IAC-BH-PMP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07705/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Decision and Reasons Promulgated**
On 12th October 2015	**On 25th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

KA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Draycott of Counsel instructed by Paragon Law
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In decisions made respectively on 10th June 2015 and 19th August 2015 the First-tier Tribunal and the Upper Tribunal gave permission to the appellant to appeal against the decision of Judge Raikes in which she dismissed the appeal on all grounds against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, a male citizen of Afghanistan born on 17th March 1996. The decision of the Upper Tribunal extended the grant of permission to all the grounds raised in the application as opposed to the limited grounds specified in the permission decision of the First-tier Tribunal.

2. The grounds of application criticize the judge for:

(a) Failing to take into account the appellant's age, background and the lengthy delay in the respondent dealing with his claim when assessing his credibility and, in particular, the appellant's inability to give further details of his father's Taliban activities.

(b) Requiring corroboration in respect of parts of the claim.

(c) Rejecting the appellant's claim of forced recruitment by the Taliban on grounds of plausibility despite concessions made by the respondent, an expert and background evidence supporting the appellant's claim.

(d) Assessing background evidence after the hearing. In particular the judge's consideration of the respondent's Operational Guidance Note did not take into consideration the guidance given in *FS (Domestic violence – SN and HM – OGN) Pakistan CG* [2006] UKAIT 00023.

(e) Asserting that the appellant could have made contact with his family in Afghanistan when the respondent had conceded that reception facilities in Afghanistan were inadequate and that there had been a failure to comply with the duty to trace.

(f) Failing to assess the feasibility of returning the appellant to Kabul.

(g) Failing to include the factor of delay in the proportionality assessment. However, the Upper Tribunal permission comments that the appellant would be required to explain why paragraphs 66 and 70 of the questioned decision was insufficient to amount to a proper consideration of delay.

3. At the hearing before me Mr Draycott submitted that the appellant relied on all the grounds. He outlined the background to the appeal pointing out that the appellant was an unaccompanied child on arrival who was granted discretionary leave for four and a half years. There was no appeal against the initial dismissal of the asylum claim. He emphasised the importance of the expert report by Dr Foxley commencing on page 66 of the appellant's main bundle of documents which, particularly in paragraph 18, had explained the reasons for the appellant's lack of knowledge of his father's activities with the Taliban. He also submitted that the judge wrongly requiring corroborative evidence to support aspects of the appellant's claims.

4. My attention was drawn to the significant bundle of cases involving children in the appellant's ring binder in relation to the claim that the judge had not taken account of the appellant's age when reaching findings. Mr Draycott drew further attention to the expert report in connection with the judge's view that forced recruitment of minors did not occur in Afghanistan. He contended that the judge had overlooked the contrary conclusion in the report. Additionally the judge had applied information from research conducted after the hearing without giving the parties an opportunity to comment.

5. Mr McVeety reminded me of the short response under Rule 24 dated 2nd September 2015 asserting that the judge had directed herself appropriately. He contended that the judge's reference to information in the Operational Guidance Note was to publically available information and, as such, was akin to reference to the COIS reports. He also submitted that the expert report was a statement of opinion although he did concede that the information covered was comprehensive. He thought that the judge had made reference to the appellant's young age before reaching conclusions and decisions based upon implausibility coupled to inconsistency in

evidence. In the latter respect he made reference to paragraphs 39, 40 and 41 of the decision. He also argued that the judge did not specifically refer to a requirement for corroboration but simply identified deficiencies in evidence. As to the alleged delay, Mr McVeety pointed out that this had amounted to only about twelve months which should not be seen as significant and so was not material.

Conclusions

6. As to the alleged failure to take into consideration the appellant's age when reaching credibility findings, the judge does make some reference to this in conjunction with the appellant's alleged lack of knowledge of his father's activities. Specifically in paragraph 39 the judge refers to the appellant's age but thought it relevant, without further explanation, that the appellant could not answer basic questions about the Taliban and his father's role within it. It should be noted that the unfavourable conclusions about the appellant's credibility are reached without any reference to the expert report of Dr Foxley who, at paragraph 18 of his report, gives possible reasons for "weakness in detail" in the appellant's evidence. It was incumbent upon the judge to consider the report in this context and to give cogent reasons for dismissing its conclusions if the appellant's credibility was to be attacked. It is also the case that the decision rejects the appellant's claim of attempted forced recruitment by the Taliban for implausibility rather than a reasoned rejection of the expert evidence on this subject covered in paragraph 36 of Dr Foxley's report.

7. Although, in the context of credibility findings, the grounds seek to criticise the judge for taking into consideration the information in an Operational Guidance Note (paragraphs 44 and 45 of the decision), it is not evident that such reference breached the guidance of the Upper Tribunal in *FS*. That decision points out that such notes must be considered in the context of subsequent evidence about the situation in the country of origin including reference to subsequent COI reports. Paragraphs 44 and 45 of the decision show that the judge did consider such evidence in that manner and so the decision cannot be criticised on that account.

8. The judge's conclusions about risk on return do not show that consideration was given to the fact that the respondent had acknowledged that her obligations under Section 55 had not been met (paragraph 85 of the refusal letter) and that reception facilities in Afghanistan were not adequate. The judge finds in paragraph 53 that the respondent had not breached her duty to trace without giving cogent reasons or taking into consideration the acknowledgement that reception facilities were not adequate.

9. Finally, as to the allegation that the judge failed to take into consideration delay in his proportionality assessment, I conclude that the error is not material as it is clear from the content of paragraphs 66 and 70 of the decision, that the judge carefully took into consideration the length of time which the appellant had been in the United Kingdom and the private life which he had established in that period.

10. Although I have concluded that some of the grounds of application have not been made out, the judge's failure to engage fully with the expert report of Dr Foxley has tainted her findings of fact. Further, the judge has failed to fully asses risk on return in the light of the respondent's concessions. On the basis of those two material errors it is my conclusion that the appeal should be heard afresh by the First-tier Tribunal.

This conclusion accords with the provisions of paragraph 7.2 of the Practice Statement for the First-tier and Upper Tribunal done by the Senior President on 25th September 2012 because of the judicial fact-finding which will be necessary in order for the decision in the appeal to be re-made.

Decision

The decision of the First-tier Tribunal shows an error on a point of law and is set aside. The appeal is to be heard afresh by the First-tier Tribunal following the directions set out below.

Anonymity

The First-tier Tribunal made an anonymity direction pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order applying Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008):

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DIRECTIONS

1. The appeal is to be heard afresh by the First-tier Tribunal sitting at Stoke.
2. The time estimate for the hearing is three hours.
3. A Pushtu interpreter should be made available for the hearing.
4. Representatives should submit a consolidated bundle of all documents to be considered at the hearing.
5. The hearing will take place on a date to be specified by the Resident Judge at Stoke.

Signed Date

Deputy Upper Tribunal Judge Garratt