Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09051/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th November 2018	**On 27th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR Z H
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Mukherjee of Counsel instructed by Davjunnel Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan whose appeal to require international protection was dismissed by First-tier Tribunal Judge Page in a decision promulgated on 12th September 2018.

2. The judge did not find the Appellant to be a credible witness (paragraph 12). He noted that on his own account the Taliban were only interested in

him in his local area so there was no reason why he had to leave the country. The judge said he could have relocated to Kabul. The judge recorded the Upper Tribunal decision in **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC)** and that in general it would not be unreasonable or unduly harsh for the Appellant as a single adult male "in good health" to relocate to Kabul even if he had no connections there. The judge noted (paragraph 13) that he was a young man with "no health problems" who could relocate there.

3. The judge went on to say that even if the Appellant's claim was the truth he could be returned to Kabul safely. The judge said that the Appellant's claim did not disclose an arguable case to asylum in light of the Upper Tribunal's decision in **AS**. He went on to dismiss the appeal.

4. Grounds of application were made. It was said that the Appellant was not asked as to why he did not relocate or claim asylum en route and the finding that he should have moved to Kabul to was procedurally improper. The CG on relocation of children to Kabul was that they should generally not be expected to do so if they did not have any family support. The judge had gone on to find that children who do join the Taliban and were trained by them were generally not forced to do this. This evidence indicated that there was a real risk that children were forcibly recruited by the Taliban. The judge was obliged to consider the Appellant's evidence including the profession and abduction of his father in considering the credibility issue but he did not do so.

5. **AS** did not say that all male adults could be safely relocated to Kabul. This Appellant had a different factual matrix to what was said in **AS**.

6. Permission to appeal was granted by First-tier Tribunal Judge Holmes who said that the judge had made a brief decision and it was far from clear why the claim that he faced forced conscription into the Taliban was incredible. Since the judge had found that the general recruitment of children was a voluntary process it stood to reason that he was accepting that sometimes it was not. There was also an issue of whether the judge had properly considered the Appellant's individual circumstances and that too could be argued. Permission to appeal was therefore granted in a decision dated 3rd October 2018.

7. The Home Office responded by way of a Rule 24 notice in a letter dated 24th October 2018 noting that the judge had given a number of reasons for rejecting the credibility of the Appellant and there could not have been a material error in light of the judge's clear self-direction at paragraph 16 that he could be returned to Kabul safely if his claim was the truth.

8. Thus, the matter came before me on the above date.

9. Mr Mukherjee of Counsel appeared for the Appellant and he pointed out to me what was said at pages 85 to 93 of the Appellant's bundle relating to the Appellant having chronic hepatitis. As such the judge was wrong to

say that the Appellant was in good health. It was accepted in **AS** that the healthcare provisions were not very satisfactory. This was an Appellant who had been diagnosed with hepatitis which was a severe condition and the judge had made a fatal error in not dealing with this in assessing that he was in good health. I was asked to set aside the decision and remit the appeal to the First-tier Tribunal.

10. For the Home Office Ms Everett acknowledged that the judge had made a brief decision and there was a possible error of law. The Appellant had mentioned his hepatitis in his statement at page 10 of the Appellant's bundle noting that he would not get the required treatment for his condition if returned to Afghanistan. Nevertheless, I was asked to find there was no material error in law and the decision should stand.

Conclusions

11. It seems to me that there is merit in the attack on the judge's findings on credibility. As the grounds say the judge did not explain why the Appellant, as a child, could be expected to have relocated to Kabul in the first place. Furthermore, whilst concluding that the Appellant was not asked to join the Taliban the judge arguably contradicted himself when saying that this did happen from time to time. In addition, there was no finding about whether the Appellant was in contact with his family or the claim that his father had been abducted.

12. The more worrying point in the decision is that the judge proceeded on the basis that the Appellant was in good health. The judge made a point of emphasising this in paragraph 13. The judge described the Appellant as a single adult male "in good health". The judge went further than that describing him as a young man "with no health problems". This went directly against the evidence presented to the judge in terms of the Appellant's own witness statement and backed up by the medical evidence. It goes to the heart of whether or not relocation to Kabul is appropriate. Not to take account of the medical evidence was a material error in law and it seems to me that the decision is therefore unsafe.

13. In these circumstances I have concluded that the judgment must be set aside. I was asked to remit the case and it seems to me that this is appropriate because further fact-finding is necessary and the matter should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Page.

14. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. In the meantime, the anonymity order will be continued.

Notice of Decision

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

16. I set aside the decision.

17. I remit the appeal to the First-tier Tribunal.

Order Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *JG Macdonald* Date 20th November 2018

Deputy Upper Tribunal Judge J G Macdonald