



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06256/2013

THE IMMIGRATION ACTS

Heard at Field House
On 25 April 2014

Determination Sent

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

IK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvan, instructed by Duncan Lewis & Co. Solicitors
For the Respondent: Mr G Jack, Senior Presenting Officer

DETERMINATION AND REASONS

1. I have been requested to make an anonymity direction in this appeal and, given the age of the appellant, I consider it appropriate to do so. Therefore, unless and until the Tribunal, or other appropriate Court, directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant. Failure to comply with this direction could lead to contempt of court proceedings.
2. The appellant is a citizen of Afghanistan. He arrived in the United Kingdom on 14 June 2013 and claimed asylum the following day. The Secretary of State refused this application by way of a decision dated 27 June 2013. On the following day the

Secretary of State issued a decision to remove the appellant from the United Kingdom and it is as against this decision that he appealed to the First-tier Tribunal.

3. The appellant's appeal was heard by First-tier Tribunal Judge Broe on 4 February 2014 and dismissed on all grounds in a determination promulgated on 17 February 2014.
4. Before the First-tier Tribunal there was dispute between the parties as to the appellant's age. The Secretary of State found the appellant to have been born in 1995, making him aged 19 as at the date of the hearing before the First-tier Tribunal. The appellant asserted that he was 14 years old in 2012, which would have made him either 15 or 16 years old as of the date of hearing.
5. The First-tier Tribunal found the appellant to be 16 years old [30]. Having done so it went on to consider the account given by the appellant as to the circumstances that it was said led to him fleeing from his homeland.
6. In paragraph 31 of its determination the tribunal states as follows:


"I have taken his age into account in considering the evidence and the answers he gave in interview."
7. Thereafter the tribunal made reference to the vague and unhelpful answers given by the appellant of his journey to the United Kingdom, concluding that his failure to claim asylum *en route* to the United Kingdom was a matter that damaged his credibility [31]. It further, *inter alia*, found it surprising that the appellant had never been to the mosque adjacent to his house prior to the incident which he claims caused him to flee Afghanistan in fear of his life and that he had failed to adequately explain why he should suddenly have entered the mosque and acted in a manner which he now claimed put his life at risk [32]. Looking at the appellant's evidence as a whole the tribunal concluded that he had fabricated his account in order to secure leave to remain in the United Kingdom.
8. First-tier Tribunal Judge Andrew granted the appellant permission to appeal by way of a decision dated 17 March 2014, giving the following reasons for so doing:

"2. It is arguable that following the finding the Appellant was a minor, with insufficient evidence before him as to the Appellant's family as at the date of hearing, the Judge went on to find that he could be returned safely to his family in Afghanistan. Further, that the Appellant, being a minor, was a vulnerable witness and, that as such, allowance should have been made for the answers given by him in interview, where he was interviewed as an adult, when considering the Appellant's overall credibility."
9. As can be identified from the terms of the grant of permission, the appellant seeks to challenge the First-tier Tribunal's conclusions as to the truthfulness of the account he gave on the basis that, amongst other things, it failed to take lawful account of his age when coming to such conclusions.

10. Having given careful consideration to the determination as a whole, and having heard detailed oral submissions from both Mr Chelvan and Mr Jack, I conclude that the appellant is correct in his submissions and that the First-tier Tribunal's conclusions as to the credibility of the appellant's evidence are fundamentally flawed by legal error.
11. Although the First-tier Tribunal observed in paragraph 31 of its determination that it had given consideration to the appellant's age when assessing the truthfulness of his account, there is no expression of this consideration, whether implicitly or explicitly, thereafter in the determination. There is no express reference in the conclusory paragraphs to, or apparent allowance for, the significant consequence of the appellant having been interviewed as an adult i.e. that his interview was undertaken absent the robust safeguards that are, for good reason, put in place when children are interviewed. In addition there is no indication in the determination that the hearing itself was conducted in a manner which was compliant with the "*Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*", nor is there anything implicit in the determination which suggests that the First-tier Tribunal took this guidance into account.
12. I further find it of some significance that the First-tier Tribunal held against the appellant the fact that he failed to claim asylum *en route* to the United Kingdom. The appellant travelled to the United Kingdom under the care of an agent, or at least that is his claim. Given that the appellant is a minor and travelled to the United Kingdom under the care of an adult it is in my view perverse to treat as a matter adverse to his credibility his failure to claim asylum *en route*, absent good reason to do so. The First-tier Tribunal's determination does not allude to such a reason being present in the instant case.
13. Furthermore, when assessing the credibility of the appellant's evidence as a whole, there is nothing in the First-tier Tribunal's determination which is suggestive of the fact that it took into account, as a matter probative of the truth of the appellant's account of the events which led him to flee Afghanistan, the fact that he had given truthful evidence as to his age.
14. For all these reasons I conclude that Mr Chelvan is correct in his submission that the First-tier Tribunal erred in failing to take adequate and lawful account of the appellant's age when coming to its conclusions on matters central to his claim. Accordingly I find that the First-tier Tribunal's determination contains an error on a point of law such that it is to be set aside.
15. Having considered paragraph 7 of the Senior President's Practice Statement of 25 September 2012, I am satisfied that the nature and extent of the judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2 of the 2008 Procedure Rules, it is appropriate to remit this case to the First-tier Tribunal for determination.

16. The only finding of the First-tier Tribunal which is to be saved is the finding made as to the appellant's age. Other than this the appeal is to be determined de-novo by a judge other than Judge Broe.

Signed:

A handwritten signature in black ink, appearing to be 'M. O'Connor', written over a faint rectangular stamp.

Upper Tribunal Judge O'Connor
Date: 2 May 2014