



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04313/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 August 2015

Decisions and Reasons Promulgated  
On 14 August 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

ZL  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Alexander, Counsel  
(instructed by Barnes, Harrild and Dyer)  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Shimmin on 23 February 2015 against the decision and reasons of First-tier Tribunal Judge Hanes promulgated on 11 February 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals. It should be noted immediately that the judge had no jurisdiction to deal with any human rights claim the Appellant had because the appeal was

against the refusal to grant him asylum, under section 83 of the Nationality, Immigration and Asylum Act 2002.

2. The Appellant is a national of Afghanistan, whose (disputed) date of birth was stated as 1 January 1998. He stated that he feared to return to Afghanistan because of his family's enemies and current conditions there.
3. When granting permission to appeal, First-tier Tribunal Judge Shimmin considered that it was arguable that Judge Hanes had failed to deal with the Appellant's welfare and the Secretary of State's failure to attempt to trace the Appellant's family.
4. The Respondent filed notice under rule 24 dated 18 March 2015 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

#### *Submissions*

5. Mr Alexander for the Appellant relied on the grounds of onwards appeal earlier submitted, together with the grant of permission to appeal. It was a clear error of law for the judge to have considered the Appellant's human rights and that part of the determination would have to be set aside. Counsel submitted that although the judge had found that the Appellant was not a credible witness, the duty to trace was a separate matter and it affected the assessment of the risk on return. The section 55, Borders, Citizenship and Immigration Act 2009 duty had not been discharged. The vulnerability of the Appellant had not been taken into account. The Secretary of State had not traced the Appellant's family.
6. Mr Tufan for the Respondent relied on the Respondent's rule 24 notice. He agreed that there had been no jurisdiction to deal with any human rights claim but submitted that the decision and reasons otherwise disclosed no error of law. TN and MA Afghanistan [2015] UKSC 40 was the leading authority on tracing. The Appellant's evidence was so unreliable that tracing could not have been attempted. Although the judge accepted that the Appellant was Afghan, his home village had never been found on a map. The failure to trace had no real bearing on the Appellant's credibility.
7. The tribunal reserved its determination, having indicated that its finding in principle was that no material error of law had been shown.

*No material error of law*

8. Clearly the judge fell into legal error by considering the Appellant's human rights and making findings, as he had no jurisdiction to do so. That part of the determination is accordingly set aside.
9. The tribunal accepts Mr Tufan's submissions in relation to the grounds of onwards appeal advanced on the Appellant's behalf. In the tribunal's view, the grant of permission to appeal was overly generous. The judge gave close attention to the issue of the Appellant's age and his vulnerability, which were taken into account in reaching his credibility assessment. Indeed, that assessment was not the subject of any real challenge and in the tribunal's judgment was thorough and eminently sustainable.
10. Given that the Appellant chose to give unreliable evidence, the prospect of tracing his family was so slight that the judge was right to disregard any formal breach of duty by the Respondent. As Mr Tufan reminded the tribunal, even the Appellant's home village had not been positively identified. TN and MA Afghanistan (above) shows that the judge had to assess the appeal on the evidence he had. There was nothing from which tracing could have commenced and so the failure to trace or to attempt to trace was irrelevant, as the judge correctly found at [25] of his decision.
11. This onwards appeal is, of course, entirely theoretical in any event, as the Appellant is not currently subject to removal directions as he was granted discretionary leave until he is 17½. There was no error of law. There is no basis for interfering with the judge's decision to dismiss the Appellant's "upgrade" appeal, which dismissal must stand.

### **DECISION**

The tribunal finds there that was a material error of law in the decision and reasons so far as the judge made findings concerning the Appellant's human rights. That part of the decision and reasons (i.e., [31]) is set aside and should be treated as deleted. Otherwise the decision and reasons stands unchanged.

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**