Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01881/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 May 2017	**On 17 May 2017**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MR KHAKSAR KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Robinson, Counsel, instructed by Turpin Miller LLP
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr Khan against the determination of First-tier Tribunal Judge Broe, whose determination was promulgated on 1 February 2017. In it the judge dismissed the appellant's appeal against the decision of the Secretary of State made on 6 October 2015 to refuse his asylum claim. The appellant was found to have been born on 1 January 1998 in accordance with an age assessment which had been conducted by Oxford.

2. The appellant is a citizen of Afghanistan and he entered the United Kingdom avoiding immigration controls on 21 January 2015 and thereafter made a claim for asylum in April 2015 and was interviewed both at screening level and for a full interview in the course of 2015, resulting, as I have said, in the refusal decision of October 2015.

3. The appellant's claim was set out in some detail between paragraph 10 and paragraph 36 of the Judge's determination. It is a feature of this case that evidence was available to the judge which included the account that was advanced by Noor and his elder brother Wali, who had left Afghanistan in 2006 and had since been granted settled status in the United Kingdom and is now, as I understand it, a British citizen.

4. The determination contains findings of credibility and fact between paragraph 41 and paragraph 51. The challenge made in the grounds of appeal is a step-by-step challenge to each of the relevant findings of fact made by the First-tier Tribunal Judge which culminated in his conclusion that the appellant had failed to make out a claim for international protection. It is important to note that the age assessment setting the appellant's age as 1 January 1998 meant that the appellant was 19 years old or thereabouts when the appeal was heard by the First-tier Tribunal Judge in Birmingham on 3 January 2017 though of course one takes a certain flexibility of approach when one realises that the dating of birthdays in Afghan is a difficult process; normally, it is a matter of attributing 1 January to a given year. In any event what it means is that on any view the appellant was an adult when the case was determined by the First-tier Tribunal Judge.

5. The judge opens his comments by noting that the appellant is 18 years old but that much of his account had been provided at a time when the appellant was a minor. He also noted that although his brother Wali was a great deal older than he was, nevertheless much of his account in Wali's interview many years ago was provided at a time he too was a minor. The judge took that into account.

6. The judge's findings begin at paragraph 42 when he notes that the appellant was fingerprinted in Hungary on 27 November 2014. That provides a sort of datum point from which all assessments of time relating to the date of his departure from Afghanistan can properly be assessed. We know that the appellant was present in Hungary on 27 November 2014. It is also the case that when he was interviewed on 7 April 2015 he said that he had left Afghanistan three months earlier. The judge took that therefore as being inconsistent (as indeed it was) with a claim to have been in Hungary on 27 November 2014. The judge worked back and said that the appellant must have left Afghanistan a great deal earlier.

7. Ms Robinson on behalf of the appellant makes a number of submissions in relation to the chronology. These are fully set out in paragraph 14 of her skeleton argument where she notes that the appellant was indeed fingerprinted on 27 November 2014. It is also clear that he entered the

United Kingdom on 21 January 2015 and claimed asylum on 7 April 2015 and that he said, at some stage, that he had left his country roughly three months before as seen at A4 in the respondent's bundle. In the screening interview he said at B4 that he had left Afghanistan about three months ago and it took approximately two months to reach the United Kingdom. In other passages in his statement of evidence and in his appeal statement he said at one time that he did not know when he left the country and in his appeal statement that he had left in early October 2014.

8. What therefore is said is that, whilst the judge relied upon the inconsistency arising from the screening interview, that inconsistency may have been the appellant saying that it was *not* three months before the interview that he had left Afghanistan but it was three months *before he arrived*, which would render the appellant's account consistent with fingerprints having been taken in Hungary on 27 November 2014.

9. For my part, I do not consider this was a particularly compelling piece of reasoning on the part of the Judge. He was certainly entitled to say that his interviews were at variance with each other but overall I would not regard it as being central; nor is there any indication that the First-tier Tribunal Judge attached an over-amount of weight on it. Suffice it to say that it was open to him to comment upon this discrepancy and the weight that he attached to it is obviously seen in the context of the reasoning which follows between paragraphs 43 and 51. Accordingly I do not treat it as being a flaw which renders the remainder of the determination unlawful but nor do I consider it to be a particularly compelling piece of the judge's reasoning. Inevitably, when assessing credibility some points are going to carry more weight than others.

10. There then follows in paragraph 43 a consideration of the appellant's claim, the centrepiece of his claim being that he was abducted by the Taliban and then forced to be a suicide bomber. This was an account which was not accepted by the judge. It is a feature of the claim that in his interview he said that the Taliban had come to the house on a number of occasions to persuade his mother to join them and unsurprisingly his mother was adamantly opposed to that. Nevertheless he was abducted by force and forced to become a suicide bomber, the inference being (quite reasonably) that he did not wish to do so. There is no suggestion that he espoused extreme Islamic thinking about others in Afghanistan. There is no suggestion that he espoused extremist ideology and if he had been a suicide bomber then the inference at any rate is that he would have done so as a result of his abduction by the Taliban. There is not any evidence, as I understand it, of a process of indoctrination.

11. Against that background the judge came to assess his claim that on the day before he was about to commit suicide in an attack in Afghanistan the Taliban brought him back to his home and it was at that stage he claims that he was persuaded by his mother and brother not to participate. There is a difference in the nature of the claim that the appellant was

advancing in that there was no reference in his statement to his being a willing and 'happy' participant in the potential bombing by his suicide whereas when he gave oral evidence he said he was 'happy' to be such a bomber until dissuaded by his mother and brother. Why he should have been happy is left unexplained. It is also part of his claim that his mother and brother were living at the family home until he left Afghanistan.

12. The Judge's finding is challenged in paragraph 3 of the grounds but I am in no doubt that this was a finding that was open to the First-tier Tribunal Judge. If the appellant had been a radicalised member of the Taliban it was on its face implausible and indeed highly unlikely that the Taliban would take steps to return him to his family on the night before his suicide. If he was in such a committed sense then logic would dictate that the Taliban would do nothing to upset his commitment, all the more so since the Taliban must be taken to have known that his mother and brother were *not* similarly radicalised and in a position where they would continue to persuade him of the good sense of *not* being a suicide bomber.

13. It follows from this that even if he was *committed* then it is unlikely that this would have taken place but if he were *not* committed then it is improbable to a very high degree that the Taliban would have jeopardised the chances of a successful suicide bombing attack on the following day by placing the appellant in the heart of his family in circumstances where his mother and brother might reasonably attempt to dissuade him, as indeed happened, according to his account. For those reasons I see nothing wrong in paragraph 43. It was a matter that was open to the First-tier Tribunal Judge.

14. As I have said, the appellant's account was on the basis that his mother and sister were living at the family home at the relevant time. As the Judge points out in paragraph 44, that could not be reconciled with the evidence of his brother Noor, with whom the appellant travelled and on whom the appellant relied as a witness of truth. On his account the house collapsed after an attack by shelling in 2004, some ten years before, and indeed that account was supported by his elder brother Wali, who said that the home had indeed been struck in an attack but this time an attack in August 2006 and it was said that he left Afghanistan immediately or some time after that attack. Noor's evidence was that Wali left Afghanistan not because of the attack but because their mother did not want them to work with the Taliban.

15. The appellant clearly sought to reconcile the various accounts by providing a third and one might say a midway version of events which sought to square the circle. He did not mention an attack on the house in his screening interview or in his subsequent documentary accounts. However, what he said in cross-examination was that one side of the house had collapsed. This was therefore an attempt at reconciling claim that he continued to live in the house until he left Afghanistan and the brother's account that the house had been destroyed in an attack in either 2004 or 2006. It is entirely unsurprising that the judge did not accept this

and, indeed, made the legitimate point that he did not find it credible that such a significant event would not have been mentioned in the various sources of material that had been provided prior to the proceedings and in the course of the proceedings but mentioned only for the first time when the hearing took place in January of 2017.

16. The Judge went on to find a further discrepancy and that was in relation to the various accounts that had been provided. In Wali's screening interview he had said in answer to question 3.3 that he saw his mother's body two days after her death. This would have been the clearest evidence that his mother had died. That of course is not to be reconciled with the appellant's claim to have been living with her in 2014 That was a difficulty which had to be faced and it was all the more difficult because Wali was found to be evasive when asked about the evidence that he had provided on another matter. Paragraph 44 of the determination is a proper recital of the accounts that were put forward upon which there were significant differences and upon which the judge was not satisfied that a truthful account had been provided by the appellant.

17. He then turned to consider Wali's evidence in somewhat more detail and Wali had said that the appellant himself had died in the attack on the house in August 2006. He had also said that the appellant was 13 and that he had been born in 1993. There is a substantial discrepancy in the age that was attributed to the appellant by Wali. Contrast that with the appellant's case that he was born on 1 January 1999 or the Oxford finding that he had been born on 1 January 1998. This of course could have been entirely explicable by Wali's lying and was not anything to do with the appellant. The judge rightly found that it was Wali who was not telling the truth but then of course it was also the case that the appellant's claim was said to be supported by Wali's evidence. In paragraph 46 there is also a reference made to the inadequacy of Wali's evidence in relation to no mention being made of a sister.

18. Perhaps more importantly is not what Wali had to say but what the appellant himself had to say and this is dealt with in paragraph 47 of the determination where the appellant said that he had relatives in Afghanistan being a mother and sister. In examination-in-chief he said that he did not have anyone in Afghanistan apart from mother and sister but in cross-examination he revealed the existence of a maternal aunt. Not only was there a maternal aunt but that this aunt was living in the same area.

19. More significantly still perhaps is that notwithstanding the fact that he had an aunt who lived in the same area, he said that he did not know if she had children. It was not simply that he knew she had no children but he *did not know* whether she had children and did not therefore know whether he had any cousins. Those cousins had been mentioned by Wali as being persons who had arranged his journey. The Judge was rightly able to take into account that this was a highly incredible version of events provided by the appellant in that if he had an aunt living in the area it was

inevitable that he would know something about her circumstances and in particular whether there were children.

20. It also goes, in my judgment, to a further element in that where an individual does not tell the truth about other family members then this is likely because the individual wishes to maintain the fiction that there is no-one to whom he could turn either living in Afghanistan or elsewhere. Were there to have been relations including cousins living nearby that would undermine his claim to be in difficulties in returning to Afghanistan.

21. The attempts to trace the mother and the sister in Afghanistan conducted by the Red Cross resulted in a letter from the Red Cross to the effect that the mother and sister had moved from the village in February 2016 but had moved to an unknown location but the Judge noted that no reference was made to aunts or cousins in the search conducted by the Red Cross.

22. There is a final point made by the Judge in paragraph 49 and that is in relation to a curious feature of this case and that is that DNA tests were undertaken in which it was revealed that Wali and Noor were brothers but the appellant himself was only a half-brother. The judge makes no finding in relation to the circumstances in which the appellant was conceived, indeed, he could not do so but I think he was entitled to make the point that, had there been another man who was in a relationship with his mother then it would have been something about which the appellant might properly have made some comment, even if it was merely to say that he was unaware during his stay in Afghanistan of anybody who might have been his father.

23. In paragraph 50 the Judge then concludes by saying that he did not accept the account of the appellant's claim for asylum and accordingly he rejected it.

24. There is also in paragraph 51 another significant finding which, as I understand it, is not challenged by the appellant and indeed could not properly be challenged and this is that, when considering the question of relocation to Kabul, the Judge found it more likely that the appellant answered truthfully when he said that he came to this country for a better life. That finding is entirely consistent with the Upper Tribunal's thinking in *AK (Article 15(c)) Afghanistan CG* [2012] UKUT 163, in which the Tribunal considered the position of relocation to Kabul and said this:

> "Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account both in assessing safety and reasonableness not only the level of violence in that city but also the difficulties experienced by that city's poor and also the many internally displaced persons living there, these considerations will not in general make return to Kabul unsafe or unreasonable."

So in conclusion the judge's finding that there was a relocation option reasonably open to the appellant was one that was properly open to him.

25. For these reasons I find that notwithstanding the detailed critique that is made of the determination in the grounds of appeal, those grounds are not made out and consequently I reject the appellant's appeal against the determination of the First-tier Tribunal. The decision I make is that there is no error on a material point of law and that the determination of the First-tier Tribunal Judge will stand.

DECISION

The First-tier Tribunal Judge made no error of law and his determination of the appeal shall stand.

No anonymity direction is made.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
11 May 2017