



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/05164/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Field House  
**On** 11 March 2016

**Decision and  
Promulgated  
On 6 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**[Z A]  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Smith (counsel) instructed by Bindmans LLP  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, on the basis of the appellant's age and to preserve the anonymity direction made in the First-tier tribunal.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Aujla promulgated on 15 November 2015, which dismissed the Appellant's appeal.

3. The Appellant was born on [ ] 1998 and is a national of Afghanistan.
4. On 30 July 2010 the respondent refused the appellant's claim for asylum, but, because of the appellants the young age, granted leave to remain in the UK until 30 July 2013. At that stage the appellant did not appeal the refusal of asylum. On 22 July 2013 the appellant applied for further leave to remain in the UK. The respondent refused that application on 6 January 2015, but granted further discretionary leave to remain in the UK until 6 June 2015.
5. The appellant has submitted a separate application for leave to remain in the UK on article 8 ECHR grounds. The respondent has refused that application. The appellant appealed the respondent's refusal. That appeal was due to be heard in mid-March 2016 before the First-tier, but the hearing has been vacated to await the outcome of this appeal.

### The Judge's Decision

6. The Appellant appealed against the respondent's decision of 6 January 2015 (refusing asylum) to the First-tier Tribunal. First-tier Tribunal Judge Aujla ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged and on 25 January 2016 Upper Tribunal Judge Rintoul gave permission to appeal stating

*"It is arguable that First-tier Tribunal Judge Aujla erred in that, having indicated [41] that he had serious concerns about some of the assertions made in an expert report, these are not adequately identified, nor is it clear which parts of the report he accepted and which he did not. It is in particular unclear at [46] why the expert's opinion that the appellant might be treated as a deserter was rejected.*

*"All grounds are arguable"*

### The Hearing

8. (a) Ms Smith, for the appellant, adopted the terms of the grounds of appeal. She told me that the Judge had failed to make clear findings in relation to an expert report relied on by the appellant, and had failed to indicate whether he rejected or accepted the expert evidence. The thrust of her argument was that the decision was undermined by a failure to provide adequate reasons, and a failure to take account of material evidence. She told me that the Judge accepted the core aspects of the appellants claim at [44], but then refused to accept the appellant as a credible witness at [48] when consideration was given to the appellant's attempts to contact his mother.

(b) Ms Smith reminded me that there are four grounds of appeal. The fourth ground of appeal is a criticism of the Judge's treatment of part of the appellant's claim that he risks persecution as an unaccompanied minor if returned to Afghanistan. The appellant celebrated his 18<sup>th</sup> birthday in January 2016. Miss Smith restricted submissions in relation to the fourth ground of appeal by arguing that the appellant has only just attained majority.

(c) Ms Smith drew my attention to the report prepared by Dr Schuster (between pages 65 and 100 of the appellant's bundle). She argued that although the Judge appears to reject the expert report at [41], the Judge does not adequately specify why he rejects the report. She told me that that is a material error of law because (she argued that) the Judge did not make clear findings, but instead said at [41] and [45] that he had studied the report and now rejects it.

(d) Ms Smith told me that it is a crucial part of the appellant's claim, supported by the expert's report, that the appellant will be treated as a deserter, and that that is not a matter with which the Judge engages at all. She reminded me that the expert report finds that the appellant is westernised and will be easily identified in Afghanistan as a young man who spent his teenage years in the UK. She told me that despite the Judge's findings at [49], the decision does not reconcile the expert's report with the Judge's decision that the appellant does not have a profile which would attract risk in Afghanistan.

(e) Ms Smith told me that the Judge has not adequately considered internal relocation, and that the Judge's conclusion at [50] of the decision elides consideration of the expert report.

(f) Ms Smith told me that the Judge's findings at [48] (that the appellant had not been truthful about contact with his mother) flies in the face of the findings at [44] of the decision and does not take account of the unchallenged evidence that the appellant had provided truthful information to the British Red Cross, which led to contact with his cousin in Afghanistan. She told me that the Judge failed to consider TN, MA & AA (Afghanistan) v SSHD [2015] UKSC 40.

8. Mr Tarlow, for the respondent, relied on the terms of the rule 24 reply submitted for the respondent. He told me that the decision does not contain any errors, material or otherwise; that the decision is a carefully worded, well-reasoned decision containing adequate findings of fact leading to a conclusion which is manifestly open to the Judge to reach. He reminded me that the expert's report is lengthy, and told me that it would be unrealistic for the Judge to refer to each paragraph contained in such a lengthy report. He told me that, in reality, the challenge is simply disagreement with the Judge's findings of fact rather than an argument that a material error of law has been made. He urged me to dismiss the appeal and allow the decision to stand.

## Analysis

9. The Judge only mentions the expert report in three paragraphs of the decision. At [38] the Judge states that he is taking the report into account. At [45] he repeats that he is taking the expert's report into account. At [41] the Judge states

*"I have carefully studied the expert report. Whilst I have given the report appropriate weight, I do have serious concerns about some of the assertions made therein. There are a number of assertions made by the expert which were not independently sourced and I raised my concerns during Ms Smith's submissions when she was referring to the expert report."*

10. Is not sufficient for the Judge to say that he is simply taking account of the expert report. It is not clear from [41] which part of the expert report the Judge accepts and which part he rejects. The objective reader cannot tell what weight has been attached to the expert report, even though the Judge declares that the weight attached is appropriate. The decision contains no meaningful analysis of the contents of the expert report, not even a comparison between the expert's conclusions and what is found in the background material.

11. In NA v UK Application 25904/07 2008 ECHR 616 it was said that *"in assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they are compiled, the consistency of their conclusions and that corroboration by other sources are all relevant considerations."*

12. The Judge only deals with the expert report at [41], and there only gives the report superficial attention, failing to reach a conclusion - or even make findings - in relation to the quality of the evidence from the expert. Although the Judge makes reference to *"serious concerns"* he does not at any point in the decision set out what those concerns are. The superficial treatment of the expert report amounts to a material error of law.

13. At [44] of the decision the Judge finds that overall the appellant gives a credible account. The Judge starts [48] of the decision by stating that he does not accept the appellant's account of his attempts to maintain contact with his mother in Afghanistan to be credible. There is clearly a conflict between the Judge's findings at [44] and [48]. The Judge does not provide adequate reasons for explaining why on the one hand he finds the appellant to be credible but in other respects he does not find the appellant credible. In his overall assessment of credibility, the Judge does not take account of the accepted fact that the appellant cooperated with the British Red Cross and gave them sufficient information to enable contact to be established with the appellant's cousin in Afghanistan.

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. I find that the inadequacy of findings in relation to the detailed expert evidence placed before the First-Tier together with the lack of reasoning surrounding the conflicting findings about the appellant's credibility amount to material errors of law. I consider the error to be material because had the Tribunal conducted a properly reasoned fact finding exercise, based on an analysis of the evidence, the outcome could have been different.

16. I therefore find that the decision is tainted by a material errors of law. I must set the decision aside.

#### Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 a case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

*(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or*

*(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*

18. Both Ms Smith and Mr Tarlow agreed that if I find a material error of law, this case should be remitted to the First-tier because the appellant has an outstanding appeal before the First-tier and it is desirable that both matters be dealt with together. In this case I have determined that the case should be remitted because of the nature and extent of the fact finding exercise necessary to reach a just decision in these appeals. None of the findings of fact are to stand; a complete re-hearing is necessary.

19. I remit the matter to the First-tier Tribunal sitting at Taylor House to be heard before any First-tier Judge other than Judge Aujla.

## **CONCLUSION**

### **Decision**

**20. The decision of the First-tier Tribunal is tainted by material errors of law.**

**21. I set the decision aside. The appeal is remitted to the First Tier Tribunal to be determined afresh.**

Signed

Date 15 March 2016

Deputy Upper Tribunal Judge Doyle