Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05460/2017

THE IMMIGRATION ACT

Heard at Field House
On 8th February 2018

Decision & Reasons Promulgated
On 22nd February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

JS
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Jaquiss counsel instructed by Barnes Harrild & Dyer
For the Respondent: Ms Isherwood Senior Home Officer Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all of the circumstances I make an anonymity direction.

3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Geraint Jones QC promulgated on the 20th July 2017 whereby the judge dismissed his appeal against the decision of the Respondent to

refuse his protection claim on the grounds of asylum, humanitarian protection and Articles 2 and 3 of the ECHR.

4. By leave granted on 12 December 2017 Upper Tribunal Judge McWilliam granted permission to appeal. In granting permission the judge noted the following:-

> *"By any account the appellant was a child at the date of the hearing before the judge on although this was noted by the judge, it is arguable that the judge did not consider the extent to which is age impacted on his evidence. The appellant did not give oral evidence in this was arguably a factor the judge took into account when assessing credibility (see paragraph 40 (v)). It is arguable that unfairness followed (see AM [2017] EWCA Civ 1123."*

5. Thus the matter appears before me to determine in the first instance whether or not there was an error of law in the decision by the First-tier Tribunal Judge.

6. The grounds of appeal deal with a number of issues where it is alleged the judge has erred in law.

7. The appellant had been interviewed about specific aspects of his appeal. It had been accepted that the appellant had travelled through a number of intermediate countries including Italy and France. In the refusal letter page E 15, final paragraph on the page, it was noted that the appellant had given a reason for not claiming asylum in Italy and France. I would note that, if one examines the basis of that in the interview, the appellant immediately prior to that was asked about Hungary, Italy and France [Q & A 115 & 116 of the interview] and gave an explanation that was supposedly covering all 3 countries. In the letter of refusal it appears to have been limited to Italy and France but the conclusion was to the effect that the failure to claim prior to arriving in the United Kingdom did not adversely affect the appellant's credibility. In part fact that the appellant was a minor at the time that he was travelling was material in the respondent making that concession.

8. In dealing with the failure of the appellant to claim asylum, the judge initially in paragraph 31 limits himself to what was said in the appellant's statement and concludes that the appellant has given no explanation or reason for not claiming asylum in any intermediate country. Whilst that would be correct with regard to what was said in his statement the appellant had given an explanation in interview and the respondent had accepted that explanation. The judge continues considering that aspect and in paragraph 33 notes the answer given to question 116 of the interview but specifically states:-

> *"... but I reject that as a reason for his failure to make an asylum claim in other countries through which he passed"*

9. In dealing with the issue in that manner the judge does not limit himself specifically to the countries he subsequently identified but to any country.

There was nothing to indicate that the judge had raised the issue of that concession with the representative for the appellant. The judge has concluded at paragraph 35 that the appellant had not given an adequate reason for not claiming asylum in the countries through which he passed prior to coming to the UK and found that that significantly bears against the credibility of the appellant. Clearly the issue of the appellant being a child was highly material in that regard.

10. In that respect I draw attention to the cases of ST (Child asylum seekers) Sri Lanka [2013] UKUT 292 (IAC), R (on the application of Ganidalgi) v SSHD [2001] 1WLR 479 and SSHD v Balasingham Maheshwaran [2002] EWCA Civ 173. The general principle is that unless something arises during the hearing to bring the concession into question and the judge specifically brings such issue to the attention of the representatives, concessions should be accepted. That is especially so where as in ST an appellant is a minor. The appellant in the present proceedings was a minor. The approach of the judge to the issue of the concession made by the respondent and the adverse credibility finding made cannot stand in light of the case law identified.

11. At the time of the hearing the appellant was a minor. That clearly is a highly material fact and the judge should have considered carefully how to approach the evidence of the appellant, who had to be considered a vulnerable witness by reason of his age and that such may impact upon the account he gave both in his statement and in interview. The age of the appellant is also material in assessing his account of the events that occurred to him in Afghanistan. Having considered the decision with care there is no reference in the context of the approach to the evidence of the appellant being a minor and a vulnerable witness in his being interviewed and giving his statement nor reference to giving due allowance for that fact in assessing the evidence. Again I find that the approach of the judge discloses an error of law.

12. I would further note that there are other issues relating to the background evidence. The appellant had produced a photograph of a tattoo, which he alleged had been carried out by the Taliban to identify him as a candidate to be a suicide bomber. There was background evidence that at least one Taliban commander tattooed children for such purpose. The judge finds that there is nothing to indicate that the tattoo that the appellant has is of a type used by the Taliban for such purposes. There was no evidence that it was not. There was no evidence as to what types of tattoos the Taliban commander used. The background evidence did provide some support that children were tattooed. As such the background evidence could provide some support to the appellant's account and should have been considered as such. There is no reference to the background evidence by the judge.

13. In the circumstances for the reasons set out there are material errors of law in the decision. I considered how the appeal should be determined. In the circumstances the findings of fact made by the judge cannot stand.

The appropriate course is to remit the appeal for a hearing afresh in the First-tier Tribunal. The findings of fact cannot stand in light of the matters set out.

Notice of Decision

14. I allow the appeal of the appellant and remitted the case for a fresh hearing before the First-tier Tribunal.

15. I make an anonymity direction.

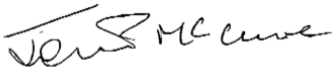
Signed 

Date 18th February 2018

Deputy Upper Tribunal Judge McClure

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 the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings



Signed Date 18th February 2018

Deputy Upper Tribunal Judge McClure