



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/12626/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6<sup>th</sup> September 2018**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR A S S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms B Smith (Counsel), Leonard Cannings Solicitors LLP

For the Respondent: Mr I Jarvis (Senior Home Office Presenting Officer)

**DECISION ON ERROR OF LAW**

1. The appellant's appeal against a decision to refuse his protection claim was dismissed by First-tier Tribunal Judge Abebrese ("the judge") in a decision promulgated on 30<sup>th</sup> January 2018. Permission to appeal was granted by a First-tier Tribunal Judge on 10<sup>th</sup> July 2018, on the basis that it was arguable that the judge's assessment of credibility and the documentary evidence was flawed. Mr Jarvis made some preliminary observations. While the Secretary of State did not agree with all the grounds in support of the application for permission to appeal, there was force in the second of them, regarding relocation to Kabul and the proper

assessment of the appellant's case. There was considerable guidance in the case law, and indeed from the Home Office on the correct approach to assessing risk on return in cases concerning minors. It was clear that the judge was required to take the appellant's age properly into account. Although it was clear from the decision that the judge was aware of the appellant's age, the decision showed little engagement with this aspect of the case.

2. Having read the decision carefully, I agreed with Mr Jarvis' observations and did not need to hear from Ms Smith. Paragraph 43 of the decision is of particular importance. It is here that the judge found that the appellant may relocate to Kabul and that the evidence did not show that he would be targeted or at risk, following return as an adult. Ground 2 is made out in this context. The judge mentioned AK Afghanistan CG [2012] UKUT 00163, a case which does not in terms concern minor claimants. The proper date of assessment was the date of the hearing and guidance given by the Upper Tribunal in ST (Child asylum seekers) Sri Lanka [2013] UKUT 00292 fell to be taken into account. The judge made no express findings regarding any family support in Kabul, the adequacy of reception facilities or other relevant matters. In these circumstances, the decision contains a material error of law and must be set aside and remade.
3. Ms Smith said that the appropriate venue was the First-tier Tribunal as the error of law bore on the judge's adverse credibility findings. Remaking the decision would require full fact-finding. The appellant would have his 18<sup>th</sup> birthday in January 2019 and would welcome an early hearing date. Mr Jarvis did not disagree with Ms Smith's submission on the appropriate venue.
4. The decision of the First-tier Tribunal is set aside. It will be remade in the First-tier Tribunal at Hatton Cross before a judge other than Judge Abebrese and although case management will be a matter for the First-tier Tribunal, the first available date for remaking the decision should be sought.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. It will be remade in the First-tier Tribunal at Hatton Cross before a judge other than Judge Abebrese. A Pushtu interpreter will be required and a suitable time estimate is three hours.

Signed

Date 08 October 2018

Deputy Upper Tribunal Judge R C Campbell

**Anonymity**

The judge did not make an anonymity direction. As the appellant's claim is based on risk on return to Afghanistan and he is a minor, I make an anonymity direction under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. That order will continue until set aside or varied by another Tribunal.

Signed

Date 08 October 2018

Deputy Upper Tribunal Judge R C Campbell