Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/04136/2014**

THE IMMIGRATION ACTS

Heard at Field House
On 28 July 2015

Decision Promulgated
On 11August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

MAJID ABDUL
(Anonymity Direction Not Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr I Palmer (counsel), instructed by Barnes Harrild & Dyer, solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any party requires the protection of an anonymity direction. No anonymity direction was made previously in respect of the appellant. Having considered all of the circumstances and the evidence, I do not consider it necessary to make an anonymity order.

2. This is an appeal by the appellant against the decision of First Tier Tribunal Judge Keith promulgated on 10 December 2014, dismissing his appeal against the Secretary of State's decision to refuse his asylum claim.

Background

3. The appellant is an Afghan national, born on 1 January 1995.

4. The appellant entered the UK on 10 November 2009 and claimed asylum the day he arrived. On 10 May 2010, his application for asylum was refused but, because he was a minor, he was granted discretionary leave to remain until 1 July 2012. He did not exercise a right of appeal against that decision. On 29 June 2012, he applied for further leave to remain. That application was refused by the respondent on 6 June 2014. It is against that decision that the appellant appealed on 20 June 2014.

The Judge's Decision

5. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Keith ("the judge") dismissed the appeal on all grounds. The judge did not find the appellant to be a credible witness.

6. On 5 May 2015, Upper Tribunal Judge Lindsley granted permission to appeal, noting *inter alia* "the appellant will however have to show that the arguable errors, particularly with regard to the background evidence, also show that return to Kabul is unduly harsh or unsafe for the appellant for ultimately there to be a material error of law in the First Tier Tribunal's decision on the asylum appeal".

The Hearing

7. Mr Palmer, Counsel for the appellant, relied on the grounds of appeal, submitting that it was arguably impossible to see that the judge considered all of the evidence placed before him and made rational findings, and that there was no proper reason for not finding the appellant to be a credible witness. He complained that for the pivotal findings in fact, inadequate reasons were given and that inadequate consideration had been given to the totality of the background materials placed before the judge. He argued that the appellant is a vulnerable young man who cannot safely return to Kabul and that it is unreasonable for the appellant to relocate to Kabul from his home area of Ghanzi.

8. For the respondent, Mr Kandola stated that although the judge's findings in fact were brief, the judge has set out enough to support his conclusion; that the judge was entitled to make the findings that he did and to consider the weight to be given to each piece of evidence. He argued that the judge's findings in fact demonstrate that there is nothing unusual about this appellant's circumstances and that this appellant is a 19 year old adult male who will not attract the attention of the Taliban if he returns to either his home province of Ghanzi or to Kabul.

Analysis

9. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts

or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

> "Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."

11. I have looked at the decision in SSHD – v – AJ (Angola) [2014] EWCA Civ 1636 that an error of law by the First-tier Tribunal may be considered immaterial –

> " … if it is clear that on the materials before the Tribunal any rational Tribunal must have come to the same conclusion or if it is clear that, despite its failure to refer to the relevant legal instruments, the Tribunal has in fact applied the test which it was supposed to apply according to those instruments."

12. Credibility assessments by first instance fact finding Tribunals will normally be challengeable only on the basis of irrationality: Edwards – v – Bairstow [1956] AC 14.

13. The refusal letter of 10 May 2010 accepts the general credibility of the appellant's history in Afghanistan and accepts that the appellant's father's corpse was returned to the family home by the Taliban, but that is not sufficient for the appellant to be successful. The appellant's claim turns on a continued interest by the Taliban which would give him a significant profile on return to Afghanistan. The Home Office reasons for refusal letter of 6 June 2014 does not accept the appellant's claim that his brother was murdered by the Taliban nor that he had received written threats from the Taliban. The appellant had fair notice that those are matters for proof by credible and reliable evidence.

14. Although the appellant produces a bundle under Rule 15(2a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, counsel for the appellant chose not to refer to any part of that bundle. I have considered the background materials contained in that bundle. They make it clear that Afghanistan is far

from peaceful, the Afghan parliament was recently the subject of an armed attack by the Taliban, and that returns to Kabul for young men who have had protection and education in the UK through their childhood is not without difficulty, but none of the evidence placed before me demonstrates that the appellant has a particular profile which would make return to Kabul unduly harsh for the appellant.

15. In AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163(IAC) the Tribunal held that 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.

16. In Husseini v Sweden (Application no. 10611/09) ECtHR (Fifth Section) the Afghani applicant was from Ghazni and was of mixed Hazara and Pashtun ethnicity. The ECtHR held (in October 2011) that that there were no indications that the situation in Afghanistan was so serious that the return of the Applicant thereto would constitute, in itself, a violation of Article 3. Although there were impediments to enforcing expulsion orders to Ghazni province, it was possible and reasonable to expect the Applicant to re-settle elsewhere in Afghanistan, for example, in Kabul or Mazar-e Sharif. Having regard to that conclusion and UNHCR guidelines, it appeared that an internal relocation alternative was available to the Applicant in Afghanistan.

Conclusion

17. The judge's findings in fact are brief but they are to the point. The judge states in unambiguous terms that he did not find the appellant to be a credible witness. Before making that finding in fact, the judge carefully discusses all of the evidence produced in the case and gives appropriate self-direction on the relevant law.

18. The conclusions reached by the judge were conclusions which were manifestly open to him on the evidence produced in this case. They are supported by the judge's findings in fact. In reality, the grounds of appeal argued amount to little more than a disagreement with the conclusions reached by the judge. They do not amount to an argument which sets out material errors of law.

CONCLUSION

19. I therefore find that no errors of law have been established and that the Judge's determination should stand.

DECISION

20. The appeal is dismissed.

Signed 3rd August 2015

Deputy Upper Tribunal Judge Doyle