



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

Appeal Number: PA/01010/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 May 2017**

**Decision & Reasons Promulgated  
On 24 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**AA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B Burdock of Counsel instructed by JD Spicer Zeb Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. AA is a citizen of Afghanistan and his date of birth is [ ] 1999. He made an application for asylum and this was refused by the Respondent on 18

January 2017. The Appellant's claim was based on his father activities. His evidence was that his father was a lorry driver delivering food to NATO forces based in Ghazni and as a result of this he was beaten up by the Taliban. He was released and resumed work. He was then, according to the Appellant taken again by the Taleban along with the Appellant. They were tortured and then released. The Appellant fled Afghanistan.

2. The claim was rejected by the Respondent. It was briefly dealt in the Reasons for Refusal Letter. The Respondent, at paragraph 20, noted that the Appellant was unable to provide any details regarding the name of the company which employed his father, the location of the company, the nature of it and whether the company had an administrative office. It was for this reason the Respondent rejected the Appellant's claim. There was no further analysis of the details of the claim.
3. The Appellant appealed against the decision of the Respondent and his appeal was dismissed by Judge of the First-tier Tribunal Maka following a hearing on 2 March 2017. The decision is dated 9 March 2017. The Appellant was granted permission by Designated First-tier Tribunal Judge Macdonald on 3 April 2017.
4. The Appellant attended the hearing before the First-tier Tribunal when he was aged 17. He was aged 16 when he arrived in the UK. Under the heading of 'preliminary issue' the judge recorded that Counsel representing the Appellant sought a direction that the Appellant should not be called or cross-examined since he had produced a witness statement and had been substantively interviewed. The judge's attention was drawn to question 175 of the interview where it was noted that the Appellant was crying. Counsel reminded the judge that the Appellant's age was not in dispute. The Presenting Officer stated that she did not have many questions to ask the Appellant. Nevertheless she stated that cross-examination was necessary and the Appellant was cross-examined and he relied on a witness statement at the hearing dated 12 August 2016.
5. The findings of the judge are found at paragraphs 42 onwards:

“42. I have carefully considered all the evidence before me and in particular paid full regard to the oral evidence that was given before me at the hearing and which is set out in part within this determination. I have also carefully considered the documents and the submissions made to me.

43. I have paid due regard to the Appellant's age at the time of the events and given due consideration to giving him the benefit of the doubt. I have also assessed and paid greater attention to the objective evidence in question bearing in mind the Appellant was still a minor at the time. When considering the benefit of the doubt I have taken cognisance of **KS (benefit of the doubt) [2014] UKUT 00552 (IAC)**.

44. I accept the Appellant is a national of Afghanistan and I accept he is a minor. I do not however accept the Appellant's father was a delivery driver working for a company associated with NATO. I do not accept this for a number of reasons. I have read and re-read the Appellant's interview and witness statements carefully. I find the Appellant knew very little about his father's job and employment. He did not know the name of the company his father worked for (Q99) or what kind of company it was (Q100). He did not know who owned the company (Q105), how many people were there (Q106) and whether his father travelled with someone or alone (Q117). I do find this plausible given his father had been delivering food as a lorry driver for 4-5 years (Q98). I note the Appellant even on his own date of birth was aged at least 10-11 at the time. I do not accept as plausible he would not know the name of his father's company or more detail about it given the period of time his father had been delivering fruit to NATO forces.
45. I have considered the issue of the Appellant's age and Counsel's helpful submission that there were NATO forces based in Ghazni at the time. This makes it all the more implausible the Appellant could not tell me these important details about his father's job. I note the Appellant was able to give the interviewing officer a lot of information about Afghanistan including currency (Qs 60-61), famous landmarks (Q67) and neighbouring cities and countries (Q67 and 75). This information would only be known by a child who was well versed in the geography and set up of his country. I do not find it plausible the Appellant would do so well in remembering details about landmarks in Kabul and in other cities (Q67) but could not remember the name of his father's company.
46. I have also noted the inconsistent information given by the Appellant in his accounts. In his witness statement he said his father was arrested one and a half months before he fled Afghanistan. He was delivering food in Ghazni and was detained for 3 days in an unknown place where he was beaten. After his release he continued working.
47. In his asylum interview, he said his father was beaten up severely (Q131) with scars and signs on his hands and body (Q132). He was on his way to Ghazni when he was taken (Q130) and not in Ghazni, which he said in his statement. He was kept for 3 days by the Taliban (Q134). After his release, he said his father joined back to work (Q140). I do not find it plausible that someone beaten severely with scars and signs on their hands and body would be able to go back to work immediately upon release.

48. In his statement, the Appellant said some 2 weeks later he and his brother Abdul, along with their father were all arrested at home. In his interview, he initially said the second arrest was a few days after his father's release (Q140) and later on said it was between 15-20 days after his father's release (Q142). That is not 2 weeks. He said only the 3 males present were taken (Q156) but made no mention of his other brother, who was also present (Q148). In his statement he said he was made to walk a few minutes before being put in a vehicle and being driven for around an hour. In his interview, he was driven for a while around one to one and half hours and then made to walk for a 'long walk' (Qs 153-155). This is not the same as what he said in his witness statement. I am satisfied the only reason there are these discrepancies is because the incidents did not happen. I do not accept this is anything to do with the Appellant's age or vulnerability given his witness statement was submitted before his asylum interview.
49. I also note the Appellant's time line just does not add up. If his father's first persecution was one and half months before he left and he was detained for 3 days and then 15-20 days later the Taliban came back and detained the Appellant for a further 3 days that would at best amount to 26 days (3 + 20 + 3). At Q174, the Appellant said his father was stopped again 3-4 days after coming home (after the second release) and that was the point at which after 2 to 3 days he arranged for the Appellant to leave the country. Even on a generous analysis this is not one and half months prior to leaving the country.
50. Besides these discrepancies, I do not find the Appellant's account plausible as a whole. I do not accept the Taliban with their ruthless streak would allow the Appellant's father to be released with the help of village elders and then allow him to work for another 15-20 days before they go and visit him again at home knowing full well he had disobeyed them and knowing where he lived. I do not accept as plausible nor reasonably likely the Taliban would then take him away again, torture him, the Appellant and his brother and then release his father again after some 3-4 days later. This is even more implausible considering his father was a 'traitor' by working with NATO and by marrying a Shia thereby being called an infidel or disbeliever (Q173).
51. Given the Appellant's father had disobeyed the Taliban (on 2 occasions) and given his background of marrying a Shia woman, I do not find it plausible the Taliban would then want him to join them or work for them being a disbeliever. I do not find it plausible he would then be threatened (after a 3<sup>rd</sup> encounter - Q174). I also do not find it plausible his first concern is to get the Appellant out rather than his other 2 brothers (including his

brother Abdul who was also tortured) and himself or the rest of the family. The threat from the Taleban was to his father and not to the Appellant.”

6. For the purposes of this decision I do not intend to deal with all the grounds but I will deal with two issues raised in ground 3 and ground 4. The judge did not accept that it would be plausible that the Appellant would not know the name of the company employing his father and he engaged with the issue raised in the Reasons for Refusal Letter at paragraphs 44 and 45 of the decision. However, the judge made a significant number of adverse credibility findings that were not raised in the Reasons for Refusal Letter or indeed at the hearing by the Respondent.
7. Whilst it is for the Appellant to present his case and the burden of proof rests on him and being represented it is reasonable to expect his representative to identify inconsistencies in his account and to engage with them, what concerns me here is that the issues taken by the judge may involve a misreading of the evidence or taking answers that the Appellant gave in his interview out of context. At paragraph 4.2 (ground 3), it is argued that the judge did not take proper account of all the evidence in respect of the finding at paragraph 47 of the decision where the judge found that it would not be plausible that someone beaten severely with scars and signs on their hands and body would be able to go back to work *immediately* upon release.
8. I have considered what the Appellant said about the issue in his asylum interview in answer to questions 140 and 142 and it is fair to say that the Appellant does not state at any time that his father returned to work immediately after his release and I do not find it was a reasonable inference for the judge to conclude.
9. In relation to paragraph 4.3 (ground 3) this relates to the finding of the judge at paragraph 48 relating to the second time the Appellant's father was apprehended by the Taleban (this time with the Appellant) and the judge concludes that the evidence given by the Appellant is discrepant. The judge made reference to the Appellant's evidence in his witness statement that two weeks after the release of his father he was arrested, and the judge compared this to what the Appellant said in his interview. Initially he said that he was arrested a few days after his father's release in answer to question 140 and later he said it was between fifteen to twenty days after his father's release in answer to question 142. However it is correct to say that in answer to question 142 the Appellant stated "*roughly* I would say between 15-20 days" and the judge's finding takes the answer out of context.
10. It is asserted at ground 4 that the judge made a material misdirection in relation to the findings at paragraph 45 and the presence of NATO forces. Whilst it is a matter for the judge what weight to attach to the evidence,

the finding that the fact that NATO forces were present in Ghazni at the material time undermines the Appellant's evidence (as opposed to having corroborative value) is inadequately reasoned and premised on the Appellant having forgotten the relevant information about his father's employment, whilst his evidence was that his father did not tell him the name of the company. There are a number of other issues raised in the grounds, but in my view, the cumulative impact of the above errors are such that it is not necessary for me to engage with each and every ground.

11. I set aside the decision to dismiss the Appellant's appeal. The matter will be heard afresh. No findings are preserved.

**Notice of Decision**

12. The decision of the FtT is set aside. The matter is remitted to the FtT for a fresh hearing.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Joanna McWilliam

Date 23 May 2017

Upper Tribunal Judge McWilliam