



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

Appeal Number: PA/05279/2017

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 19 October 2018**

**Decision & Reasons  
Promulgated  
On 13 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**N A S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J Lewis instructed by Migrant Legal Project (Cardiff)  
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

### **Background**

2. The appellant is a citizen of Afghanistan. He claims to have arrived clandestinely in the United Kingdom on 15 October 2015. On 4 March 2016, he claimed asylum based upon a fear of his stepfather and the Pashtun Kochi people.
3. One of the issues in dispute was the appellant's age. On 18 May 2017, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR. In doing so, the Secretary of State accepted an age assessment conducted by Kent County Council that his date of birth was 1 January 1997 so that, at the date of decision, he was 20 years and 4 months old.

### **The Appeal**

4. The appellant appealed to the First-tier Tribunal. Judge K Real dismissed the appellant's appeal on all grounds. Judge Real accepted, based on the evidence before her, that the appellant was an adult. She accepted that "given the history of violence at the hands of his stepfather" that he was at real risk in his home area and, applying the respondent's guidance, "there is unlikely to be effective state protection" (see para 44 of her decision). Nevertheless, again having regard to the fact that the appellant was an adult, she found that it would not be "unreasonable or unduly harsh" for him to relocate to Kabul (see para 46).
5. The appellant appealed to the Upper Tribunal. Permission to appeal was granted by the First-tier Tribunal (DJ Shaerf) on 9 November 2017.

### **The Judicial Review**

6. Meanwhile, the appellant lodged judicial review proceedings in the Upper Tribunal challenging the age assessment of Kent County Council. In a judgment handed down on 10 April 2018, UTJ Canavan quashed the age assessment decision made by Kent County Council. She made a declaration, based upon the evidence before her, that the appellant's date of birth was 15 March 2000.
7. The effect of this decision is, of course, that at the date of Judge Real's decision on 30 August 2017, the appellant was a child aged 17 years and 5 months.

### **The UT Hearing**

8. The appeal was listed before me for a Case Management Hearing on 19 October 2018.

9. At that hearing, Mr Howells who represented the Secretary of State accepted that the First-tier Tribunal had erred in law by treating the appellant as an adult in the light of the judicial finding in the age assessment challenge. That, he accepted, had implications for the judge's assessment of whether it was unreasonable or unduly harsh for the appellant to relocate to Kabul.
10. With the agreement of Ms Lewis, who represented the appellant, he invited me to treat the hearing as an error of law hearing and to set aside the First-tier Tribunal's decision.

### **Conclusions**

11. In the light of that agreement and Mr Howell's concession that there was a material error of law (based upon an error of fact amounting to an error of law) by treating the appellant as a child at the date of hearing, I agreed to determine the error of law issue.
12. I am satisfied that there was a material error of law and that, albeit through no fault of her own, the judge fell into error by taking as a material fact that the appellant was an adult at the date of hearing. His date of birth was, in fact, as the Upper Tribunal found in the age assessment judicial review, 15 March 2000, such that at the date of hearing he was a child aged 17 years and 5 months.
13. It was agreed that the judge's findings in relation to the risk on return of the appellant to his home area should stand. It was agreed that the sole outstanding issue in relation to the appellant's international protection claim was whether he could safely and reasonably internally relocate to Kabul having regard to all the circumstances, including his age and mental health. It was also agreed that the appellant could continue to rely on Art 8 at the remitted hearing.

### **Decision**

14. For the above reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of an error of law and that decision is set aside.
15. The appeal is remitted to the First-tier Tribunal (Taylor House) to be heard by a judge other than Judge K Real in order to determine whether the appellant can internally relocate to Kabul and whether his return would breach Art 8 of the ECHR.
16. To the extent I have already indicated, the judge's findings are preserved that he would be at risk on return to his home area and that he would be unable to obtain a sufficiency of protection.
17. In order to allow the appellant to obtain updated expert evidence and psychiatric evidence, the appeal should not be listed before 1 February 2019.

Signed

A handwritten signature in black ink that reads "Andrew Grubb". The signature is written in a cursive style and is underlined.

A Grubb  
Judge of the Upper Tribunal

Dated 26 October 2018