Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01298/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd January 2019	**On 19th February 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

UQ
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani of Counsel, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Blundell promulgated on 16 March 2018, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 13 January 2018 was dismissed.

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2. The Appellant is a national of Afghanistan, born in 1999, who claims to have arrived clandestinely in the United Kingdom on 29 July 2015, following which he claimed asylum on 8 August 2015 on the basis of a fear of persecution on return to Afghanistan from the authorities due to his father's affiliation with the Taliban and because he worked with him for the Taliban.

3. The Respondent refused the application the basis that it was not accepted that the Applicant's father worked for the Taliban and the Appellant was considered to have given a vague account of his involvement, training and arrests and it was not accepted that the letter relied upon was clearly from the Taliban. The Respondent did not accept that the Appellant was at risk on return to Afghanistan, nor that he was entitled to humanitarian protection, nor that his removal would breach Articles 2 and/or 3 of the European Convention on Human Rights. There was no general risk on return under Article 15(c) of the Qualification Directive and no specific factors giving rise to a risk over and above that. The Appellant's human rights application was also refused on the basis that he did not meet any of the requirements for a grant of leave to remain under paragraph 276ADE or Appendix FM of the Immigration Rules and there were no exceptional circumstances.

4. Judge Blundell dismissed the appeal in a decision promulgated on 16 March 2018 all grounds. Although it was found that the Respondent's reasons for refusal did not withstand scrutiny, it was found that the Appellant had given inconsistent evidence about his length of detention and when the police visited his home in Afghanistan looking for his father. Even taking into account the Appellant's age (he is a was a minor at the time of these events) and vulnerability, these were considered to be fundamental inconsistencies which undermined the credibility of his claim. Overall, the Appellant was found not to be at real risk of persecution in his home area and likely to be able to re-establish contact with his family on return. In any event, the Appellant could internally relocate to Kabul. The Appellant did not pursue any human rights claims at the hearing before the First-tier Tribunal but in any event the appeal as dismissed on these grounds as well.

The appeal

5. The Appellant appeals with permission on two grounds. First, that the First-tier Tribunal erred in law in failing to assess the inconsistencies in the round against the available background evidence and expert report. More specifically, the First-tier Tribunal in paragraph 40 of the decision did not accept that there had been a mistake in the Appellant's written statement, but the solicitors representing the Appellant at the time have accepted that there was an error as the discrepancy in the statement was not picked up. Secondly, that the First-tier Tribunal made findings as to the Appellant's family and circumstances of his departure from Afghanistan without any evidential basis and followed only from the rejection of the Appellant's protection claim.

6. A hearing before the Upper Tribunal on 8 November 2018 was adjourned with directions for the Appellant's solicitors to file and serve a comprehensive witness statement in relation to the alleged error on the part of the Appellant's previous legal representatives, with relevant documentation to be attached, within 21 days.

7. A statement from the Appellant's current solicitors was filed late on 19 December 2018, with no explanation for the delay or failure to comply with the directions. However, it is clearly material to the issues in this appeal and in the interests of justice I admit that further evidence and return below in more detail to the material submitted.

Findings and reasons

8. In relation to the first ground of appeal, it is necessary to set out in more detail the findings of the First-tier Tribunal on the first inconsistency and then consider the subsequent explanations and evidence that has been given in relation to it.

9. The findings of the First-tier Tribunal are set out in paragraphs 38 to 40 as follows:

> *"38. The final point taken in the refusal letter requires more detailed consideration, however. It was said there, at [65]-[68], that the Afghan authorities had no interest in the appellant because they had visited the family home after the appellant's two detentions and they had shown no interest in the appellant. The respondent had understood from the interviews and the asylum statement that the chronology of events was that the visits to the family home took place after the appellant's two detentions. That understanding seems to have been borne fairly squarely out of the appellant's answer to question 129 of the asylum interview. Neither [14] of the asylum statement nor the post-interview representations made by his solicitor gave a contrary impression.*
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> *39. At [10] of his appeal statement, however, the appellant responded to this point in the refusal letter by stating: "I should have made clear in my Asylum Statement that he first two times that the police came looking for my father were both before I was detained for distributing Taliban letters." The appellant confirmed, in adopting this statement, not only that it was true and accurate but also that there was nothing in it that he wished to amend. Mr Entecott cross-examined the appellant about the changed chronology, therefore. The appellant reverted to the account he had given initially, stating that the visits occurred after he was arrested. He said that there must have been a misunderstanding when his appeal statement was prepared.*
>
> *40. I considered this discrepancy to be non-peripheral. I have considered it carefully, bearing in mind the appellant's status as a*

vulnerable witness and the fact that he would have been a child when the matters in question occurred. Ultimately, however, I did not consider that the appellant's age and vulnerability was an element of this discrepancy (I refer to [14] of the Joint Presidential Guidance Note). The appellant did not maintain in his statement or in his evidence before me that there was any difficulty in recalling the order of these critical events. He was clear in his appeal statement that the respondent's understanding of the chronology was wrong, despite the fact that it was borne out of his own answer to question 129 of the interview. Having adopted that statement and confirmed that there was nothing which he wished to amend, he stated that there was a misunderstanding. The appellant has been represented by the same firm of experienced immigration solicitors throughout. It is apparent from the statements, letters and Letters Before Action that they have represented him diligently and with a constant eye on the fact that he was a minor until recently. I do not accept that a mistake was made in compiling the appeal statement. I consider the situation to be, instead, that the appellant amended his account in response to the point taken at [65]-[68] of the refusal letter but that he became muddled over that amendment when he gave evidence before me. Mr Hodson submitted that the appellant had remained resolute when the problem was put to him but, as I observed during argument, the appellant had two choices – obfuscation or standing fast to his last answer – and his choice of the latter does not show that he is telling the truth. I consider this discrepancy to detract from the credibility of the appellant's account."

10. As recorded in the passages above, the Appellant's account in his asylum interview and asylum statement were that the police visits to the family home took place <u>after</u> he had been detained by the authorities on two occasions. In contrast, in the Appellant's written statement signed and dated 15 February 2018, he stated at paragraph 10:

    "At paragraph 67 of the Decision, the decision maker says that he does not believe that I am wanted by the Authorities. He says that this is because the Authorities came to my home on two occasions, looking for my father without arresting me. I should have made clear in my Asylum Statement that the first two times that the police came looking for my father were both before I was detained for distributing Taliban letters."

11. On behalf of the Appellant, it was submitted that material has now been submitted which shows that a mistake was made either by the Appellant or by his legal representatives in relation to the chronology of police visits/detention and but for that mistake, there would be no discrepancy and no reason for the adverse credibility finding on this basis. The material now submitted shows that there was an unfairness to the Appellant in the appeal proceedings, even if it was not available to the First-tier Tribunal and the Judge was unaware of it. It was submitted that a de novo hearing is required for this Appellant to remedy the unfairness.

12. The response to the Appellant's solicitors from Elder Rahimi solicitors (the Appellant's previous legal representatives) is exhibited to a written statement. The documents include an e-mail (from which the date has been cut off) which includes the following:

> *"An initial draft of the statement was prepared on 29.01.2018. I have attached the attendance notes from this appointment. I failed to notice the discrepancy between the AIR and the WS paragraph 10 which was later picked up by the Immigration Judge. You will see from my attendance notes that [the Appellant] appeared tired towards the end of the appointment, when the second half of his statement was read back to him.*
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> *On 19.02.2018 the caseworker who had conduct of the appeal reviewed the draft statement and again, did not pick up on this discrepancy. I have attached his attendance notes.*
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> *On 15.02.2018 a final draft of the statement was prepared with [the Appellant]. My annexed attendance notes state: "Second half of statement read back to client again as he appeared sleepy at previous appointment." Unfortunately it is not clear from my attendance notes whether the second half of the statement read back to [the Appellant], included paragraph 10 which is situated just before the middle of the statement. It could be that the second read back of the statement started after paragraph 10 and that [the Appellant] did not spot the error in the first read back as he was struggling to concentrate."*

13. The attached attendance notes are consistent with that explanation. The first note dated 29 January 2018 more fully states:

> *"Appeal Statement drafted, read back and signed. Some amendments to be made once we know more about what has been done to trace family via Red Cross. Client seemed tired when the final part of the statement was read back to him. Re-read second half at next app. Have given him a copy of statement, told him to look over it + email me with any mistakes."*

14. There was no written statement from the Appellant about this issue or his understanding of what the misunderstanding or mistake was and who made it. Mr Bandegani confirmed that in the absence of such a statement, he had instructions from the Appellant on this, although they only went so far as to say that there had been a misunderstanding. When seeking to identify what the misunderstanding or mistake actually was, Mr Bandeganni suggested that it was the use of the word 'before' in paragraph 10 of the witness statement which should have said 'after'. However, it is clear, as found by the First-tier Tribunal in paragraph 40 of the decision, that paragraph 10 of the witness statement is directly responding to the points in paragraphs 65 to 68 of the refusal letter. It can not be that a mistake was made only in relation to one word of it, the

claimed mistake can only be the inclusion of the paragraph as a whole. The only way this could be explained by Mr Bandegani as to why paragraph 10 existed at all in the statement was that it was not composed by reference to the asylum interview but only the appeal statement, however, that did not deal directly with the chronology.

15. Mr Bandegani maintained at the hearing that the Appellant was not aware of the inconsistency or mistake prior to the hearing before the First-tier Tribunal. The Appellant’s legal representatives have admitted an error and therefore the reliance by the First-tier Tribunal on the Appellant being represented by experienced immigration solicitors throughout falls away. The First-tier Tribunal’s reasoning in relation to this issue is predicated on there not being a mistake in the witness statement, but if there was, as shown by the later material, there was no inconsistency and therefore no basis for the adverse credibility findings.

16. Although the First-tier Tribunal found in paragraphs 41 and 42 an ‘even more significant error’, it was submitted that the overall findings in paragraphs 43 and 44 of the First-tier Tribunal’s decision were at least partly based on the first issue as to the chronology and could not alone support adverse credibility findings for the appeal to be dismissed.

17. On behalf of the Respondent, Mr Tufan submitted that there was a material discrepancy on the first issue and the Appellant has not established, even with the subsequent material submitted, that this was caused by a mistake. In any event, it was submitted that any error would not be material given the finding that the Appellant could internally relocate to Kabul which is wholly consistent with the findings in the country guidance case of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC).

18. I do not find that the Appellant has established that there was any error in his witness statement presented to the First-tier Tribunal, for the reasons given by Judge Blundell set out above or otherwise. The material subsequently before the Upper Tribunal does not set out specifically what the claimed mistake or misunderstanding was; there is no direct evidence from the Appellant on this point and the claim that his previous legal representatives had admitted the error is putting the response from them far too highly. The only error that is accepted by Elder Rahimi is that they did not spot that there was an inconsistency between the answers given by the Appellant in his asylum interview and the witness statement prepared for the appeal. The consequence of that is not that there was necessarily any error in the content of the witness statement, but can only go so far as that in the course of preparation for the appeal, the matter was not raised with the Appellant to address before the hearing. There is no acceptance by Elder Rahimi that paragraph 10 or any part of it was wrong or included in the written statement in error. The witness statement was read back to the Appellant at least once and the Appellant had a copy of the statement which he subsequently signed and adopted as his evidence. The Appellant himself has at no point said that he did not

give the information in paragraph 10 to his solicitors to form part of his statement, only that there was some unidentified misunderstanding. The fact that the second half of the statement was re-read to the Appellant at a later appointment because he seemed tired when this section was dealt with previously takes the matter no further. For these reasons, there is no error of law in the decision of the First-tier Tribunal on the first ground of appeal.

19. There is no direct challenge to the findings of the First-tier Tribunal in paragraphs 41 and 42 as to the second inconsistency which was found to be even more significant and taken together with the findings in relation to the first inconsistency, justify the overall findings in paragraphs 43 and 44 of the decision (which it is noted, the Appellant's representative at the hearing appeared to accept would normally be sufficient to undermine the asylum claim).

20. The grounds of appeal further claimed that the First-tier Tribunal failed to undertake a global assessment of the Appellant's credibility and did not appropriately carry forward the findings that his account was consistent with the background evidence and the expert report, nor the findings that the Respondent's reasons for refusal were unsustainable. However, I find no error of law in the approach of the First-tier Tribunal who reached sustainable and cogent findings on credibility and therefore on the issue of whether the Appellant was at real risk on return to his home area which were open to the Judge on the evidence before him.

21. The second ground of appeal is that the findings in paragraphs 44 to 47 of the First-tier Tribunal decision were without evidential basis and predicated on the earlier adverse credibility findings. It is difficult to see how any error on this ground could be material to the outcome of the appeal given the clear findings in paragraph 44 of the decision that the issue of internal relocation does not arise as the Appellant is not at risk of return in his home area. The challenge to those findings has failed.

22. In any event, the only plausible alternative explanation of the Appellant's journey to the United Kingdom on the findings that he did not flee Afghanistan due to a real risk was that he was supported in his journey by his family for a better life in the United Kingdom. No evidential basis is required for such a finding, there is simply no other alternative in this sort of case. In these circumstances, it is reasonable to infer that the Appellant could contact his family, but even if he could not, on the basis of the findings in AS, there is nothing about this Appellant to suggest that even without family support, internal relocation to Kabul would be unsafe or unreasonable.

23. For all of these reasons, I do not find any error of law in the decision of the First-tier Tribunal which is therefore confirmed.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

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 him or any member of their 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 Date 15th February 2019

Upper Tribunal Judge Jackson