



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: AA 05293-13

THE IMMIGRATION ACTS

At **Field House**
on **25.11.2013**

Decision signed: **25.11.2013**
sent out: **11.12.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

SDW

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Andrew Eaton* (counsel instructed by Asylum Aid)
For the respondent: Mr Laurence Tarlow

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge GJ Naphine), sitting at Hatton Cross on 15 July, to dismiss a s. 82 (1) asylum “upgrade” appeal by a citizen of Afghanistan, born 2 January 1997. On 7 May 2013 the appellant was refused asylum, but given leave to remain till 2 July 2014, when he will be 17½.

2. The appeal to this Tribunal turns on whether the judge gave adequate reasons for not accepting the assessment of Robert Sellwood, an educational psychologist, that the appellant had an IQ of no more than 52. In view of the history the appellant gave in oral evidence (contrary to Mr Sellwood’s opinion that he would be unable to do so, but in accordance with advice from counsel – not Mr Eaton), I share the judge’s surprise at that assessment. However, though it was very much his business to assess the appellant’s oral

evidence for himself, it is common ground that he needed to do so in the light of Mr Sellwood's report.

3. The judge dealt with the report as follows:
 50. I do not accept Mr Sellwood's assessment of the Appellant. Mr Sellwood did not make clear how he adapted his tests for the fact that the Appellant lacked all formal education and was interviewed and tested in a foreign language.
 51. Given the unreliability of IQ tests and the lack of evidence of rigour in the conduct of the Appellant's test I do not accept the stated results of that test.
 52. I find [counsel's] decision to call the Appellant and his performance in giving his evidence to be strong evidence that he is someone who operates at a higher level than the IQ of 53 [sic] assessed by Mr Sellwood. [at paragraph 53 the judge gives further details of this]
4. While the judge was fully entitled to say what he did at paragraphs 52 – 53, the parties have quite rightly agreed that he needed to give better reasons than he did at paragraphs 50 – 51 for rejecting Mr Sellwood's assessment. Mr Sellwood, in a further report attached to the grounds of appeal to the Upper Tribunal, has pointed out that not only he had explained in his original report that he had used "non-verbal subtests ... as they are the least sensitive to cultural differences", but drawn attention to the lack of correlation, in a series of assessments he had carried out before, between the subject's non-verbal test results, and the amount of time he had spent in school. These were points the judge had needed to note and deal with, before taking his own view on Mr Sellwood's assessment.
5. It is also agreed that there needs to be a fresh hearing of this appeal, which will come before another first-tier judge. As the first-tier hearing was at Hatton Cross, the papers will be sent there, under the usual arrangements; but, if the appellant, who lives in London E6, and his representatives want to apply for a change of venue to Taylor House, then they should do so at once to the resident judge at Hatton Cross.
6. If the Home Office wish to have the appellant examined by their own psychologist, as they are encouraged to do, then Mr Eaton has undertaken on behalf of those instructing him that, given suitable notice, they will make the appellant available for the purpose. In that event, both the Home Office psychologist and Mr Sellwood should be called to give oral evidence; but it would in any case be helpful to the judge at the fresh hearing if Mr Sellwood were called.

Appeal allowed

Fresh hearing in First-tier Tribunal, not before Judge Napthine

A handwritten signature in black ink, consisting of stylized, overlapping letters and a long horizontal stroke at the end.

(a judge of the Upper Tribunal)