



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

Appeal no: **AA/08413/2013**

THE IMMIGRATION ACTS

At **Field House**
on **27.10.2014**

Decision signed: **10.11.2014**
sent out: **on 19.11.2014**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Sharif GHAZAL

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: *Daniel Bazini* (counsel instructed by Leonard & Co)

For the respondent: Mr S Kandola

DETERMINATION AND REASONS

1. This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Elisabeth Davidge), sitting at Newport on 2 May, to dismiss an asylum and human rights appeal by a citizen of Afghanistan, who she found was born on 10 April 1993. Permission was granted on the basis that the judge might have relied too much on things the appellant did not mention at his screening interview on 5 April 2013, despite his age at the

time; and on the lack of support for his case from his brothers in this country.

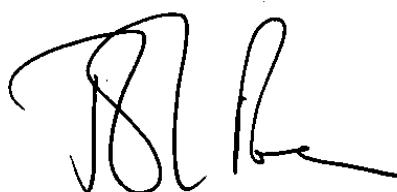
2. The first point taken for the appellant was that, though the judge had made a finding of fact in the appellant's favour on his age at paragraph 25, all she took from that at 26 was to say that it "... counts to his credit in the context of assessing credibility because I find that he has not exercised deceit as the respondent thought". The suggestion was that the judge should have added something about the need for caution in dealing with the appellant's evidence on the points in question, bearing in mind not only his age at the time, but that his source of information had been his mother and brother. I am satisfied there is nothing in this point: the very experienced judge would have had it well in mind, especially as she had just made a finding of fact on it in the appellant's favour.
3. The next point was about the way the judge had treated the evidence of the 'country expert' Dr Antonio Giustozzi at paragraphs 27 - 35: as will already be clear from that, she had dealt with it in considerable detail. The judge's first point, at paragraph 27, was that the appellant's claim that his sister had been under pressure from their uncle to sign the land transfer was contrary to what the 'country expert' had said at paragraph 7 of his report:

In Afghan inheritance law, sons inherit the property of the father. [The appellant's] mother could have sold or transferred the land before he or his brothers reached the age of 18, but the uncle *might* [*my emphasis*] not have dared to put pressure on the mother because bullying a widow would also have been seen very negatively in the community and [the appellant] and his brothers could have contested the property transfer once over 18.

4. However, what the judge took from this at paragraphs 28 - 29 was not any reason to disbelieve the appellant on this point, but a basis for saying that the 'country expert's' evidence did not add any weight to his on it. While Dr Giustozzi had expressed the opinion that the appellant's claim was generally plausible, it was not unreasonable for the judge to point out that his clearly knowledgeable evidence had shown that a transfer made under these circumstances could have been contested later; so I do not accept the criticism made of her on this either.
5. Next the judge pointed out, at paragraphs 30 - 31, first that Dr Giustozzi had mentioned that the appellant's brothers were in this country; but in fact, according to him, two were in Pakistan, and one was already over 18. This was a point the judge was entitled to note; but it had no possible bearing, either on the appellant's credibility or Dr Giustozzi's expertise on Afghanistan, and there is nothing to suggest that she thought it did.
6. Then, at paragraph 32, the judge had pointed out that the appellant had never said (see his statement, paragraphs 8 - 10) that his uncle had threatened to kill him, as Dr Giustozzi seemed to have assumed. Once again, this added nothing to the issues on hand.
7. The next point made by the judge on the 'country expert' evidence, also at paragraph 32, was that a transfer of their shares by the appellant, or his brothers, would not have disposed of their four sisters' respective half-shares. This too was correct, on Dr Giustozzi's account of Afghan law.

8. Next the judge pointed out, at paragraph 34, that what Dr Giustozzi had said about the involvement of the local politician Hajji Mohaqiq did not add to the appellant's credibility on this. It was suggested that the judge should have given him credit for knowing about Hajji Mohaqiq in the first place; but in my view that was a perfectly reasonable comment, which the judge was well entitled to make.
9. The judge's next point, at paragraphs 37 - 38, was that the appellant had apparently said nothing about Hajji Mohaqiq at his age assessment interview, and had said he had been learning English, as he wanted to join his brothers in this country. The criticism on this is that the judge should have taken no account at all of the report on that interview, since it was not 'Merton-compliant'. I see no real force in this; whatever the report's deficiencies as a finding on the appellant's age (on which after all the judge had found in his favour), she was entitled to take account of it as a record of what he had said. While the report was concerned with his age, rather than his history in Afghanistan, there is nothing to show that the judge took undue account of it in that light.
10. The final point was about the judge's treatment of the previous first-tier decision, made following a hearing on 4 October 2013, but later set aside by the Upper Tribunal on grounds partly relating to the lack of any finding on the appellant's age. The judge noted the adverse findings made in the previous decision on his failure to call his brothers to support him, even though they were in this country. It was suggested that she was wrong to do so, as that decision had been set aside.
11. While there might have been something in that, if all the judge was doing had been relying on the previous findings, it is quite clear that this was a point on which she was entitled to, and did make her own. It was an obvious point, and one which she did not need to put to the appellant himself. As she pointed out, he was represented before her, by no less a person than Mr Bazini, as it happened; but no explanation was put forward, beyond the suggestion that his brothers had not wanted to come and give evidence on his behalf. To put it as neutrally as possible, this begged a number of further questions. It follows that I reject all the manifold complaints made about the judge's decision.

Appeal dismissed



(a judge of the Upper
Tribunal)

10.11.2014