



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11778/2017

THE IMMIGRATION ACTS

Heard at Manchester
On April 30, 2018

Decision & Reasons Promulgated
On May 3, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MASTER M A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Mensah, Counsel, instructed by AJO Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I extend the anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and direct that unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.
2. The appellant is an Afghan national who had entered the United Kingdom illegally on June 30, 2014 after a journey that had lasted 2 ½ months. His original claim for asylum had been refused by the respondent on February 26, 2015 and following an appeal hearing on September 10, 2015 Judge of the First-tier Tribunal Ransley dismissed his appeal. She made a number of findings including:

- (a) She accepted that the appellant's answer in his screening interview had been wrongly interpreted and the correct answer was that the Taliban had killed his uncle not his father.
 - (b) The appellant was unable to give a satisfactory explanation about his father's role within the army despite talking to him about it over a three/four-year period.
 - (c) The appellant gave inconsistent evidence about his uncle having been killed by the Taliban. In his first witness statement he stated that he had learnt of his uncle's death from villagers whereas in his substantive interview he claimed that he discovered his uncle's death when the Taliban came to his home. In his second witness statement he reaffirmed that he learnt his uncle had been killed by villagers. The Judge concluded that if she had heard about his uncle's killing in this way he would have said as much in his interview. This was a material inconsistency.
 - (d) The Judge did not find it credible the appellant would have waited for three warnings from the Taliban before leaving the country.
 - (e) He gave an inconsistent history of when he left Afghanistan. During his age assessment interview, the appellant claimed he left five days after his paternal uncle had been killed whereas in his witness statement he claimed it was 5/6 months after his paternal uncle's killing.
 - (f) The Judge was not prepared to attach weight to his foster parent's evidence that they thought he had been consistent.
 - (g) It lacked credibility that if his family had paid a substantial sum to traffickers to bring him to the United Kingdom that his family would not have provided him with contact details to let them know he had arrived safely in the United Kingdom.
 - (h) The respondent had not been in a position to trace the appellant's family because the appellant claimed he did not know where his family lived.
3. In refusing the appellant's current application the respondent relied on these findings although accepted the appellant had adduced sufficient evidence to justify a new claim.
 4. His appeal came before Judge of the First-tier Tribunal Holt on December 13, 2017 and in a decision promulgated on January 17, 2018 she dismissed the appellant's appeal on protection and human rights grounds.
 5. The appellant lodged an application for permission to appeal on January 31, 2018 and Judge of the First-tier Tribunal Landes granted permission to appeal on February 22. The Judge's comments about the appellant's demeanour was not a finding as such but it is arguable the Judge should have considered the evidence of the appellant's former foster carers when considering his behaviour and presentation. It

was arguable that the Judge should have put any concerns about Mr J's role to the witness and her approach to the Red Cross letter was possibly coloured by the fact she believed the appellant had kept vital evidence from his own representative.

SUBMISSIONS

6. Miss Mensah relied on the grounds of appeal that had been drafted by former counsel and submitted that the Judge had erred (a) in her assessment of the appellant's demeanour, (b) her approach to the new evidence from the Red Cross and the witness Mr J, (c) by failing to attach weight to the expert report of Dr Fateh and (d) the Judge's approach to the appellant's screening interview in which she appeared to depart from what had been previously accepted by Judge Ransley.
7. At the FTT hearing counsel had highlighted the fact that the appellant was a minor and a vulnerable witness and whilst the Judge acknowledged these factors she went on to make personal findings about his demeanour which go contrary to the approach recommended in cases such as KB and AH (credibility-structured approach) Pakistan [2017] UKUT 491 (IAC) and MM (DRC, plausibility) DRC [2015] UKIAT 00019. She submitted that the Judge erred in assessing the appellant's demeanour in circumstances where he was giving evidence for an interpreter.
8. Miss Mensah argued the Judge had also erred in her approach to the evidence of Mr J and the letter from the Red Cross about Mr A. Mr J was employed by social services and was entrusted to look after minors. He was not appearing as a friend but simply providing information that was known to him. Mr J gave clear evidence that he had spoken to the village leader because there was a phone number on Mr A's letter which he had called. The Judge was wrong to make the findings she did about Mr J. She submitted that his evidence had not been considered and the Judge's finding that Mr J had acted inappropriately was without foundation.
9. The Judge stated that the report of Dr Fateh took the case no further because his account had been rejected. Miss Mensah submitted that the report should have been given weight when considering the appellant's account.
10. Finally, Miss Mensah submitted that the Judge materially erred by placing weight on an apparent discrepancy in his screening interview in circumstances where the previous Judge had accepted his version of events.
11. Mr McVeety relied on the Rule 24 response and submitted there was no material error in law. He submitted the grounds of appeal failed to recognise that the starting point was the previous decision of Judge Ransley which had been upheld by the Upper Tribunal. The Judge (and Upper Tribunal) had rejected his claim and consequently the expert report took the case no further. The only new evidence that the Judge had to consider was the letter from the Red Cross and the evidence of Mr J. He submitted that the appellant claimed he had gone almost daily to the Red Cross and had not been able to locate his family and he submitted that the Judge was entitled to be sceptical about Mr J's evidence that he had managed to speak to the village leader and confirm the appellant's account. The Judge was entitled to make the finding she did about that document and evidence. Weight was a matter for the

Judge and ultimately in view of the late disclosure of this document the Judge was entitled to reach the conclusions she did.

12. Turning to the issue of demeanour the Judge made findings that the appellant did not appear vulnerable or overwhelmed. She did not say the appellant was a liar or that his demeanour meant he was untruthful but her observation about the appellant's demeanour was not a finding as such. He submitted that this, contrary to the strong submission advanced, did not amount to an error in law.

ERROR OF LAW ASSESSMENT

13. This was the appellant's second appeal against a decision to refuse him protection. His first appeal had been heard by Judge Ransley and I have already set out in paragraph 2 above her core findings.
14. Following the decision in Devaseelan (Second Appeals-ECHR-Extraterritorial Effect) Sri Lanka [2002] UKIAT 007092 the Tribunal provided guidance on how second appeals should be approached. The Tribunal stated:
 - (a) The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the Appellant's status at the time it was made. In principle issues such as whether the Appellant was properly represented, or whether he gave evidence, are irrelevant to this.
 - (b) Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.
 - (c) Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second Adjudicator. The first Adjudicator will not have been concerned with such facts, and his determination is not an assessment of them.
15. The appellant unsuccessfully appealed Judge Ransley's decision and his appeal rights were deemed exhausted on November 12, 2015.
16. The respondent was satisfied there was new evidence to consider as he was given a further right of appeal. The appellant had submitted additional evidence in connection with his mental health, the Red Cross and his article 8 claim.
17. The appellant adduced further news reports to support his claim that Afghanistan was too dangerous for him. I note such evidence did not form part of Miss Mensah's submission to me although she did rely on the expert report of Dr Fatah dated November 21, 2017. This document was not considered by the respondent as it post-

dated the date of his application and whilst Judge Holt did consider the report she concluded that as he was not at risk the report took his case no further.

18. Miss Mensah argued that the failure to consider this report was an error in law but I disagree with this submission. This was not the appellant's first appeal on protection grounds. It was his second appeal and following the decision in Devaseelan the Judge was not required to revisit issues that had already been dealt with unless the new evidence altered the previous evidence.
19. The fact Judge Ransley had made a number of adverse credibility findings against him meant Dr Fatah's report added nothing to appellant's claim. The report was prepared on the basis of what the appellant had told him but Judge Ransley's findings meant Judge Holt's approach to the report cannot be faulted.
20. Miss Mensah also submitted the Judge had erred in her approach to whether the appellant's father or uncle had been killed by the Taliban. Whilst I accept the Judge was wrong to refer in paragraph 16 of her decision to the inconsistency between the appellant's screening and asylum interview the Judge made it clear later in paragraph 16 that she only revisited this issue because the appellant mentioned it in his December 2017 statement. She did not however go behind what Judge Ransley had stated so there is no error in law of this issue.
21. Before Judge Holt the appellant relied on the evidence of Mr K and Mr S and the letter from the Red Cross. The remaining grounds of appeal centred on the Judge's approach to this evidence and the appellant's demeanour at the hearing.
22. Miss Mensah submitted that the Judge had erred in her approach to the appellant's demeanour.
23. In MM the Tribunal set out the approach to be taken in respect of credibility, plausibility and oral testimony and made clear that relying on demeanour to decide the issues of credibility and plausibility amounted to an error in law.
24. Ms Mensah submitted that the Judge had erred in law by commenting at paragraph 17 that the appellant was a "confident, very self-assured, polite and mature individual, irrespective of the vagueness when he was talking about the key issues in his case."
25. In KB & AH the Tribunal made clear that when assessing credibility a structured approach should be undertaken and regard should be had to the respondent's own Asylum Policy Instruction, Assessing credibility and refugee status Version 3.0, 6 January 2015. The Tribunal noted that where an account was internally consistent and then consistent with objective material then these are positive factors to be taken into account when considering credibility.
26. However, when considering the core of the appellant's claim I remind myself that his claim had already been rejected by the Tribunal because the Judge found that his account contained a number of internal inconsistencies.

27. Having read paragraph 17 I am satisfied she did not rely on these comments when assessing the appellant's credibility. Her comments were based not only on how the appellant was before her but also based on the reference/statement provided by Mr W. In other words, her assessment mirrored what she perceived to be the views of someone who knew him much better than she did. This was not a case where the Judge looked at the appellant, listened to him give evidence through an interpreter and then made the observations she did. This was a case where someone who knew the appellant much better than the Judge provided a statement about the appellant and Judge Holt attached weight to that statement and ultimately came to the same conclusion. In any event the issue of whether he was at risk had already been addressed at the previous hearing and formed no part of that decision making. Miss Mensah's submission that the Judge wrongly approached the issue of demeanour does not amount to an error in law.
28. Miss Mensah has submitted that the Judge erred in her approach to the evidence provided by Mr J and Mr S. This then impacted on her assessment of the Red Cross letter. The Judge set out the evidence of Mr S and Mr J in paragraphs 18 and 19 respectively.
29. The Judge considered Mr S's statement dated December 13, 2017 (day of hearing). The Judge noted that the witness was an interpreter who assisted Sefton Social Services and regularly interpreted for the appellant when dealing with social services and at school. He described the appellant as being confident and going from "strength to strength". The Judge concluded Mr S was more of a character reference and added nothing to the appellant's appeal. I see nothing wrong with the Judge's conclusion.
30. The Judge then considered Mr J's evidence and she stated at an early stage her concerns about his evidence. Miss Mensah submitted that the witness was called as he had dealings with two Afghan minors and had valuable evidence to give about his contact with a village leader in Afghanistan. Mr McVeety submitted the Judge was tasked with considering the evidence and making findings. The Judge was entitled to be sceptical about Mr J's evidence in light of the fact the appellant had regularly visited/contacted the Red Cross and had been unable to find out anything about his family.
31. Mr J gave oral evidence and adopted a letter he had provided dated December 4, 2017. He referred to a Red Cross letter that had been only produced on the day of hearing. This letter related to another Afghan and provided contact details for a Mr G who was a village leader who also, coincidentally, knew the appellant and Mr J.
32. Having listened to the appellant's evidence about the Red Cross the Judge rejected Mr J's evidence. Paragraph 22 of her decision is central as she explained that she did not find it credible that Mr J was able to speak to the village leader but the Red Cross, with all their resources and the same information, were unable to confirm the information. There was no evidence before Judge Holt that the Red Cross had been contacted or had failed in their attempts to contact the village leader. The Judge therefore rejected the evidence of Mr J and gave detailed reasons for her findings.

33. This was not a case where the Judge had not considered the evidence from Mr J but it was more a case that the Judge rejected the evidence and gave reasons for her conclusions. These findings were clearly open to her and her findings were well reasoned.
34. I therefore conclude there was no error in law.

DECISION

35. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the decision.

Signed

Date 30/04/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed

Date 30/04/2018



Deputy Upper Tribunal Judge Alis