedural impropriety does not vitiate a decision if no prejudice has been suffered. There is a sensible reason for the finding, as pointed out in the submission by Mr Matthews. I do not find this Ground to be made out.

9) Apart from the fair notice issue, the Grounds are generally of a nature attacking the adequacy of the Judge's reasons for the overall adverse credibility finding. I was not referred to any authority on how alleged error of law of this nature ought to be tested.

10) On inadequacy of reasoning the dictum of Lord President Emslie in Wordie Property Co Ltd v Secretary of State for Scotland 1984 SLT 345 at 348 may be taken as a starting point:

The decision must, in short, leave the informed reader and the court in no real and substantial doubt as what the reasons for it were and what were the material considerations that were taken into account in reaching it.

11) The Court of Appeal in England and Wales gave general guidance in R (Iran) and Others v SSHD [2005] Imm AR 435 at 542. (The regulatory framework has since changed, but the principles remain the same.)

13. … Adjudicators were under an obligation to give reasons for their decisions (see reg 53 of the Immigration and Asylum Appeals (Procedure) Regulations 2003), so that a breach of that obligation may amount to an error of law. However, unjustified complaints by practitioners that are based on an alleged failure to give reasons, or adequate reasons, are seen far too often. The leading decisions of this court on this topic are now *Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119 and *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409. We will adapt what was said in those two cases for the purposes of illustrating the relationship between an adjudicator and the IAT. In the former Griffiths LJ said at p 122:

"[An adjudicator] should give his reasons in sufficient detail to show the [IAT] the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on [an adjudicator], in giving his reasons, to deal with every argument presented by [an advocate] in support of his case. It is sufficient if what he says shows the parties and, if need be, the [IAT], the basis on which he has acted, and if it be that the [adjudicator] has not dealt with some particular argument but it can be seen that there are grounds on which he would have been entitled to reject it, [the IAT] should assume that he acted on those grounds unless the appellant can point to convincing reasons leading to a contrary conclusion."

14. In *English* Lord Phillips MR said at para 19:

"[I]f the appellate process is to work satisfactorily, the judgment must enable the [IAT] to understand why the [adjudicator] reached his decision. This does not mean that every factor which weighed with the [adjudicator] in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the [adjudicator]'s conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the [adjudicator] to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

12) I also have regard to HA v SSHD [2007] CSIH 65, in particular paragraph 17:

In the light of the cases cited to us it is convenient at this stage to formulate some propositions about the circumstances in which an immigration judge's decision on a matter of credibility or plausibility may be held to disclose an error of law. The credibility of an asylum-seeker's account is primarily a question of fact, and the determination of that question of fact has been entrusted by Parliament to the immigration judge (*Esen*, paragraph 21). This court may not interfere with the immigration judge's decision on a matter of credibility simply because on the evidence it would, if it had been the fact-finder, have come to a different conclusion (*Reid*, per Lord Clyde at 41H). But if the immigration judge's decision on credibility discloses an error of law falling within the range identified by Lord Clyde in the passage quoted above from *Reid*, that error is open to correction by this court. If a decision on credibility is one which depends for its validity on the acceptance of other contradictory facts or inference from such facts, it will be erroneous in point of law if the contradictory position is not supported by any, or sufficient, evidence, or is based on conjecture or speculation (*Wani*, paragraph 24, quoted with approval in *HK* at paragraph 30). A bare assertion of incredibility or

> implausibility may disclose error of law; an immigration judge must give reasons for his decisions on credibility and plausibility (*Esen*, paragraph 21). In reaching conclusions on credibility and plausibility an immigration judge may draw on his common sense and his ability, as a practical and informed person, to identify what is, and what is not, plausible (*Wani*, paragraph 24, page 883L, quoted with approval in *HK* at paragraph 30 and in *Esen* at paragraph 21). Credibility, however, is an issue to be handled with great care and sensitivity to cultural differences (*Esen*, paragraph 21), and reliance on inherent improbability may be dangerous or inappropriate where the conduct in question has taken place in a society whose culture and customs are very different from those in the United Kingdom (*HK* at paragraph 29). There will be cases where actions which may appear implausible if judged by domestic standards may not merit rejection on that ground when considered within the context of the asylum-seeker's social and cultural background (*Wani*, paragraph 24, page 883I, quoted with approval in *HK* at paragraph 30). An immigration judge's decision on credibility or implausibility may, we conclude, disclose an error of law if, on examination of the reasons given for his decision, it appears either that he has failed to take into account the relevant consideration that the probability of the asylum-seeker's narrative may be affected by its cultural context, or has failed to explain the part played in his decision by consideration of that context, or has based his conclusion on speculation or conjecture.

13) A distinction has to be drawn between appeals which raise issues of law and those which are essentially argument about findings of fact, presented in language of legal error. Fault should not be found by burrowing out areas of the evidence which have been dealt with less fully than others, and presenting that as a legal flaw. If there are good reasons for rejecting the credibility of a claim put forward by an appellant there is not a further requirement to analyse one by one his expressions of disagreement and of insistence upon his case, unless these disclose further specific issues requiring separate decision. The appellant's points in his statement did not rise to that standard.

14) Read fairly and as a whole the determination of the First-tier Tribunal is an adequate explanation to the appellant of why his case has failed. The appeal amounts to a challenge to the factual decision reached, rather than to identification of any error of law. The judge came to permissible conclusions, adequately explained. The grounds, although expressed in terms of legal error, do not amount to more than re-argument of the case.

15) This was also a case defeated on the alternative of internal relocation, an issue from which the appellant has sought to shift the focus.

16) The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal shall stand.

5 September 2013
Judge of the Upper Tribunal