

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/13738/2016**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 18 December 2018** | **On 1 February 2019** |
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**Before**

**DR H H STOREY**

**JUDGE OF THE UPPER TRIBUNAL**

**Between**

**n B**

(ANONYMITY DIRECTION made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Gherman, Barnes Harrild & Dyer Solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Afghanistan born in December 2000, arrived in the UK illegally in June 2016 when he claimed asylum on the basis that his father and brother were members of the Afghan military and that he would therefore be targeted by the Taliban by association. The respondent did not find his claim credible. In a decision made on 24 November 2016, the respondent refused his asylum claim but granted leave to remain under paragraph 352ZC of the Immigration Rules, as an unaccompanied asylum-seeking child. The appellant’s appeal was dismissed by Judge Widdup of the First-tier Tribunal on 21 July 2017, largely on the basis of adverse credibility findings. That determination was set aside. In a decision sent on 29 October 2018, Judge Manuell of the First-tier Tribunal dismissed his appeal, again largely on the basis of adverse credibility findings. At the date of the hearing before Judge Manuell the appellant was 17½, still a minor.

2. The appellant’s grounds of appeal were four-fold, it being argued that the judge erred in:

(1) failing to apply the correct law as at the relevant date;

(2) applying his own preconceptions as to the nature and quality of the appeal;

(3) applying his own preconceptions as to the Afghan army and general military practice when making credibility findings; and

(4) making improper credibility findings.

3. By (1) the grounds seek to argue that the judge wrongly proceeded on the basis that the appellant when an adult would not be a lone young person in Kabul. That is a misreading of paragraph 35 which reads:

“35. This means that the tribunal finds that the Appellant is not at real risk for any reason in Afghanistan in the event of his entirely hypothetical return before he is 18. The Appellant can contact his family or close relatives prior to his return, which fact he has sought to conceal. He will not be a lone young person in Kabul, an unattended child, with no male relative. He is mature, in good health and able to look after himself. His best interests are manifestly to rejoin his family from whom he has been separated for too long. The belated and fruitless enquiries made of the Red Cross count for nothing as there is no reason to believe that correct information has been given to them for tracing purposes. Moreover, if the Appellant’s father is or was an officer in the Afghan National Army, based in Helmand, he could not have been hard to trace.”

4. The whole point of the first sentence was to confirm what the judge had already said at paragraph 6, namely that the relevant date for assessing risk was the date of hearing at which date the appellant was still a minor and whose risk had to be assessed as such.

5. Ground (1) also contains an allegation that the judge failed to conduct an assessment of the claimant’s best interests under s.55 of the BCIA 2009 and this failure was demonstrated by his seeming doubt that the appellant was still a minor and his failure to make an anonymity direction. In respect of the judge’s treatment of the appellant’s age, issue is taken with his statement at paragraph 22:

“The Appellant gave his evidence without any apparent difficulty. The cross-examination was of modest length. The Appellant remained alert and articulate throughout, determined to defend the story he had advanced. His claimed age had been accepted by the Respondent, so that was not in dispute. In the tribunal’s view, the Appellant’s confidence and ease of self-expression indicated that he was exceptionally mature for the age he claimed to be.”

6. I cannot establish from the file whether the judge was asked to make an anonymity direction but since one had been made by the previous FtT, the judge should not have withdrawn it without at least an explanation. However, I do not see that this failure gave rise to any legal error nor that it somehow demonstrates that the judge did not accept the appellant was still a minor. As regards the criticism raised against the claimant’s age, the judge’s comments at paragraph 22 cannot in my view be read as casting doubt on the appellant’s age; it only concerned his level of maturity. Further, the judge clearly did take account of the appellant’s best interests, not only expressly referring to them in paragraph 35 but making clear why they would not be undermined if he was returned – because he could re-join his family.

7. Ground (2) takes aim at what the judge said at paragraph 21:

“The tribunal is at a loss to understand why this appeal was remitted with the express consent of the Respondent, particularly when First-tier Tribunal Judge Widdup’s reasons for disbelieving the Appellant reflected those given by the Respondent in the reasons for refusal letter. Nevertheless, the present tribunal has heard and decided the appeal for itself, and taken no account of Judge Widdup’s findings, despite the fact that the whole appeal process against the refusal of asylum and humanitarian protection in this case has no obvious utility. The Appellant is not facing removal from the United Kingdom. The Appellant, having been granted leave to remain until 30 June 2018, will enjoy a full right of appeal on asylum, humanitarian protection and human rights grounds in the event of refusal of the application for further leave to remain which he is sure to make. No doubt the Appellant has simply followed the advice he has been given. These seemingly wasteful aspects of the whole protection process – taking up precious Legal Services Commission funding and tribunal time – merit further consideration.”

8. This text is said to betray bias against the appellant, indicating that the judge did not look at matters afresh. I disagree. When there has been a previous exercise of judicial fact-finding, judges are obliged to consider whether the terms of a set aside require some or all of the previous findings of fact to be preserved or not. The judge was entitled to observe that the respondent’s reasons for expressly consenting to the remittal were unclear; that was correct as a matter of fact. These observations of the judge plainly did not prevent him from deciding the case for himself and there is nothing to suggest that he sought at any stage to draw on or rely on Judge Widdup’s findings.

9. I see no merit in Ground (3). The grounds complain that the judge “has not substantiated his findings, and based them purely from his own perspective and conjecture”. This overlooks that the burden of proof rested on the appellant, not the judge. As regards the criticisms made of the judge’s reasons for not accepting the appellant’s account of the circumstances of his journey to the UK and for not accepting that the Afghan army would not have responded to an attack by the Taliban on a home where a serving soldier had died, these amount to mere disagreements with the judge’s findings. These finding did involve conjecture but it has not been shown to be unreasonable conjecture or based on foreign “westernised” preconceptions. I note that the grounds do not identity any background country information at odds with the judge’s findings on these matters.

10. I have the same response to further criticisms levelled in the grounds at the judge’s reasons for finding it not credible that an Afghan military family would lack security procedures and be so unattended and unguarded.

11. Ground (4) places focus on the judge’s treatment of the appellant’s claim that there had been translation errors made at his asylum interview. At paragraph 28 the judge wrote:

“The tribunal has considered carefully whether these inconsistencies might be attributable to youth or trauma. In the tribunal’s view the discrepancies are serious and they must be considered alongside the inherent implausibility of the ley elements of the Appellant’s story. The Appellant claimed to have a clear recollection of events, so clear that he was able to correct what he said were translation errors made at his asylum interview. In the tribunal’s view it is unlikely that an unqualified interpreter would have been used by the Home Office. No obvious interpretation problems were observed by the officer who conducted the interview, or by the responsible adult present on the Appellant’s behalf.”

12. Ms Gherman pointed out that the appellant’s concerns about the asylum interview had been raised on 28 November 2016 and were sent before the refusal decision. She had made submissions about this before the judge.

13. I am not persuaded that Ground (4) identifies an error of law. First of all, the judge clearly took into account the appellant’s concerns about the interview. Second, although the grounds contend that the responsible adult with the appellant at interview was not able to speak Dari (the language the interview was conducted in), no point was raised to this effect by the responsible adult during or at the end of the interview. Third, the appellant was advised at the interview to provide any further information or evidence by 29 November 2016 and the appellant’s letter of 28 November in response raised only two specific concerns absent the interview record in respect of answers to two out of 111 questions. One concerned Q69 where the appellant said the answer should have read “bridmal” which means sergeant; and Q90 when the appellant said he said car, not (as recorded) bike. Neither of these inaccuracies had any significant impact on the judge’s assessment of the appellant’s account. It must be recalled that the judge’s adverse credibility findings in this case were based on a number of shortcomings: a lack of internal and external consistency; lack of detail and implausibility. In my judgment the judge was entitled to find that the appellant’s account was not credible and that he would in fact be able to return to Kabul and re-join his family there. I should also note that the judge’s credibility assessment took careful account of the fact that the appellant was still a minor. Although the judge did expressly refer to the Joint Presidential Guidance Note of 2010 or the Court of Appeal decision in **AM** **(Afghanistan)** [2017] EWCA Civ 1123, he noted at paragraph 7 that:

“It was noted that the Appellant remains a minor but it was accepted on his behalf that no vulnerability issues (apart from his minority) arose. No reasonable adjustments were requested and none appeared to be needed. No difficulties were noted during the hearing.”

14. The judge noted that the appellant’s representative at the hearing did not seek to submit to the contrary.

15. For the above reasons I conclude that the judge did not materially error in law and accordingly that his decision to dismiss the appeal must stand.

**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: 14 January 2018



Dr H H Storey

Judge of the Upper Tribunal