



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/04311/2016

Appeal Number:

THE IMMIGRATION ACTS

Heard at: City Tower, Birmingham Decision & Reason Promulgated

On: 12th May 2017

On: 2nd June 2017

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**Master J
(anonymity direction made)**

Appellant

And

The Secretary of State for the Home Department

Respondent

**For the Appellant: Ms E. Rutherford of Counsel instructed by
Coventry Law Centre**

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Afghanistan born in 2001. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Hussain) dated 7th November 2016 to dismiss his appeal on protection grounds.

Anonymity Order

¹ Permission was granted on the 1st December 2016 by First-tier Tribunal Judge Gillespie

2. This case involves a claim for international protection made by a minor. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Background and Decision of the First-tier Tribunal

3. The Appellant arrived in the United Kingdom on the 22nd July 2015. It has never been in issue that the Appellant was 14 years old at the time.
4. He claimed asylum and advanced a fear of persecution by the Taliban. The Appellant said that he is from Hesarak, a district of Nangarhar Province with a high incidence of Taliban activity. Two of his paternal uncles were killed. It was believed that they were executed by the Taliban, possibly because they had some association with the Afghan National Army. This resulted in an enmity between the Taliban and the Appellant’s family. They came to the family home on at least two occasions and beat and threatened the Appellant’s father. Taliban would often come to the village and threaten and cajole boys into joining their ranks. There are hardly any boys left in the village now. The Appellant’s family were afraid for his safety and so arranged for him to come to the United Kingdom.
5. The Respondent did not accept that the account was true, but in view of the Appellant’s young age was prepared to grant him Discretionary Leave until he reached the age of 17 and a half years. Protection was refused.
6. The Appellant appealed the protection decision to the First-tier Tribunal. It accepted that the area that he comes from is under Taliban control. The Tribunal did not expressly reject the evidence that the Appellant’s uncles were killed, but rejects as speculative his assertion that they were killed by the Taliban. The Tribunal finds there to be no risk to the Appellant from the Taliban today. There is no objective evidence that the Taliban forcibly recruit men into their ranks. The Appellant expresses a fear that he will be killed by them in

case he seeks revenge for his uncles' deaths, but this is not consistent with the fact that a) they did not kill him when he lived in the village, b) they have not killed his younger brothers and c) they have not killed his father. Finding there to be no risk in the Appellant's home area, the appeal is dismissed.

The Appeal

7. The Appellant now has permission to appeal on the grounds that the First-tier Tribunal erred in law in the following material respects:

- i) Failing to make a finding key issues, namely whether there would be adequate reception facilities available for the Appellant in Afghanistan, whether he would be at risk on return as a member of a particular social group (an unaccompanied child) or whether he could be returned to Kabul.
- ii) Failing to take all of the relevant evidence into account, *in particular*:
 - (a) the reasons advanced by the Appellant as to why he and his family believed it to have been the Taliban who killed his uncles;
 - (b) the country background material demonstrating that there have been instances of forced recruitment in the Appellant's home area of Hisarak;
 - (c) the reasons given by the Appellant for inconsistencies in his evidence, including the fact that he was very young at the date of the events being narrated
- iii) Making perverse findings, *in particular* the Tribunal finds there to be no risk to the Appellant today *inter alia* on the basis that they did not try and kill him when he was a child. This was contrary to the country background evidence that the Taliban do not deliberately target women and children.

The Reply

8. The Respondent accepts that the First-tier Tribunal has erred in law in that it failed to consider whether there would be a risk on return to

the Appellant as an unaccompanied asylum seeking child; there are no findings on that point in respect of Nangarhar nor indeed Kabul, the only place where the Secretary of State believes there to be a sufficiency of state protection. Mr Mills accepts that there are no findings in the determination about whether or not the Appellant is in contact with his family, nor about whether he could safely be returned to any part of Afghanistan. It was Mr Mills' submissions that the matter of family tracing would stand and fall with the findings on the Appellant's credibility: if I upheld the negative assessment of the First-tier Tribunal, it could be assumed that he remained in contact with his parents and would be received upon his return to either the home area or Kabul.

My Findings

9. The central reason that the First-tier Tribunal gives for rejecting the claim that the Appellant's uncles were killed by the Taliban is that the accusation is speculative. The Tribunal finds [at 11] that "there is no direct evidence" that the men are dead, or that if they are, that they were killed by the Taliban.
10. The Appellant's evidence about his two paternal uncles was as follows. They were not in the army but used to help the ANA whenever they came to the village. They would sit with the soldiers. "Bad people" in the village did not like this and would give information about them to the Taliban. There are a lot of Taliban in the area, and they control the roads. They would come into the village and knock on doors demanding that the people feed them. A lot of people followed them because they were afraid. They had killed people in the village and the Appellant believes that this is why his uncles did not like them. The ANA has tried to drive them out but has not been successful. In the witness statement prepared for his asylum claim and submitted at the SEF interview on the 3rd September 2005 the Appellant said this:

"I don't know exactly how my uncles were killed but people said that they were killed during the night. On the day that they were killed my uncles had gone to the field for farming in the afternoon. In the evening they didn't return and then late at night villagers came to the house. Everyone was talking in the house and I heard them saying that my uncles had been killed by the Taliban. My father was very sad but he didn't cry. Later on other villagers brought the dead bodies home. Everyone was crying and I cried as well. People were saying that my uncles were shot. The following day we buried them together in the cemetery".

11. In his substantive asylum interview the Appellant was asked how

he knew that his uncles had been killed by the Taliban. He repeated the evidence he had given in his witness statement and said that this was what people had told him. He had not seen them shot himself. Everybody knew it must be them since they had no other enemies [at Q63]. In his appeal statement the Appellant acknowledges that he has no direct proof of their responsibility, but states that he “knows in his heart” that they killed his uncles.

12. Ms Rutherford’s short submission on this evidence was that in making its findings the Tribunal focused exclusively on the Appellant’s admission that he no direct proof linking the Taliban to the deaths. The determination fails to address the reasons that the Appellant *did* have for believing them guilty, namely the strong inference that he (and apparently the rest of his village) drew from the circumstances: his uncles were opposed to the Taliban, associated with members of the army, and were shot dead in a field in an area with a heavy Taliban presence. The standard of proof is a low one, and in looking for “direct evidence” it would appear that the Tribunal applied an impermissibly high standard of proof. I am satisfied that this ground is made out.
13. In assessing the materiality of the error I bear in mind that this was not the only reason given for rejecting this particular part of the claim.
14. A second reason given was that the Appellant had failed to mention his uncles in his ‘screening interview’. That pro-forma, completed on the 3rd September 2015, is extremely brief. The Appellant says that the Taliban were active in his village and that they even killed people. The First-tier Tribunal considered it “surprising” that the Appellant did not specify that the people he was talking about were his uncles. Although this point was not taken by Ms Rutherford, I note - in the context of materiality of the foregoing error - that this is precisely the approach deprecated in YL (Rely on SEF) China [2004] UKIAT 00145. In his appeal statement the Appellant confirms that he was instructed to only give basic details about why he was afraid to return to Afghanistan. He reports “not feeling good emotionally” and that he found the interview to be a very difficult experience. None of that appears to have been weighed in the balance.
15. The determination goes on to find no risk arising from the Taliban based on the fact that the Taliban had not yet killed the Appellant, nor his brothers, nor the Appellant’s father. I am satisfied that this reasoning was apparently employed without any consideration given to whether the Taliban were reasonably likely to consider themselves at risk of revenge attack by young children. As for the Appellant’s father, the evidence was that he had been intimidated and beaten by the Taliban.

16. Overall I am satisfied that the Appellant's grounds of appeal in respect of the credibility findings are made out. Mr Mills accepted that if this was my conclusion the proper course would be for the matter to be remitted to the First-tier Tribunal for re-hearing. I need not deal with the remaining grounds. The Respondent accepts that the First-tier Tribunal omitted to make the key findings on important matters as alleged in the grounds and in view of the extensive fact finding required I agree that remittal would be the appropriate course.

Decisions

17. The decision of the First-tier Tribunal contains errors of law such that the decision must be set aside.
18. The decision in the appeal is to be remade in the First-tier Tribunal.
19. There is a direction for anonymity.

Upper Tribunal Judge Bruce
31st May 2017