



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

Appeal Number: AA/07178/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24th February 2015**

**Determination Promulgated
On 25th February 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL GA BLACK

Between

**MD
(ANONIMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nicholson (Counsel instructed by Times PBS)

For the Respondent: Ms A Holmes (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against a decision and reasons of the First-tier Tribunal (Judge Griffiths) promulgated on 9th December 2014 dismissing the asylum appeal and section 47 directions made under the 2006 Act. This matter comes before me for consideration as to whether or not there is an error of law.
2. The appellant was an unaccompanied minor from Afghanistan whose age was disputed by the Respondent. He was granted discretionary leave until

4th January 2012. His application for further leave to remain was refused on 8th September 2014. He claimed that he was at risk from the Taliban.

3. In a decision and reasons the Tribunal found that the appellant's claim lacked credibility. The appellant gave evidence as did his uncle and former foster mother. In a lengthy decision the Tribunal set out its findings and reasons from [42 - 49]. The Tribunal accepted the assessment made of the appellant's age by social services making his age at the date of hearing to be 18 years and one month. The Tribunal referred to the standard of proof as "more likely than not." The Tribunal found that it was "more likely than not" that the appellant's family had arranged for him to come to the UK for economic reasons. Reasons were given from finding that the appellants' account was not credible at [44] and conclusions at [45].

Grounds of appeal

4. The main ground argued was that the Tribunal erred by applying the higher standard of civil proof. Further the Tribunal failed to take into account the appellant's age and adopt a child sensitive approach in accordance with **KS (benefit of the doubt) [2014] UKUT 00552 (IAC)**. The Tribunal erred by placing too great a weight on the appellant's uncle's return to Kabul, in light of the fact that he was a refugee.

Permission to appeal

5. First-tier Tribunal Judge Levin granted permission on 9th January 2015 on all grounds.

Rule 24 response

6. The Respondent opposed the appeal and considered it was unfortunate that the Tribunal had referred to the phrase "more likely than not" but that this did not cause the decision to be flawed. The correct phrase is used in the age assessment.

Error of law hearing

7. Both representatives made submissions which I have recorded in the Record of proceedings. At the end of the hearing I indicated that I found material errors of law in the decision which I set aside and the matter was remitted to Taylor House for rehearing. I now give my reasons.

Discussion and conclusions

8. In a lengthy decision the Tribunal considered in the main all relevant issues in the appeal. However, it referred on three distinct occasions in the decision [42, 43, 48] to the more stringent civil standard of proof. I am satisfied that this amounts to a material error of law. The appeal is an asylum appeal and the lower standard of proof is applicable. Although the Tribunal may well have carefully considered the issues and evidence, it

also importantly needs to show that it has applied the correct standard of proof other than in at [4] as a standard direction. Other than the clear references made to the civil standard there is no further reference made in the decision such that I can be satisfied that the lower standard was applied in reaching the findings and reasons. Even if the Tribunal applied the civil standard to the age issue [42] it was necessary to establish that the lower standard “real risk” was otherwise applied.

9. Further, I consider that the Tribunal failed to have due regard to the approach in **KS** (cited above) that should be adopted for cases involving minors, particularly that indicated where a minor has reached adulthood at the time of the hearing.
10. There are additional matters which taken together with the above issues lead me to decide that the decision as a whole is deficient and cannot stand. For example the reference to the social worker’s observation that the appellant had been “selective” in his answers, in circumstances where the social worker was not giving evidence. Furthermore it was perhaps not entirely fair for the Tribunal to draw adverse inference on the appellant’s complaint that he did not understand the interpreter’s accent, in light of the fact that the Tribunal in the decision confirmed that the appellant at the hearing accepted that there was no prejudice to him [23].

Decision

11. **There are material errors of law in the decision and reasons which is set aside. The matter is remitted to Taylor House for rehearing (not before Judge Griffiths) on 21st August 2015.**

Direction 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 direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. This is an asylum appeal.

Signed

Date 24.2.2015

GA BLACK

Deputy Judge of the Upper Tribunal

NO ORDER FOR FEE REPAYMENT IS APPLICABLE

Signed

Date 24.2.2015

GA BLACK
Deputy Judge of the Upper Tribunal