Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/05415/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 November 2019	**On 23 December 2019**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

D K I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dolan, instructed by Sriharans Solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is appealing against a decision of Judge of the First-tier Tribunal Randall ("the judge") promulgated on 15 August 2019 to dismiss his protection and human rights claim.

2. The appellant is a citizen of Afghanistan, from Helmand Province. He was born on 18 June 2000 and arrived in the UK in June 2012.

3. In summary, the appellant states that:

   (a) When he was 11 years old armed Taliban fighters came to his family home, took their food, and said that if the family informed they would come and destroy them. This had not happened previously.

(b) The following day American soldiers came to the house, and shot his father (who looked like a Taliban because of how he dressed).

(c) Later that day the appellant's uncle took the appellant, along with his mother and brothers, by tractor to his house in the same village.

(d) The next day, the appellant's uncle told him that his life was in danger because the Taliban were told by neighbours that he was the one who informed the authorities.

(e) He stayed in hiding, at his uncle's home, for about a week, and then began his journey to Europe.

4. The judge did not accept that events occurred as the appellant claimed. The judge went on to find that even if they did, the appellant would not now be of interest to the Taliban given how much time had elapsed.

5. The judge found that as there was no risk of persecution in the appellant's home area it was not necessary to consider whether it would be reasonable to expect him to relocate to Kabul.

6. The judge then considered Article 8 ECHR. The judge stated at paragraphs 39 – 40:

> *As far as Article 8 is concerned the relevant standard is the balance of probabilities. It is not argued that the appellant has family life here so that issue does not arise. As to his private life the appellant is over 18 so paragraph 276ADE(1)(iii) does not assist even though he has been here for over seven years. He had not been here for seven years when he turned 18 on 18 June 2018 having arrived on 17 June 2012. He is still under 25 but will not have been here for half of his life until 2022, so paragraph 276ADE(1)(iii) does not presently assist him either. Finally, given my findings above, both on risk on return and on the appellant's cultural beliefs, despite the decision in Kamara and the argument that the appellant may still be regarded as a child in Afghanistan until he marries, I find that he has not established that there are very serious obstacles to his integration into Afghanistan, so paragraph 276ADE(1)(vi) does not assist him.*
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> *As far as Article 8 outside the Rules is concerned, under Section 117B I am to give limited weight to private life established whilst the appellant has been in the United Kingdom precariously. That covers all of the time the appellant has been here and that the appellant's commendable engagement with the education system here and the supporting letters from his former foster parent and social worker, I take account of the fact that he has now been here for over seven years. I also take account of the skills he has learned here, including mechanics and English. These will assist him in Afghanistan as well. Overall, the appellant has not established on the balance of probabilities that it would be unduly harsh to return him to Afghanistan such as to breach Article 8*.

Grounds of Appeal

7. The grounds of appeal raise four distinct grounds. In granting permission, the Upper Tribunal stated in the "reasons" section that the first two

grounds were not arguable. However, the grant was not limited in the "decision" section. Therefore, having regard to *Safi and others (permission to appeal decisions)* [2018] UKUT 00388 (IAC), I invited Mr Dolan to pursue the first two grounds if he so wished. He declined to do so and limited his submissions to the third and fourth grounds of appeal.

8. The first of the grounds advanced by Mr Dolan (ground 3) concerns paragraph 22 of the decision, where the judge stated:

> "Thirdly, why, after his father was targeted by the Americans, was the appellant [sic] was fearful of the Taliban? The explanation given was that the Taliban thought that (overnight) the appellant had betrayed his own father to the Americans after their very first visit to his house; but, on any view, this appears unlikely behaviour to attribute to an 11 year old."

9. Mr Dolan submits that the judge in this paragraph allowed his own perspective and influences to affect his assessment of what would be plausible and was effectively seeking to decide for himself what the Taliban might have thought an eleven year old would do. The grounds state that this is the type of error identified by the Court of Appeal in *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223 where it is highlighted that a judge needs to be:

> "cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society".

10. The second submission made (the fourth ground of appeal) is that the assessment of proportionality under Article 8 was inadequate. In particular it was argued that the judge failed to adequately consider how young the appellant was when you left Afghanistan, how young he still is (and that he would be treated as a child in Afghanistan), and that he lacks contact with family or friends in against. Mr Dolan argued that there was a real risk of destitution on return that had not been adequately considered.

11. Ms Jones submitted that when the decision is read as a whole it becomes clear that there is no material error. With respect to ground 4, she highlighted paragraph 7.6 of the decision where the judge noted the evidence of the appellant that he lives independently, shopping and cooking for himself. She drew attention to the finding of the judge at paragraph 27 that the appellant may have exaggerated his lack of contact with family in order to strengthen his claim.

Analysis

12. The grounds of appeal quote, and Mr Dolan relied on, paragraph 25 of *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223, where the Court of Appeal stressed the importance of viewing an account of events in the context of the conditions in the country from which the appellant comes and of being cautious before finding an account

inherently incredible. These are indeed important principles. However, this does not mean a judge cannot, applying common sense to a particular situation, reach the conclusion that an account (or an aspect of an account) is implausible. It is important, when considering plausibility, to keep in mind what the Court of Appeal in *Y* stated at paragraphs 26 – 27, not just paragraph 25. I therefore set out below paragraphs 25-27 of *Y*:

> *25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:*
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> > *"'An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done."*
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> *26 None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the Awala case by Lord Brodie at paragraph 24 when he said this:*
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> > *"… the tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole".*
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> *He then added a little later:*
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> > *"… while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his*

> *ability, as a practical and informed person, to identify what is or is not plausible".*
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> *27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree.*

13. At paragraph 19 of the decision the judge stated that despite not accepting some of the points raised by the respondent, there were "other issues of concern about the merits of the claim". One of these, which is set out at paragraph 22 of the decision (quoted above in paragraph 8) is that the judge found it was unlikely the Taliban would have believed that the appellant had "betrayed his own father to the Americans after their very first visit to his house".

14. This finding is problematic – and undermines the judge's assessment of the appellant's credibility – for two reasons. Firstly, the judge appears at paragraph 22 to have misconstrued the appellant's evidence which was not that the Taliban believed he betrayed his father to the Americans, but that they believed he had betrayed them to the Americans. It is notable that when summarising the respondent's position (at paragraph 2.6.2 of the decision) and the appellant's evidence (at paragraphs 5.1.3 and 5.3.4) the judge did not make any reference to the appellant claiming the Taliban believed he betrayed his father, and there is no explanation why this is raised for the first time at paragraph 22.

15. Secondly, there is no adequate explanation in the decision as to why it would be "unlikely" for the Taliban to accuse the appellant of betraying them (or, indeed, his father). It was accepted by the judge (at paragraph 24) that the appellant's village was contested and that it was plausible the Taliban and Americans both went to it. In this context, it does not, on its face, seem implausible or inherently unlikely that if American soldiers went to the appellant's family home the day after armed Taliban fighters had been there the Taliban might have been suspicious that someone from the household had informed the Americans; and given the appellant, following his father's death, would have been the eldest male member of the household, it would not seem implausible that the Taliban would be interested in him. I accept Mr Dolan's submission that in finding this aspect of the appellant's account implausible the judge fell into the error identified in *Y*.

16. However, although I accept that the judge made the error identified in ground 3 of the grounds of appeal, I am not satisfied that the error was material. This is because there has been no challenge in the grounds of appeal to the judge's finding at paragraph 35 that even if the events occurred as claimed the appellant would not be of interest to the Taliban after so long.

17. The appellant's account, taken at its highest, does not plausibly explain why, after over 7 years have elapsed and huge changes have happened in the region (including the displacement of the entire village – see paragraph 5.3.7 of the decision) the Taliban would remain interested in him, given that the only reason given they had any interest in him was that he had told the Americans they had come to his house and taken food. Whilst it is plausible that the Taliban would have sought out the appellant after the Americans came to his family home and killed his father (in order to find out what happened and punish/kill the appellant if they thought he had informed the Americans that the Taliban had been at the home) there does not seem to be any basis for believing that they would maintain an interest in the appellant for over 7 years. In this regard it is relevant that the appellant, by his own account, was able to reside with his uncle in the same village for a week following the incident without the Taliban managing to locate him, despite the presence of informers in the village. The appellant's ability to do this indicates that he was not a priority for the Taliban even in the week following the death of his father. This supports the conclusion of the judge at paragraph 35 that the appellant would not, 7 years later, be of interest to the Taliban.

18. I am not persuaded that there are any errors in the judge's approach to article 8 ECHR. Although the assessment at paragraphs 39 – 40 is brief, reading the decision as a whole it is apparent that when considering both obstacles to integration under paragraph 276ADE(1)(vi) of the Immigration Rules and proportionality of removal under article 8(2), the judge has had regard to the following factors:

    (a) the appellant's age when he left Afghanistan,

    (b) the length of time he has lived in the UK,

    (c) his concern that he would be treated as a child in Afghanistan until he marries, and

    (d) his education and achievements in the UK, and his ability to deploy skills learnt in the UK in Afghanistan.

19. The grounds of appeal submit that there was inadequate consideration of the appellant's youth when he left Afghanistan. However, the judge clearly had regard to this. Although not emphasised in paragraphs 39 – 40, these paragraphs need to be considered in the context of the decision as a whole, where it is clear that the judge has had the appellant's age at the forefront of his mind. The judge began his asylum credibility assessment by reminding himself that the appellant was only 13 when the asylum interview took place, that the events at issue occurred when he was only a child, and that he was only 19 at the time the hearing. The judge referred to the respondent's guidance on children and noted its significance "especially as the most important evidence still relied on was elicited when the appellant was only 13." Moreover, at paragraphs 17-19 of the decision the judge criticised the respondent for failing to follow his own guidance and make appropriate allowances for the appellant's age.

Although these references to the appellant's age are in the section of the decision concerned with asylum, there is no reason to believe that the judge did not keep them in mind when assessing article 8.

20. The grounds of appeal submit, also, that the judge had inadequate regard to the argument advanced by the appellant that he would be treated as a child in Afghanistan. However, this is explicitly referred to in paragraph 39. The judge did not dispute that the appellant may be treated as a child, but found that despite this there would not be very significant obstacle to integration. The criticism in the grounds, therefore, amounts to no more than a challenge to the weight given to this factor. However, that was a matter for the judge.

21. The grounds submit that the judge failed to take into account that the appellant would not be able to support himself. However, although dealt with only briefly, at paragraph 40 the judge considered the appellant's capacity for earning a living in Afghanistan where he found that the appellant would be able to utilise the education in mechanics he had received in the UK, as well as his English-language ability. Based on the evidence before the judge, I am satisfied that it was open to him to conclude that a healthy male Afghan educated in the UK and able to speak English would not become destitute or be unable to earn a livelihood on return.

22. A further point made in the grounds is that there was a failure to consider the appellant's lack of contact with family or friends. There is no reference in paragraphs 39 – 40 to whether the appellant would have the assistance of family in Afghanistan. At paragraph 27 the judge found that the appellant gave "curious" answers to questions about his family and that one explanation for this would be that he had exaggerated lack of contact in order to strengthen his claim. However, there is no clear finding as to whether the appellant would have family support on return. That said, the absence of such a finding does not affect the outcome because the conclusion of the judge is that even without support of family removal would not be disproportionate.

23. The article 8 assessment, although brief, includes consideration of all material factors and reaches a conclusion that is not inconsistent with the evidence that was before the judge. I therefore reject the fourth grounds of appeal.

24. The appeal is dismissed.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal does not contain an error on a point of law that is material to the outcome. I therefore do not set aside the decision.

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 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 Sheridan

Dated: 19 December 2019