



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09346/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7 September 2018

Decision & Reasons Promulgated
On 18 September 2018

Before

UPPER TRIBUNAL JUDGE BLUM

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Mughal, Counsel, instructed by Montague Solicitors LLP
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade appeal following the identification of a material legal error in the decision of Judge of the First-tier Tribunal P J S White (the judge), promulgated on 12 December 2017, in which he dismissed the appellant's appeal against the respondent's decision dated 12 September 2017 refusing his protection claim (the appellant was however granted Discretionary Leave until 1 July 2019).
2. In an 'error of law' decision promulgated on 12 June 2018 I found that the judge had not materially erred in law in rejecting the appellant's claim to have been detained by the Taliban, to have escaped from this detention and to have been subsequently sought by the Taliban. In reaching his adverse credibility findings

the judge considered the evidence going in the appellant's favour as well as evidence in the other direction. The judge was fully entitled to rely on a number of inconsistencies and implausibilities relating to the appellant's description of a Taliban camp and the manner of his escape. The fact that the judge found the appellant's description of forcible recruitment to be plausible, and some of his evidence to be consistent, did not oblige him to accept the appellant's account. It was apparent from a holistic assessment of the judge's decision that he made full and proper allowance for the appellant's minority when assessing the evidence. Nor was I satisfied that the judge erred in law by requiring corroborative evidence, or that he unreasonably expected the appellant to answer for his mother's alleged actions. Given the appellant's claim that his three brothers had been abducted from the same madrassa he attended, and given his claim that the Taliban said they would take him on their next visit, the judge was unarguably entitled to find the mother's actions in continuing to send the appellant to the madrassa to be wholly implausible.

3. I was however persuaded that the judge materially erred in law when assessing whether the appellant had family members in Afghanistan and consequently whether he may be at risk of serious ill-treatment through exploitation or abuse on account of his minority and the alleged absence of family support (with reference to **LQ (Age: immutable characteristic) Afghanistan** [2008] UKAIT 00005 and **DS (Afghanistan) v Secretary of State for the Home Department** [2011] EWCA Civ 305). At paragraph 26 of his decision the judge noted the appellant's evidence that his mother and uncle were now in Pakistan. Although the judge observed that there was no evidence from either of them, he did not explicitly reject this aspect of the appellant's account. The judge later rejected the appellant's claim to have no family in Afghanistan. It was not sufficiently clear however that the judge had in fact rejected the appellant's claim relating to his mother and paternal uncle, and the Presenting Officer at the 'error of law' hearing accepted that the judge failed to make clear findings as to what family the appellant had in Afghanistan and whether there would be adequate reception arrangements if he was returned to Kabul. Given the appellant's minority and the need to consider any risk to him on the basis of his notional return at the date of the hearing, it was incumbent on the judge, particularly in the context of the return of minors to Afghanistan, to make clear findings as to whether the appellant had any family remaining in Afghanistan and what reception arrangements were, on the lower standard of proof, likely to be in place. As this was a discreet issue and severable from the judge's otherwise sustainable findings in respect of the appellant's claimed fear of the Taliban, I preserved those other findings. I adjourned the appeal for a further hearing to determine whether the appellant has family members in Afghanistan and whether adequate reception arrangements could be made for his return.

Relevant background

4. The appellant is a national of Afghanistan. His date of birth is given as 1 January 2002. He is therefore 16½ years old. He was born and grew up in Jalalabad Province where he lived with his mother, 3 older brothers and one younger sister. The appellant's father, RA, is said to have left Afghanistan approximately 15 years ago

and is now a British citizen. There was no witness statement from RA and he gave no evidence before the First-tier Tribunal or the Upper Tribunal. The appellant left Afghanistan on an unknown date and arrived in the UK on 14 March 2017.

5. Although the appellant claimed to have left Afghanistan because his three brothers had been forcibly conscripted, and that he himself had been conscripted but managed to escape from a Taliban camp, this aspect of his asylum claim was disbelieved both by the respondent and by the First-tier Tribunal. The First-tier Tribunal judge was lawfully entitled to his decision and this aspect of the appeal is no longer in contention. I must therefore proceed on the basis that the appellant was never threatened with recruitment by the Taliban and was never detained or sought by them, and that there is no real risk of any persecution in his home area of Jalalabad.
6. In the Reasons For Refusal Letter dated 12 September 2017 the respondent explained that the British Embassy in Kabul did not have the capacity to carry out family tracing and was not aware of any third-party family tracing provider. There was no evidence that the appellant had immediate family in other EU countries and it was not possible to directly contact family members in Afghanistan given the appellant's claim that he no longer had family in that country. The respondent concluded that it was not possible to obtain information to either confirm his family's current location and circumstances, or to obtain information relevant to an assessment of whether there was a prospect of reuniting him safely with his family in the event of a return. Nor was there any evidence of alternative adequate reception arrangements. The respondent stated that failure to trace the appellant's family could not be interpreted as evidence that there were no adequate reception arrangements for him on return. "The particular circumstances of the case meant that only cursory steps were available to endeavour to trace your family, therefore little weight can be attached to the unsuccessful tracing endeavours. The family tracing results should not be taken as meaning that your claim has been accepted."

The hearing

7. The appellant did not produce any further evidence specific to himself or his family. His father sat at the back of the Tribunal while the appellant gave evidence but there was no application for the father to give evidence as a witness. The appellant adopted his statement signed and dated 9 October 2017, much of which relates to his now discredited claim to have been recruited by the Taliban. In his statement the appellant claimed his mother went to Pakistan fearful of further persecution by the Taliban. At the start of the hearing Ms Mughal provided a copy of a document 'After Return', published by the Refugee Support Network in April 2016, and indicated that she would rely on **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)**. In overseeing the appellant's oral evidence I applied the Guidance provided in the Joint Presidential Guidance Note No 2 of 2010.
8. I summarise the appellant's oral evidence. In examination-in-chief the appellant said his mother was in Pakistan but he did not know her whereabouts. He last spoke to her a week before the hearing. He would contact her through his father's

mobile phone. She now resided in Pakistan because the Taliban used to go to her house and pressurise her and ask about the appellant. The appellant's paternal resided with his mother. He had no other family in Afghanistan.

9. In cross-examination the appellant said it took him more than a year to reach the UK. When he first contacted her after arriving in the UK she was already in Pakistan. The appellant did not ask her how long she had been in Pakistan. The appellant was asked what family members he had in Afghanistan before he left. He said he had his uncle, a younger sister, his mother, and three brothers who had allegedly been abducted by the Taliban. He had no cousins. He had no contact with anyone other than his mother. When asked whether, if he returned to Afghanistan, his mother might return also to look after him, the appellant answered in the negative. If the Taliban became aware of his return, they would ask his mother why she said he was not there. The appellant confirmed that he had never asked his mother where in Pakistan she lived. When asked why not, the appellant shrugged his shoulders and answered, "just like that." He then said she was not used to Pakistan and she didn't know where she was. The appellant confirmed that his mother was living with his paternal uncle. The appellant's mother stayed at home and did nothing, and he had not asked his paternal uncle whether he was earning money in Pakistan. The appellant knew that his mother and paternal uncle had accommodation, but he had not inquired as to the type of accommodation. When he spoke to his mother and uncle they discussed how they were and whether they were safe.
10. In response to questions from me the appellant said he first spoke to his mother about a week after first arriving in the UK. I asked the appellant whether his father had any brothers. He initially said his father had one brother. He then said, on further inquiry, that his father had other brothers, but that "they don't live with us". The appellant said his father had three other brothers, one of whom was living with the appellant's mother. The appellant said he did not know where his other two paternal uncles lived, but said that they were living in Afghanistan when he was in Afghanistan.
11. Mr Tarlow submitted that the appellant's evidence was not truthful and that he had a family network in Afghanistan. It was difficult to believe that the appellant had never asked his mother where in Pakistan she lived. The appellant should not be considered a lone child as he had family support in Afghanistan and could be returned. Ms Mughal submitted that the appellant was credible and that I must take account of his age when assessing his evidence. The appellant's mother would not want to worry him about her circumstances. My attention was drawn to questions 39 and 135 of his asylum interview and it was submitted that the appellant knew that the telephone code '0092' related to Pakistan. It was submitted that there would be no welcoming committee for the appellant in Afghanistan and no reasonable accommodation available. The appellant did not know where his uncles lived or whether they would be willing to look after him, and it would not be reasonable for the appellant's mother to return to Afghanistan because she would be in some difficulty. Ms Mughal was unable to explain the nature of the difficulty given that his claimed fear of the Taliban had been disbelieved. It was

further submitted that it was unreasonable for the appellant's British father to return to Afghanistan. I then pointed out to Ms Mughal that I had very limited information concerning the appellant's father. She invited me to allow the appeal.

The relevant legal framework

12. The appellant relies on the grounds of appeal contained in section 84(1)(a) to (c) of the Nationality, Immigration and Asylum Act 2002. The lower burden of proof is upon the appellant to establish a real risk that he is a refugee.
13. In **AA (unattended children) Afghanistan** CG [2012] UKUT 00016 (IAC) the Upper Tribunal held that unattached children returned to Afghanistan, depending upon their individual circumstances and the location to which they are returned, may be exposed to risk of serious harm, *inter alia* from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection.

Findings and reasons

14. The appellant's account of being targeted and detained by the Taliban was disbelieved by the respondent, and the basis of his asylum claim was found to be a fabrication by the First-tier Tribunal. This finding was upheld in the error of law hearing before the Upper Tribunal. The First-tier Tribunal judge gave cogent and legally sustainable reasons for concluding that the appellant had not been forcibly recruited by the Taliban. Having rejected the appellant's claim to have a well-founded-fear of the persecution in his home area, it is necessary to determine whether the appellant does have family in Afghanistan who could ensure there are adequate reception arrangements for his notional return. The fact that the appellant has been disbelieved in respect of the core elements of his asylum claim does not determine his claim to have no family left in the country. It is quite possible for him to have fabricated those elements of his asylum claim, but to be telling the truth about his mother, sister and paternal uncle moving to Pakistan. His untruthfulness is however a relevant factor to take into consideration when determining the veracity of the appellant's assertions. The fabrication of his asylum claim indicates he is someone who is willing to lie to obtain an advantage in relation to his immigration status and this is a general factor that must be borne in mind.
15. Having considered the appellant's oral evidence, and having made full allowance for his minority, and having given him the benefit of the doubt because of his youth, I am not satisfied, for the following reasons, that he has given a truthful account. The appellant claimed, despite being in contact with his mother since a week after his arrival in the UK, that he had not asked her where in Pakistan she lived. I do not find this assertion plausible. Given the closeness of their familial relationship and the natural concern that the appellant would feel if his mother has relocated to Pakistan, it is simply not believable that he would never have inquired as to her location. There was no evidence at all from the appellant's father. It was the appellant's evidence that he contacted his mother using his father's mobile

phone, and that one of his father's brothers lived with the appellant's mother. The appellant's father would therefore have contact with his wife and, presumably, his brother. It is simply not plausible that the appellant's father would not then have asked where his wife and brother were living, or that he would not have provided this information to the appellant. When asked why he did not know where in Pakistan his mother was living the appellant initially shrugged his shoulders, then said his mother was not used to Pakistan and she did not know where she was (suggesting that the appellant had made some inquiries of his mother's location). The appellant's mother has however resided in Pakistan for over a year and is, on the appellant's evidence, accompanied by her brother-in-law. I am not persuaded, even on the lower standard of proof, that the appellant's mother would not know where in Pakistan she was living. When assessing the plausibility of the appellant's account I additionally remind myself that reliance on inherent improbability may be dangerous or inappropriate where the conduct in question has taken place in a society whose culture and customs are very different from those in the United Kingdom (*'HK'* [2006] EWCA Civ 1037, at para 29; *Araghi v Secretary of State for the Home Department* [2006] EWCA Civ 973, at para 7). I take into account the content of the Joint Presidential Guidance Note No 2 of 2010 and the authority of *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123, and note, *inter alia*, that a minor may encounter greater difficulty understanding questions, and that I must make proper allowance for the possibility. The appellant's age (16½) is however towards the older end of the age spectrum and there was no indication that he did not understand any of the questions he was asked or suffered from any medical issues.

16. The appellant's claim that his mother, sister and paternal uncle were in Pakistan was not supported by any independent evidence. There is no requirement for corroborative evidence in this jurisdiction and I do not draw an adverse inference from the absence of any reliable documentary evidence tending to show that the appellant's family are residing in Pakistan. I appreciate that a considerable number of Afghan refugees are residing in Pakistan without lawful permission and that they may struggle to obtain official documentation confirming their residence. It is however for the appellant to prove, albeit to the lower standard of proof, that his family have moved to Pakistan and the absence of any evidence does not advance the appellant's claim. I note the absence of any reliable evidence, even unofficial, that the appellant's mother resides in Pakistan. It was submitted on the appellant's behalf that he knew the international dialling code for Pakistan during his asylum interview, but this does not compel me to accept his claim that his mother resided in Pakistan. It is quite possible for him to have learnt the dialling code for the purposes of his asylum application. I additionally note that the appellant was asked in his interview (Q35) what telephone code he would use to call Afghanistan, and he correctly answered "0093". Although a minor point, if the appellant had no family remaining in Afghanistan and was not in contact with anyone in Afghanistan, there would have been no reason for him to know the dialling code for that country.
17. Nor has the appellant been able to give any reasonable explanation for his family moving to Pakistan. The appellant maintains that his mother went to Pakistan

because of the problems he faced from the Taliban. But the appellant's account of having been approached by the Taliban has been disbelieved. Given the factual matrix as found by the First-tier Tribunal, there was no reason for the appellant's mother and paternal uncle to move to Pakistan. This undermines the appellant's claim that his mother, sister and paternal uncle have left Afghanistan.

18. The appellant has not been consistent in his account of family members in Afghanistan. In examination-in-chief the appellant claimed to have no family members in Afghanistan, but it later emerged that his father had two brothers who were living in Afghanistan when he left the country. There was no mention of these uncles in the appellant's statements or in his evidence before the First-tier Tribunal, although he did refer to his paternal 'uncles' during his asylum interview. In my judgement the appellant has sought to minimize the family members he has in Afghanistan.
19. Having considered the appellant's evidence in a holistic manner, and for the reasons given above, I am not persuaded, even to the lower standard of proof, that the appellant's mother, sister and paternal uncle have moved to Pakistan. I find that the appellant has fabricated his account of his family's circumstances and that he is in contact with his mother and at least one of his paternal uncles who continue to reside in Afghanistan, and that he has two other paternal uncles who also reside in Afghanistan.
20. The appellant's family were able to finance his journey to the UK and must therefore have some financial resources. The appellant and his father remain in contact with his mother and at least one of his paternal uncles. The appellant has not produced any evidence that his family are incapable of arranging for him to be met in Kabul if removed, or travelling there and meeting him themselves, and for him to be fully supported and accompanied back to his home area of Jalalabad. It was not suggested that the appellant would encounter any threat to his wellbeing or welfare in Afghanistan on account of the general security situation or on his journey to Jalalabad from Kabul.
21. In the alternative, I am satisfied, again on the lower standard of proof, that the appellant's father could accompany the appellant back to Kabul and either remain with him, thereby ensuring his safety and welfare, or ensuring he is safely escorted back to his family who remain in Jalalabad. I appreciate that the respondent was of the view that the appellant's father could not accompany him back to Afghanistan. No reason was given for this position, and Ms Moghal was unable to shed any light on the basis of the grant of leave that would have eventually led to the naturalisation of the appellant's father. I accept that he is a British citizen, but no evidence was adduced as to whether he was ever recognised as a refugee, and there was no evidence that he himself held a well-founded fear of persecution in Afghanistan. Nor was there any evidence of the nature and extent of his private life in the UK.
22. I find the appellant, were he to be notionally returned to Afghanistan, would have the full support of his family in Afghanistan, and his father in the UK, and that

there would be adequate reception arrangements in place. I consequently find the appellant would not be an unaccompanied minor and that he would not be exposed to a real risk of persecution, as detailed in AA.

Notice of Decision

The protection appeal is dismissed.

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his 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
Upper Tribunal Judge Blum

Date 11 September 2018