



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01352/2014

THE IMMIGRATION ACTS

Heard at Field House
On 13 November 2014

Determination Promulgated
On 26 November 2014

Before

Deputy Upper Tribunal Judge Pickup

Between

WA
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr S Khan, instructed by Malik & Malik Solicitors
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, WA, date of birth 14.8.96, is a citizen of Afghanistan.
2. This is his appeal against the determination of First-tier Tribunal Judge Burns, promulgated 11.9.14 dismissing his appeal against the decision of the respondent, dated 14.2.14, to refuse his asylum, humanitarian protection and human rights claims and to remove him from the UK as an illegal entrant. The Judge heard the appeal on 22.8.14.

3. First-tier Tribunal Judge Kelly granted permission to appeal on 7.10.14.
4. Thus the matter came before me on 13.11.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Burns should be set aside.
6. The refusal and removal decision was made following an assessment by the local authority on 7.11.11 that the appellant's date of birth was 14.8.96, two years earlier than the appellant's claim of 14.8.98. However, the decision was made on the basis that the appellant was nevertheless a minor at the date when he claimed asylum. It is asserted, incorrectly, that the age assessment had been withdrawn by the date of the appeal hearing. The grounds of application for permission to appeal assert that the First-tier Tribunal erred in refusing the appellant's application to adjourn the appeal hearing in order to await the outcome of a re-assessment of the appellant's age.
7. In granting permission to appeal, Judge Kelly said, "It is arguable that the Tribunal did not act fairly in refusing the application for, amongst others, the following reasons: (i) the appellant's age - both at the time of his asylum interview and at the hearing of his appeal - was potentially relevant to the assessment of his credibility, (ii) the Tribunal did not make any explicit finding concerning the appellant's age, but its reasoning at paragraph 52 is nevertheless consistent only with it having preferred the assessment of the local authority over the claims made by and on behalf of the appellant, and (iii) there is no acknowledgement by the Tribunal that the assessment of the local authority had been withdrawn. It is thus arguable that the Tribunal ought either to have acceded to the application to adjourn, or to have based its assessment of the appellant's credibility upon his claimed age at the material times. It is also arguable that it failed to take account of material evidence. Permission to appeal is accordingly granted."
8. The grant of permission was based upon factual inaccuracies. By a letter dated 11.11.14 it is explained that judicial review proceedings have been issued challenging the "lawfulness and correctness of an age assessment conducted by the Croydon LBC in July 2014." Whilst Croydon has agreed to carry out a further assessment, which will supersede the July 2014 assessment, "The decision of July 2014 has not been withdrawn." It is thus incorrect to assert that the age assessment had been withdrawn and that the First-tier Tribunal Judge erred in failing to acknowledge the supposed withdrawal or take it into account. It is not clear to me

whether it was asserted before the First-tier Tribunal appeal hearing that the age assessment had been withdrawn, but even if it had, such an assertion was inaccurate. It follows that there was a valid age assessment, maintained by Croydon LBC, before the First-tier Tribunal Judge and he was entitled to take it into account and to prefer that assessment over the appellant's unsupported assertions as to his true age.

9. In the light of the above, the only material issue in the appeal to the Upper Tribunal is whether it was fair or unfair for the judge to proceed to hear the appeal on 22.8.14, or whether he should have acceded to the adjournment request.
10. An application for an adjournment had been made in writing prior to the appeal hearing and refused on 5.8.14. The appellant's representative produced a skeleton argument to Judge Burns renewing the adjournment request. It appears that the appeal had already been put back for some 3 months, during which time "it was hoped that the dispute in respect of our client's age would be settled." The judge was informed that the dispute had not yet been settled, but no further information was provided. The written refusal of the adjournment request had advised the appellant's solicitors that unless there was further evidence the case would proceed on whatever evidence was available on the issue.
11. The renewed application for an adjournment was considered by the First-tier Tribunal Judge, who noted at §26 that it was opposed by the representative of the Secretary of State, who submitted that the case had been dragging on for some time. The appellant's representative submitted that the age assessment would have a bearing on credibility and thus should be allowed. The judge noted that there was no letter or other information as to when such further age assessment would be provided. There was no guarantee or even likelihood that any further age assessment would result in any different outcome to the assessment already before the Tribunal. The respondent's representative submitted that in the event of fresh information as to age it was open to make a fresh challenge to the refusal decision. On the limited information available to the First-tier Tribunal Judge, he saw no justification for the adjournment and refused the application.
12. I am satisfied that the First-tier Tribunal Judge acted perfectly properly on the limited information available to him which might justify an adjournment. Time had already been granted for further age assessment but nothing was forthcoming and there was no indication when there might. Neither was it the case that the age assessment had been withdrawn, as has been asserted. There was nothing before the judge

upon which he could have reached the conclusion that the age assessment by the local authority was flawed or otherwise unreliable.

13. It is further relevant that the Secretary of State had proceeded on the basis that the appellant was still a minor at the date he claimed asylum. On his claim he would have been 13, on the Croydon assessment he was 15 and thus had turned 18 by the date of the appeal hearing.
14. In fairness to the appellant, at §52 the judge considered that “his credibility should be assessed within the broad parameters of the conflicting ages offered.” The judge decided to make no credibility finding against the appellant for having potentially given a false age. The judge also carefully considered the age assessment and found it to be reliable. However, as can be seen from §53 the judge was still keeping an open mind as to the appellant’s age and reached the view that whatever his age, there were still serious problems with the appellant’s account. There was a change in evidence and inconsistency in the appellant’s case as to when he allegedly left the family home following his father’s death. The judge said, “Whatever age the appellant might have been, this is an event that would have, in my finding, remained pretty well branded on the memory and I was not persuaded that the appellant was being honest and truthful on this point. Rather, I concluded that the appellant was adapting his evidence to fit in with changing circumstances.” I find that on the evidence this was a finding open to the judge and for which he has given cogent reasoning whilst at the same time considering the appellant’s age assertion. Ultimately, by §57 of the decision the judge reached the conclusion that the appellant’s claim was bogus and made up, “and that the appellant’s entire history showed a determination to come to the United Kingdom.”
15. The findings of the First-tier Tribunal Judge are ones which were open to him to make and for which cogent reasons have been provided. Further, it does not seem to me that even if the appellant were only 13 at the time he claimed asylum on 8.10.11, due allowance for his age in any credibility assessment could have produced any different outcome to the appeal. The documentary evidence, rejected by the judge, did not depend on the appellant’s age and the basic facts of his claim, also rejected by the judge, would have been the same whatever age. This is not the sort of situation of an inability to remember, or confusion by reason of lack of understanding, or immaturity, that might be age-dependant. The appellant’s account was rejected wholesale in its entirety.
16. In all the circumstances, I find that there was nothing unfair about the way in which the judge refused the application for a further adjournment or conducted the appeal hearing. Even now, there is no other age assessment and Croydon has decided not to withdraw its age

assessment. At this stage, whether a further assessment would produce a different outcome is entirely a matter of speculation. In fairness, the judge evidently allowed a degree of latitude in the assessment of the evidence for the possibility of a wider age range, but ultimately concluded that whatever age the appellant was, his evidence was not credible. Despite there being what he considered to be a perfectly proper age assessment, and no reasons were advanced for suggestion that it was flawed, the judge deliberately ignored any adverse credibility there might have flowed from making a false age claim. The judge did not seek in fact to fix the appellant's age but applied, as had the respondent, a broad age range when considering the credibility of the appellant's account. The judge did not rely on small discrepancies or variations in the appellant's accounts in making credibility findings, but rather on flaws in the main 'planks' of the appellant's case that no age assessment could provide explanation or justify making any allowance for. In any event, the appellant's representative has been unable to point me to any finding in the determination of the First-tier Tribunal that would or could have been different had the appellant's age been accepted to be as he claimed.

Conclusion & Decision:

17. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed:

Date: 20 November 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier

Tribunal did make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I continue anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



Signed:

Date: 20 November 2014

Deputy Upper Tribunal Judge Pickup