



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08887/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1 June 2018

Decision & Reasons Promulgated  
On 17 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M R T

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr Walker, Home Office Presenting Officer

For the Respondent: Ms Moffat, instructed by Hoole & Co, Solicitors (Brighton Street)

**DECISION AND REASONS**

1. The Secretary of State was the Respondent at the hearing before the First-tier Tribunal and the Respondent was the Appellant. I refer to them as the Secretary of State and Claimant in this decision.
2. The Claimant is a national of Afghanistan who was born on 1 September 1996. The Secretary of State refused his application for asylum and humanitarian protection in a decision letter dated 29 August 2017 (RFRL). The Secretary of State also

decided that he failed to meet the requirements of the Immigration Rules for leave to remain on the basis of his family life or private life in the United Kingdom.

3. The Claimant appealed the Secretary of State's decision and his appeal came before First-tier Tribunal Judge I D Boyes, who in a Decision and Reasons promulgated on 25 January 2018 allowed his appeal under the Refugee Convention and under Articles 2 and 3 of the European Convention on Human Rights (ECHR).
4. The Secretary of State sought permission to appeal the decision of Judge I D Boyes and permission was granted by First-tier Tribunal Judge Easterman, who concluded that it was arguable that Judge Boyes had given no, or no adequate reasons, for finding the Claimant to be credible in the face of the Secretary of State's reasons for concluding that he was not credible. He found that it was arguable that no reasons were given for departing from country guidance and there was little or no engagement with the prospect of internal relocation.
5. The Secretary of State's grounds for seeking permission to appeal are that the Judge did not adequately engage with the Secretary of State's arguments as to why the Claimant had not given a credible account and failed to give adequate reasons for his conclusions. The grounds also assert that the Judge failed to address the relevant case law on internal flight in concluding that the Claimant could not return to Kabul (**AK (Article 15 (c) Afghanistan CG** [2012] UKUT 00163 and **HN & Ors, (R on the application of) v SSHD** [2015] UKUT 437) and did not direct himself that return to Kabul was neither unsafe nor unreasonable. It is argued that the Judge's finding that the Claimant would be unable to work was speculative and that he had not shown that he had significant mental health or physical problems. Further, the Claimant lived on his own and these factors had not properly been considered.
6. The Claimant's Rule 24 response asserts that **AK** is a case under Article 15 (c) of Directive 2004/18/EC and given that the Claimant's appeal was brought on the grounds that there was a real risk of persecution/serious harm, the conclusions in relation to indiscriminate violence in that case were not of relevance. In any event, the case was referred to in the RFRL which was summarised by the Judge and he could be inferred to have it in mind. Further, the Judge gave reasons for his conclusions on risk at paragraphs 30 to 33 of the decision. It is submitted that the conclusions in relation to internal flight were open to him on the facts of the case and the conclusion that internal relocation was unduly harsh was open to him on the evidence. Further, contrary to the Secretary of State's submissions, the Claimant had provided evidence of his vulnerability and mental health difficulties. It was further clear that the Judge had in mind the country expert evidence and medical evidence which were referred to in the decision. There was nothing in the complaint that the Judge ignored the Secretary of State's submissions and found the Claimant credible without explaining how the conclusions had been reached.
7. The appeal therefore comes before the Upper Tribunal in order to determine whether there was an error of law in the decision of the First-tier Tribunal and if so whether to set that decision aside.

8. I heard submissions from both representatives. Mr Walker relied on his grounds seeking permission to appeal and asked me to find that there was a material error of law. Ms Moffat relied on her Rule 24 response and argued that the Judge made adequate findings in relation to credibility and adopted what the country expert said about the risk to the Claimant. She submitted that the Judge referred to the relevant evidence in relation to internal relocation. The Judge directed himself appropriately and the decision should stand.
9. Mr Walker replied that the Claimant had not been found to be suffering from any mental instability and was not receiving any treatment. The Judge concluded that it was unduly harsh for him to relocate due to mental instability when this was unclear from the medical report. Ms Moffat replied that the Judge could not be criticized for the way he dealt with the Claimant's mental state.

### **Discussion**

10. The Secretary of State's first ground of appeal is that First-tier Tribunal failed to give adequate reasons for finding the Claimant credible.
11. In **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 85 (IAC) Blake J) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.
12. In **MK (duty to give reasons) Pakistan** [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.
13. In **MD (Turkey) v SSHD** [2017] EWCA Civ 1958 the Court of Appeal held that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach.
14. The decision of the First-tier Tribunal is brief. It does not follow from that, of course, that there is a material error of law. The Secretary of State contends that the

reasoning is not adequate for him to know why he has lost. It is therefore necessary to consider the decision as a whole and the First-tier Tribunal's treatment of the Secretary of State's case. I deal firstly with the First-tier Tribunal's findings on credibility. The First-tier Tribunal summarised the Secretary of State's case, briefly, at paragraph 21. He noted that the Secretary of State's case was that the Claimant could not be believed. He did not know his father's role which cast doubt on his claim that he would be targeted by the Taliban. In addition, he did not know much of the detail of when his father was contacted by the Taliban or the circumstances surrounding his death.

15. The Secretary of State's case can be taken to be as set out in the RFRL as there is no assertion that the Judge did not have regard to material oral submissions. The Secretary of State did not accept that the Claimant's father was targeted by the Taliban. Reasons for this conclusion are given at paragraphs 24 to 28 and essentially amount to the fact that the Claimant provided very limited information regarding his father's job, limited information leading up to his death and that he did not know when he was asked to join the Taliban. The Secretary of State found that the Claimant had not substantiated this part of his claim.
16. The Secretary of State also did not accept that the Claimant was forcibly recruited by the Taliban (paragraphs 29 to 37 of the RFRL). The Secretary of State had regard to the background evidence and the case of **HK and others (minors - indiscriminate violence - forced recruitment by Taliban - contact with family members) Afghanistan CG [2010] UKUT 378** and concluded that there was no evidence in the Claimant's case that showed forced recruitment was more than a possibility.
17. The Secretary of State also contended that even if it were accepted that the Claimant had been targeted by the Taliban in his home area, he had failed to establish that he or his family had a high-profile equivalent to high-ranking Government officials, district leaders, or other groups that would lead to an on-going negative interest from the Taliban. It was concluded therefore that his fear was not objectively well-founded.
18. The Secretary of State also gave consideration to the Claimant's claim that he was being targeted in a land dispute. The Claimant claimed that after three years of living in Pakistan with his maternal uncle, mother and brothers, the Taliban came to his maternal uncle's village and beat him up. The Claimant claimed to have left Pakistan after this event but the Secretary of State contended that the time line he provided had cast doubt upon his claim to have been beaten by the Taliban. The Secretary of State contended that it was unclear why the Taliban would track him down in Pakistan over a land dispute in Afghanistan. The Secretary of State also contended that there were also doubts regarding his claim that he went to Pakistan in the first instance because his time line was inconsistent as to when he left Afghanistan. It was concluded that he had given an internally inconsistent account.
19. The Secretary of State also contended that the Claimant's behaviour engaged section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and that his credibility was damaged as he was finger-printed in Bulgaria, a safe

third country and failed to claim asylum. The Secretary of State also concluded that the Claimant had concealed his age in order to obstruct the resolution of his case.

20. The First-tier Tribunal dealt with the Claimant's credibility at paragraphs 26 to 29. He found that the Claimant's date of birth was not the one he gave but the one found by Social Services. His conclusions and reasons are as follows:

"26. ... I do not consider that this finding undermines the appellant's credibility. I do not think he was lying when he stated his age. He was simply recounting what he was told. He is illiterate and unfamiliar with time, dates and calendar events. I consider this to be the reason for the appellant giving the age and date of birth that he did.

27. I found the appellant to be credible in his account and version of events. I find that he did not embellish his version of events, did not try to fill the evidential gaps and did not try to gild the lily when it came to matters which he simply did not know. His account is plausible according to the country expert and aligns closely with what is known is happening in the area where the appellant is from.

28. I do not find the appellant's vagueness about dates or when matters occurred troubling at all. I accept the explanation given for his vagueness and consider that to be a credible and honest reason. The appellant was, on any date of birth, still a child when these matters happened in Afghanistan. His recollection of traumatic events cannot be maligned on account of him not being specific with dates and timings, that would be unfair.

29. I accept the appellant's account of what happened to him and his family. I accept that the genesis of the problem was the land dispute between his Father, Grandfather and Paternal Cousins. I have no reason not to believe him when I have found his account to be credible."

21. Whilst the Judge dealt adequately with the inconsistencies in the Claimant's account due to the inconsistent time line and the vagueness of his account and found that these were explicable due to his age, he did not engage with the Secretary of State's arguments summarised at paragraphs 16, 17 and 19 above. Whilst he stated at paragraph 27 of the Decision that the Claimant's account was plausible according to the country expert, this does not obviate the requirement to make credibility findings of his own in relation to matters in issue between the parties. I conclude therefore that the reasoning of the First-tier Tribunal was not adequate in relation to the Claimant's credibility.
22. The Secretary of State also contends that the First-tier Tribunal failed to consider and make adequate findings in relation to country guidance case law. In **AK** the Upper Tribunal remarked at paragraph 227 in relation to their findings regarding internal relocation that it was inevitable that what they said would have implications for consideration of this issue in the context of Article 1A (2) of the Refugee Convention. The ratio of **AK** in relation to internal relocation is therefore clearly relevant to the Claimant's claim under the Refugee Convention.
23. The First-tier Tribunal did not address the relevant case law in relation to relocation. He addressed internal flight at paragraph 30:

“Turning to the risk on return. I find that the appellant will be at risk on return to Afghanistan. The Security forces will not be able to protect him from the Taliban. I reach these conclusions on the following basis. Firstly, the appellant is a young man without any familial support or protection. He will be returning to Kabul, a city of which he knows nothing. He is illiterate, unskilled, has no money, no job and no prospects of a job.”

24. The Upper Tribunal in **AK** held as per the headnote that:

(iv) Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserts that Kabul city would be a viable internal relocation alternative, it is necessary to take into account (both in assessing “safety” and reasonableness”) not only the level of violence in that city but also the difficulties experienced by that city’s poor and also the many Internally Displaced Persons (IDPs) living there, these considerations will not in general make return to Kabul unsafe or unreasonable.

25. **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** was promulgated after the decision of the First-tier Tribunal. The First-tier Tribunal made no reference to factors set out in **AK** and hence cannot be considered to have properly directed himself or have given adequate reasons in relation to the question of internal relocation.

26. I therefore set aside the decision of the First-tier Tribunal and with the agreement of both representatives and in view of the fact finding required I remit the matter to the First-tier Tribunal for a de novo hearing not before Judge ID Boyes.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law and I set it aside.

The appeal will be listed in the First-tier Tribunal for a de novo hearing before a Judge other than Judge ID Boyes.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date



Deputy Upper Tribunal Judge L J Murray