Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05215/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd October 2018	**On 31st October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

FK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T D H Hodson, Counsel, instructed by Elder Rahimi Solicitors (London)
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

Background

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (Statutory Instruments 2008/269) I make an anonymity order. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify FK or any of

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his family members. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so because it is a protection claim involving a child.

The Respondent refused the application for asylum or ancillary protection on 8th April 2018. His appeal against this was dismissed by First-tier Tribunal Judge Morris ("the judge") following a hearing in Manchester on 22nd May 2018.

The Grant of Permission to Appeal

Upper Tribunal Judge McWilliam granted permission to appeal (18th September 2018) as it is arguable that;

(1) the Respondent communicated his intention to rely on an age assessment on the day of the hearing,

(2) the document was not disclosed to the solicitors until the day of the hearing,

(3) the judge attached weight to the assessment, and

(4) the decision to proceed without giving the Appellant's representatives the opportunity to take instructions on this amounts to unfairness.

The Respondent's Position

No Rule 24 notice was filed. Ms Pal accepted that the judge had placed significant weight on the age assessment document that was handed to the Appellant's representative at the commencement of the hearing. It was a material error of law for the judge not to have adjourned to enable proper instructions to be given on a document not previously seen by the solicitor.

Discussion

It is clear from the decision that some 20 minutes was given for the Appellant's representative to take instructions on the document and that the Appellant's representative did not feel that adequate time had been given for that. One only has to read [44] of the judge's decision to see the multiple concerns expressed by the judge about discrepancies that arose between that document and later documents.

I agree with Ms Pal that there was a material error of law. It is clear to me that it was unfair not to adjourn the hearing. This was new evidence that the Appellant's representative had not seen. The Appellant's representative had not had a chance to consider it at all before the hearing started. The Appellant's representative should not have been placed in a position of having virtually no time to take instructions and consider whether they wished to bring further evidence in relation to discrepancies that arose between the two documents or to get proper explanations for them. The credibility findings were significant arising from that document. Whilst it is right that there were other credibility findings, I am satisfied that it is appropriate to set the whole

decision aside because those findings infect the rest of the decision as the judge brings these into his credibility assessments.

Decision

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

I set aside the decision.

I remit the matter to be heard de novo by a judge other than Judge Morris. The hearing shall take place at Taylor House as the Appellant now lives in London.

Signed
Deputy Upper Tribunal Judge Saffer
25 October 2018