



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06450/2018

THE IMMIGRATION ACTS

Heard at Field House
On 11 April 2019

Decision & Reasons Promulgated
On 1 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

AHMED [A]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford (for Central England Law Centre)

For the Respondent: Mr I Jarvis (Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Ahmed [A], a citizen of Afghanistan, born 1 January 2001, against the decision of the First-tier Tribunal of 6 July 2018 dismissing his appeal, itself brought against the refusal of his asylum claim of 8 May 2018.

2. The Appellant is from Surkh Rod in Nangarhar, Afghanistan. He arrived in the UK on 7 October 2015 and claimed asylum. He had previously travelled across Iran, Turkey, Serbia, and various EU countries. His asylum claim was based on his fear of forced recruitment by the Taliban. Daesh had come to his village taking and killing children, and asking for boys to join their organisation. The Taliban came to his home and asked his father if the Appellant and his two older brothers would enlist to become suicide bombers. From October 2014 the Taliban sent warning letters to his family home asking that he join up. His older brothers fled at once, and the Appellant and his father followed six days later.
3. His claim was refused because it was not considered consistent with the country evidence, which did not demonstrate that the Taliban had taken over his home area as of April 2013 or that he was at risk of forced recruitment; and it was thought implausible that the Taliban would have sent warning letters giving his brothers the opportunity to escape.
4. The First-tier Tribunal accepted the likelihood of the Taliban having been perceived by the Appellant as having taken over his home area given media articles showing that Surkh Rod had become dangerous to enter by spring 2014. However, it did not accept the rest of his account as credible, because
 - (a) The mention of having witnessed a child's suicide bomb attack only at the hearing was not plausible given the Appellant's account was focussed on association with suicide bombing generally: this addition was indicative of willingness to mislead;
 - (b) Whilst the Taliban were known to write warning letters, it was not plausible that they would thus alert the parents of potential suicide bombers as this invite their targets' escape, and it was implausible that their father would make arrangements for his elder sons to escape first, leaving the Appellant vulnerable to recruitment for several days in the meantime;
 - (c) There was nothing in his account to suggest that he would be at any personal risk of facing problems with Daesh: the possibility must have been something that he had become aware of whilst living in the UK, from television reports, and was not a real risk;
 - (d) There was an inconsistency in his account of losing touch with his father, as he had said in his witness statement that they became separated in Sofia after which a Pashtu speaker that the Appellant called "uncle" took care of him and assisted with his journey to the UK, whereas at the hearing he had said that he had managed to contact his uncle in Afghanistan following losing touch with his father in order to make arrangements for his onwards journey;

- (e) It appeared that the plan had consistently been for him and his father to travel to the UK rather than claim asylum in the first safe third country;
 - (f) His claim to have been unable to re-establish contact with his father in the UK was not plausible: had he truly been innumerate such as to be unable to recognise a mobile telephone number he would presumably have mentioned this at interview, and he had in fact shown evidence of numeracy by correctly identifying Afghan banknotes at interview and admitting he had attended school for a year. And the benefit of feigning being out of contact with adult relatives was self-evident given the advantages that unaccompanied minors had in the status determination system.
5. Based on those findings, the First-tier Tribunal found the Appellant was not in need of international protection, as he was not at risk in Surkh Rod if he returned there for any individual reason and not was there any generalised risk of violence there; anyway he would have support available to him from his immediate and extended family. In any event, he could safely relocate internally to Kabul being a healthy male with skills gained from his life in the UK and with the benefit of relatives who could support him.
6. Grounds of appeal contended that the First-tier Tribunal had erred in law by
- (a) Failing to take account of the difference between how children and adults might be expected to recall events, and of the possibility that the Appellant would be unable to write down numbers even if he could recall them;
 - (b) Overlooking material evidence as to the prevalence of the use of child suicide bombers in the Appellant's home area;
 - (c) Making findings without evidential foundation in concluding that the Taliban would not use letters in the context of invitations to enlist as a suicide bomber notwithstanding that there was country evidence indicating that they did, and as to whether an agent might have told the Appellant of the advantages of claiming to be out of touch with his family;
 - (d) Failing to have regard to the Appellant's age, mental health, lack of work experience and education, in concluding that Kabul would be a reasonable site of relocation.
7. The Upper Tribunal granted permission to appeal on 16 November 2018, on the basis that it appeared that material evidence regarding the use of night letters had been overlooked.

8. Before me Mr Jarvis for the Secretary of State took a pragmatic stance, explaining that there were clearly difficulties with the reasoning of the First-tier Tribunal. However, the most significant failure of the Judge below was that the Appellant was in fact a minor at the date of the appeal hearing, and this had not been given express attention in the making of the credibility findings. Mr Bedford expressed his agreement with commendable concision.

Findings and reasons

9. I accept that there were indeed material errors of law in the decision of the First-tier Tribunal.
10. Given the Appellant was a minor, his evidence should have been approached having regard to the Joint Presidential Guidance Note No 2 of 2010 for *Child, vulnerable adult and sensitive appellants* vulnerable and sensitive witnesses having regard to the extent of their vulnerability and the effect on the quality of their evidence and the ultimate weight to be given it.
11. Although the First-tier Tribunal referred to the Appellant's date of birth and his age, there is no other indication in the decision that any special attention was afforded the impact that his age might have on his ability to give his account. Far from applying this approach, if anything, the Appellant's minority was in fact held against him, via the reference to the perceived advantages that the system would bestow on a child without family to which to return abroad. Accordingly the appeal must be re-heard afresh.
12. When the appeal is re-heard, the Judge will need to have regard to the matrix of Country Guidelines. In the most recent decision of *AS Afghanistan*, the Upper Tribunal found that low level individuals such as the Appellant would not be at real risk of persecution from the Taliban in Kabul. It would not in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul. However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within this general position. A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.
13. However, regard must also be had to the fact that the assessment of risk is different in the case of a minor than an adult. The situation of a child or

vulnerable young person on a return to Afghanistan may be different to that of a slightly older adult with experience of life in an urban centre there, or with family to support them. As stated in *AA (unattended children) Afghanistan* CG [2012] UKUT 16 (IAC) headnote at (2):

“the background evidence demonstrates 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. Such risks will have to be taken into account when addressing the question of whether a return is in the child’s best interests, a primary consideration when determining a claim to humanitarian protection.”

Those guidelines remain relevant: as stated in *AS Afghanistan* CG [2018] UKUT 118 (IAC) (28 March 2018) (headnote at (8)): “The country guidance in *AA (unattended children) Afghanistan* CG [2012] UKUT 16 (IAC) also remains unaffected by this decision.”

14. And as stated most recently in *SA (Afghanistan)* [2019] EWCA Civ 53 §43:

“*KA (Afghanistan)* established the proposition that, in the light of risks which included forced recruitment and sexual exploitation of vulnerable young males, persecution was not respectful of birthdays, and that assumed age was more important than chronological age. In *JS (Afghanistan)* the Upper Tribunal noted that, although JS was no longer a minor, consideration had to be given to whether he would have family or other adult support on return to his home country appropriate to his particular needs, and in the context of the risks to unattached children and the fact that such risk did not disappear on an eighteenth birthday.”

15. Although on a re-hearing the Appellant will no longer be a minor, the principle that persecution is not respectful of birthdays remains apt.
16. *AS (Afghanistan)* at Upper Tribunal level also concluded (headnote (v)) that, “although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.” The First-tier Tribunal will also need to have regard to the fact that, as noted by the Court of Appeal in *AS (Afghanistan)* [2019] EWCA Civ 208, there appears to have been something of an arithmetic slip in the course of the Upper Tribunal’s reasoning in *AS*, in that the civilian casualty rate was miscalculated by a

factor of ten. In the Court of Appeal's estimation, that could not be written off as a mere "error of expression" but represented a "substantive error" §5, 42. The implications of that miscalculation will need to be considered by the First-tier Tribunal when it hears the appeal.


17. As already indicated, the decision of the First-tier Tribunal cannot stand and the appeal must be remitted for re-hearing afresh.

Decision

The appeal is allowed to the extent it is remitted to the First-tier Tribunal for re-hearing afresh.

Signed

Date 24 April 2019

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes