



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/10510/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 February 2016**

**Decision & Reasons  
Promulgated  
On 29 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**J L M  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr A Khushi, Counsel, instructed by Bedfords Solicitors  
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Asjad (the judge), promulgated on 12 February 2015, in which she dismissed the appeal on all grounds. The appeal to the First-tier Tribunal had been against the Respondent's decision of 18 November 2014, refusing her protection and human rights claim and seeking to remove her from the United Kingdom as an illegal entrant. It is of importance to note that the Appellant has at all material times been a minor.

2. In essence her protection claim was based upon the assertion that she had been and/or would in the future be a street child, and in addition at risk of ill-treatment because of her responsibility for the death of a child of whom she was caring.

### **The hearing before the judge**

3. The hearing took place on 16 January 2015. The Appellant was represented by Counsel, and the Respondent by a Presenting Officer. Between paragraphs 11 and 20 of her decision the judge set out a number of adverse credibility findings based in large part upon inconsistencies as between four sources of evidence: the screening interview; the asylum interview; the witness statement; and oral evidence. As a result of her findings the judge concluded that the Appellant would not be at risk on any of the bases asserted in the claim. In respect of Article 8 the judge concluded that the Appellant could not satisfy the relevant Immigration Rules, and having considered the claim outside of the Rules, she found that removal would be proportionate.
4. At paragraph 26 of her decision the judge considered section 55 of the Borders, Citizenship and Immigration Act 2009 and found that it was in the best interests of the Appellant to return to Angola where she would be reunited (at least in theory) with her older brother (who was eighteen at the time) and possibly a cousin (who was only sixteen).

### **The grounds of appeal and grant of permission**

5. The Appellant sought permission to appeal primarily on the basis that the judge had failed to take the Appellant's age into account when assessing credibility. There is also a challenge to the conclusions on Article 8.
6. Permission to appeal was refused by the First-tier Tribunal but then granted by Upper Tribunal Judge Taylor on 4 November 2015. Upper Tribunal Judge Taylor makes specific reference to the Appellant's minority and the lack of any references to that fact in the material parts of the judge's decision.
7. The Respondent submitted a Rule 24 response dated 18 December 2015.

### **The hearing before me**

8. Ms Willocks-Briscoe submitted that the judge was clearly aware of the Appellant's age and she referred me to paragraphs 1, 3, 11, 20, 24 and 26 of the decision. She urged me to look at the decision as a whole and referred to the recent Court of Appeal decision in JA (Ghana) [2015] EWCA Civ 1031: I should assume that the judge was aware of relevant Practice Statements and/or Directions. It was also noted that the witness statement mentioned in the grounds of appeal was not a rebuttal statement, as claimed. I was asked to take into account the fact that the Appellant had been legally represented throughout.
9. In the event I did not call upon Mr Khushi to make submissions.

### **Decision on error of law**

10. In my view there is a material error of law in the judge's decision. This error relates to a failure to have taken any or any adequate account of the Appellant's age when assessing credibility.

11. As Upper Tribunal Judge Taylor accurately noted in her grant of permission, there is no reference whatsoever in the relevant paragraphs to the Appellant's young age at the hearing, when interviewed by the Respondent, and at the time when the alleged events in Angola occurred. It is right that there were on the face of the evidence a number of inconsistencies, some of which appear to be perhaps more significant than others. It is right as well that there is no 'sub-species' of the lower standard of proof applicable to minor appellants, as is made clear in the recent Upper Tribunal decision in KS (benefit of the doubt) [2014] UKUT 552 (IAC).
12. However, what is important in a case involving a minor is that the age is actually taken into account, and is done so in a manner that is identifiable from the face of the decision itself. This is particularly so when credibility is an issue and when there are issues relating to consistency or the lack thereof as between different items of evidence. It may have been that if the judge had applied her mind expressly to this issue and dealt with it in substance that some or all of her findings may not have remained as they are. However, that it by no means a forgone conclusion.
13. In respect of the submission that one should assume that the judge was aware of the Appellant's age and guidance, the point is that awareness of the fact of age and/or guidance is simply not the same as relevant consideration of this in the context of a credibility assessment.
14. In the present case the complete absence of any apparent appropriate consideration of age in the section on credibility (as opposed to simply stating the fact of age), coupled with the failure to have regard to the Joint Presidential Guidance Note Number 2 of 2010 (either in form or, more importantly, in substance), results in a material error of law.
15. In respect of the Article 8 claim I find that the judge has also materially erred in law. Her approach is, with respect, unclear and insufficient. At paragraph 25 she refuses the Article 8 claim outside of the Rules and only then goes on to look at the best interests of the child. In addition, and perhaps more importantly, the best interests are predicated upon the existence of a brother who is only a year older than the Appellant, a cousin who was younger than her, and the belief that the Appellant could somehow locate them in Angola. There is no finding that the Appellant could live with her mother (if indeed her mother was still living in Angola), and there is no finding that her father could or would to go back with her. In my view the assessment of the best interests of this minor Appellant was inadequate.
16. For these reasons I set aside the decision of the First-tier Tribunal.

### **Disposal**

17. Both representatives were agreed, rightly in my view, that if material errors of law existed this appeal should be remitted to the First-tier Tribunal. Having regard to paragraph 7 of the Practice Statements this must be the right course of action. The rejection of the protection claim is based upon credibility, and the findings on this core issue are flawed. In respect of Article 8, the judge's assessment is lacking in clear and comprehensive findings of fact.
18. The appeal will need to be re-heard afresh with no preserved findings of fact, other than that relating to the Appellant's age.

**Anonymity**

19. A direction was made by the First-tier Tribunal and I maintain it.

**Notice of Decision**

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

**I set aside the decision of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

**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.**

Signed

Date: 25 February 2016

Deputy Upper Tribunal Judge Norton-Taylor