Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number**
AA/08781/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 25th September 2015	**On 16th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

NAJIBULLAH WALIKHEIL
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation;

For the Appellant: Ms G Loughran (Counsel, instructed by Bindmans LLP)
For the Respondent: Mr S Whitwell (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the refusal of his asylum claim was heard by First-tier Tribunal Judge Juss at Birmingham on the 23rd of December 2014 and dismissed in a decision promulgated on the 2nd of January 2015. The Appellant was granted permission to appeal to the Upper Tribunal on the 9th of June 2015.

2. The Appellant's asylum claim was based on his stated fear of the Taliban and the government. In the decision the Judge noted the oral evidence of the Appellant. The reasons for dismissing the appeal were given in paragraphs 26 to 28. The appeal was dismissed in relation to articles 3 and 8.

3. The grounds argue that the Judge in adopting the reasoning of the Refusal Letter failed to make a proper evaluation of the evidence and had not given proper reasons for the findings made. It is also argued that the Judge failed to take into account the evidence of the Appellant's witness in relation to

family tracing and had not taken account of the reason given for not visiting the Appellant's village. In relation to Afghanistan it is also suggested that the danger to the Appellant from the government had not been considered properly. Finally the grounds assert that the article 8 assessment is fundamentally flawed and ignored evidence that his relationship with his cousin was essentially parental and the rejection of the asylum claim affected the assessment.

4. The Home Office provided a rule 24 response but neither representative had seen a copy until shown it at the start of the hearing. Both representatives made submissions in line with their respective positions. These are set out in the Record of Proceedings. In addition to the written grounds for the Appellant it was complained that the death of his mother had not been mentioned in relation to his family in Afghanistan had not been raised in the decision and the concerns the Judge had about the evidence had not been put to the Appellant. For the Home Office it was observed that those submissions were not in the grounds.

5. The decision does set out the evidence that the Judge had and a summary of the evidence that was presented at the hearing including examination-in-chief and cross-examination of the Appellant and his cousin. The record of the evidence includes the explanation by the Appellant's cousin about where he went in Afghanistan and why. The decision also includes a summary of the submissions made by the parties.

6. In paragraph 26 of the decision the Judge expressly adopted the reasons given in the Refusal Letter for the rejection of the Appellant's claim. That is not inherently unacceptable. There is no need for a Judge to repeat in his own words his reasons and if these have already been set out elsewhere I see no reason why reference to the other document should in itself be a source of criticism. Decisions are frequently shorter than the Refusal Letter giving rise to the appeal that has to be because it is acceptable for Judges to deal with matters differently from Home Office decision makers.

7. The question is whether the Judge considered the Appellant's case properly. If adopting the approach of the Refusal Letter had been all that the Judge had done then there could an argument for saying that the decision lacked independent scrutiny but that depends on the quality of the Refusal Letter.

8. The Judge, having already referred in summary to the evidence given, also referred to ways in which he found that the Appellant's account had changed. Whilst he observed that the appellation of the Appellant's cousin had changed from that of uncle it does not appear that that was relied on a reason to reject the evidence.

9. The evidence of the Appellant's cousin with regard to his efforts to trace the Appellant's family was circular in some respects. If his evidence was reliable on the point then he could not be expected to get too close to the Appellant's village, if his evidence was not reliable then his failure to get to the village was not explained. His claim that it was too dangerous was not by itself sufficient to make his evidence reliable without some other reason to find him reliable.

10. If the other findings were justified the Judge would have been entitled to find that the Appellant's claimed fear of the government had not been made out. In rejecting the evidence of visits to the house the Judge had regard to the time that had elapsed since the Appellant arrived in the UK in 2009. He did not say so but there was no evidence supporting a claim of continuing interest in the Appellant's father or the Appellant from his cousin.

11. There is a difficulty with both the Refusal Letter and the decision which is that there is no specific reference to the age of the Appellant either when the events took place, when he was interviewed and when giving his later account. The Appellant had grown up considerably in that time and some assessment was required on the effect that that may have had on the credibility assessment when

considering differences in what he had said (such as whether his father had involvement with Hezb-i-Islami). Since his age and growing up is such a fundamental part of the case it is a topic that should have been considered, it was not considered as a factor in the assessment of credibility in the Refusal Letter and so should have featured in the findings and reasons in the decision. In the circumstances I am persuaded that the failure to address his age in the decision is sufficient to amount to a material error of law and on that basis the decision is set aside.

12. Given the nature of the findings made and the assessment that is to be undertaken I find that the appropriate course of action is to remit the decision to the First-tier Tribunal for re-hearing on all matters with no findings of the first appeal being preserved. This is not to be listed before First-tier Tribunal Judge Juss.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to the First-tier Tribunal for re-hearing.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

I make no fee award which is reserved to the First-tier Tribunal on the conclusion of the re-hearing.

Signed:

Deputy Judge of the Upper Tribunal Parkes (IAC)

Dated: 16th October 2015