Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05255/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24th February 2020	**On 27th April 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

A K S
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Brown of Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Ms R Bassi, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Aujla promulgated on 12 December 2019 in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 19 July 2017 was dismissed.

2. The Appellant is a national of Afghanistan who arrived in the United Kingdom in September 2016 and claimed asylum on 3 January 2017. He had previously travelled through Bulgaria, Hungary and Italy and claimed

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asylum in each. The Appellant had previously claimed to be a minor but this was not accepted.

3. The Respondent refused the application the basis that the Applicant's claim was not credible because of a lack of detail and consistency in his account and because his credibility was damaged by section 8 of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as his asylum claim was made only after he had been arrested for ABH and had made claims for the asylum in three other safe countries. The Respondent concluded that there was no risk on return for the Appellant and in any event there would be a sufficiency of protection for him on return and the option of internal relocation. The Appellant had no established family life in the United Kingdom and he did not meet the requirements of paragraph 276ADE of the Immigration Rules, nor were there any exceptional circumstances to warrant a grant of leave to remain. The Appellant's medical condition was acknowledged but did not meet the high threshold for a grant of leave to remain on that basis, given that treatment would be available on return and the Appellant had family in Kabul.

4. Judge Aujla dismissed the appeal in a decision promulgated on 12 December 2019 on all grounds, the detailed reasons for which I return to below.

The appeal

5. The Appellant appeals on four grounds. First, that the First-tier Tribunal failed to consider whether the Appellant was in need of humanitarian protection under Article 15(c) of the Qualification Directive. Secondly, that the First-tier Tribunal failed to take into account evidence of the Appellant's poor mental health. Thirdly, that the First-tier Tribunal erred in its credibility assessment of the Appellant and in particular relied on speculation. Finally, that the First-tier Tribunal erred in law in continuing to apply AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC) despite recognising that the Court of Appeal had allowed an appeal against this decision and remitted the matter to the Upper Tribunal for rehearing.

6. At the oral hearing, it was accepted on behalf of the Respondent that the First-tier Tribunal had materially erred in law in failing to determine the appeal on humanitarian protection grounds and also in adopting an inconsistent approach to whether the Appellant was or was not a vulnerable witness such that the Joint Presidential Guidance Note No 2 of 2010: 'Child, vulnerable adult and sensitive appellant guidance' (the "Joint Presidential Guidance") should or should not be applied. Further, it was accepted that the First-tier Tribunal Judge's continued reliance on AS (Safety of Kabul) was an error of law, but not a material one because on the findings made by the First-tier Tribunal, there was no risk on return to the Appellant's home area.

7. In light of this, the parties were in agreement that the decision of the First-tier Tribunal should be set aside and the matter remitted or relisted for a

de novo hearing, at which updated medical evidence is likely to be needed for the Appellant.

Findings and reasons

8. The Respondent's acceptance of errors of law in the First-tier Tribunal's decision was entirely appropriate and correct in this case and I therefore deal only relatively briefly with the decision and grounds of appeal.

9. First, it is clear that the Appellant appealed on all protection grounds, including asylum, humanitarian protection and human rights grounds and the First-tier Tribunal makes specific reference to this in paragraph 7 of the decision and refers, at least in part, to the requirements for a grant of humanitarian protection in paragraphs 14 and 15 of the decision. However, there are no findings nor any express consideration of whether the Appellant is in need of humanitarian protection anywhere else in the decision and only a simple statement as a conclusion that the Appellant is not in need of humanitarian protection in paragraph 45. No reasons at all are given for this conclusion. I find that the First-tier Tribunal simply failed to determine this element of the Appellant's appeal and/or gave no reasons for dismissing the appeal on this basis, which amounts to a clear error of law.

10. Secondly, in relation to the Appellant's mental health and whether he was a vulnerable witness, the First-tier Tribunal took an inconsistent approach to this. In paragraph 10 the decision records that at the oral hearing, the Judge agreed to treat the Appellant as a vulnerable witness for the purpose of the hearing on the basis of evidence, primarily from the Appellant's GP, that he was under pressure and suffering from anxiety. However, at paragraph 32, the Judge stated that although he had agreed to treat the Appellant as vulnerable at the hearing, with hindsight, the decision was not justified as there was a lack of relevant evidence about his mental health. There was some discussion about the limited nature of the evidence before the First-tier Tribunal, that the Appellant was suffering from anxiety and depression and had a diagnosis of anxiety disorder and acute stress disorder, but no comprehensive analysis or medical report by a psychiatrist or psychologist. Whilst that may, with appropriate reasons, have led to a rational conclusion that applying the Joint Presidential Guidance, the relatively recent diagnosis did not affect the assessment of the Appellant's earlier evidence; what the First-tier Tribunal did was simply dismiss the evidence in its entirety and then not apply the Joint Presidential Guidance at all, only saying that it would not be unexpected that a person be worried, anxious and feel under stress in the context of an appeal against a refusal of asylum. That ignores the albeit limited medical evidence entirely, which arguably still suggests the Joint Presidential Guidance should be followed (particularly in the context that it was also not in dispute that the Appellant was a minor at the time of the claimed events in Afghanistan) and is inconsistent with the approach at the hearing, without full reasons being given for the change. This is a further error of law in the approach of the First-tier Tribunal to the Joint Presidential Guidance and assessment of the Appellant's credibility.

11. Thirdly, in paragraph 30 of the decision, the First-tier Tribunal, having immediately above stated that in particular the latest country guidance in AS (Safety of Kabul) has been considered and taken into account; stated that *"... until any fresh guidance is issued by the Upper Tribunal, the guidance mentioned above must in my view be followed and that is precisely what I have done. ..."*. That amounts to a clear error of law. As recognised by the First-tier Tribunal Judge, the decision in AS (Safety of Kabul) was the subject of a successful appeal to the Court of Appeal and had been remitted for fresh determination before the Upper Tribunal. In these circumstances, the decision does not stand as country guidance and the First-tier Tribunal should not have followed it, let alone stated that it was bound to do so.

12. However, there is no material error of law in the First-tier Tribunal's approach to AS (Safety of Kabul) given the finding that the Appellant would not be at risk in his home area and could return there, such that, as confirmed in paragraph 40, there was no need to make any findings on internal relocation. In these circumstances, there was not, on the facts of this case, any actual application of AS (Safety of Kabul). The point may be relevant when the appeal is considered afresh if the Appellant is found to be at risk in his home area for asylum and humanitarian protection reasons.

13. For these reasons, the decision of the First-tier Tribunal involved the making of material errors of law and as such it is necessary to set aside the decision. It is not necessary to make any further findings on the remaining ground of appeal. Given that the errors of law which have been found included matters affecting the assessment of credibility which could infect all of the findings, there are no findings which can or should be preserved and the appeal should be reheard de novo in the First-tier Tribunal, given the extensive nature of the further facts to be found.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) to be heard de novo by any Judge except Judge Aujla.

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 25th March 2020
Upper Tribunal Judge Jackson