



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03993/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2018**

**Decision & Reasons Promulgated
On 18 October 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

T S

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative
For the Respondent: Mr N Bramble

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge R L Walker dismissing his appeal against the decision of the respondent made on 12 March 2018 to dismiss his appeal on asylum and humanitarian protection grounds.
2. The appellant did not appear today. No explanation is given for his failure to attend and he has been warned on a previous occasion that he would need to attend and that an interpreter would be provided for him. No explanation is provided and I am satisfied from the court file that due notice of the time, date and venue of this hearing was given. I am also satisfied that the appellant was clearly warned in the hearing notices that if he did not attend the Tribunal may determine the appeal in his absence. In the circumstances, and given the previous warnings given to the

appellant, I am satisfied that it is in the interests of justice to proceed to determine the appeal today in the appellant's absence.

3. The appellant's case is set out in some detail in Judge Walker's decision. In summary the appellant came to the United Kingdom unlawfully in 2008 claiming to be a minor. He was assessed as being older than that and was later found to be older than claimed. He was interviewed in connection with his asylum claim and it was refused. The appeal was dismissed by the First-tier Tribunal. Permission to appeal to the Upper Tribunal was granted and the appeal in the Upper Tribunal was dismissed on 11 October 2013 for reasons given by Upper Tribunal Judge King in his decision. It is of note that there were significant credibility findings adverse to the appellant.
4. On his own account the appellant left the United Kingdom, went to Italy, was arrested and apparently returned to Afghanistan. He says he was met at the airport and then on returning home discovered that his four cousins were in the Taliban and had become leaders and that he was being threatened in the village as they knew his cousins were in the Taliban and thought the appellant was an informant. He then fled, fearing that he would be at risk not only from the Taliban and his four cousins, but also the local army commanders who suspected him of being associated with the Taliban. His case was that there was no sufficiency of protection from Afghanistan nor would he be able to relocate, the situation deteriorating rapidly on a security basis and even Kabul would not be safe for him. The Secretary of State did not accept his account.
5. The judge directed himself that in line with **Devaseelan** the starting point would be the earlier appeal determination which he sets out in respect of credibility at paragraph 34 of his decision. The judge noted that it was of relevance that the appellant had claimed in his earlier appeal that he had no contact with his family in Afghanistan, something that Judge King doubted, that finding having been proven to be correct, that it is now said he had been in contact with his mother during the time in the United Kingdom. The judge also noting at [36] that the adverse credibility findings were reinforced by the appellant's acceptance that his claim to be a minor was untruthful as was his claim not to have contact or communication with his family.
6. The judge concluded that the appellant's account of events on return to Afghanistan was vague and inconsistent and did not accept it. He set out from paragraphs 37 to 43 why he did not accept the appellant's account and went on to dismiss the appeal, concluding in the light of the most recent country guidance case AS (Safety in Kabul) Afghanistan CG [2018] UKUT 118 that the appellant would not be at risk.
7. The appellant sought permission to appeal on three principal grounds. First, that the judge had failed properly to take account of an expert report, misdirecting himself contrary to Mibanga [2005] EWCA Civ 367 in failing to say properly why the matter had been adjourned and in wrongly considering the appellant's evidence in a vacuum without considering that

the expert report could be corroborative of the appellant's account. The report referring to there being a strong Taliban presence in the appellant's home area and addressing also the issues of internal relocation protection and the risk of being westernised. Second, that the judge erred in his credibility findings in relying in particular on a screening interview, failing properly to have consideration to YL (Rely on SEF) China [2004] UKIAT and in dismissing credibility on the grounds of plausibility. Third, in dismissing a later decision or country guidance by a French court and thus had excluded cogent and more up-to-date evidence in assessing risk.

8. Permission to appeal was granted by Judge Parker on 21 May 2018.
9. Properly considered it cannot be said that the judge took an improper approach to the expert report in this case. It must be borne in mind in this case, as already noted, that there had been a determination of the Upper Tribunal in which significant adverse credibility findings were made. Second, and importantly, properly viewed the judge did not improperly consider that the expert should have considered credibility as is averred in the grounds at paragraph 20.
10. It is important to note that the judge said that he attached little evidential weight to the report for a variety of reasons. There has to be a starting point for evaluating an expert report and it was open to the judge to note that credibility had been undermined. It is also relevant to note that the report does not address properly the refusal letter and did not factor in concerns of credibility. That was a point open to the judge to make as was the fact that there had been no reference to the appellant being westernised which is a matter of which the report took issue, nor was it something the appellant had claimed and at [47] the judge notes in other matters which make little sense, there being no previous reference to risks or why he would, at the age of 27, now be at risk, no longer being a minor, from sexual predators. The approach to the evidence was correct and, and this is a matter to which I will turn later, the decision from the French courts is not a source which the expert ought to have addressed.
11. Further, the credibility findings in this case were reached for a number of reasons. Turning to ground 2, as noted previously it has to be borne in mind that in this case there had previously been significant and serious adverse credibility findings. Further it now transpires, and this is not denied, that the appellant had in fact lied about being a minor and had lied about being in contact with family in Afghanistan. In light of those, and the other factors which are not challenged, the adverse credibility findings are ones manifestly open to the judge and for which he gave adequate and sustainable reasons. There is no basis on which he could say that the judge dismissed this on plausibility grounds. It is evident that he judged the case properly having directed himself properly as to the law and thus there is no merit in ground 2.
12. Ground 3 is lacking in any merit. There is simply no basis on which it could have been said that a decision on one individual by a French court was in any way relevant or capable of showing that a country guidance

decision reached by the Upper Tribunal should not be followed and I find therefore there is no merit in ground 3.

13. For these reasons the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

I maintain the anonymity order made by the First-tier Tribunal

Signed

Date 12 October 2018

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul