



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10185/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14 March 2014
Prepared 14 March 2014

Determination Promulgated
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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

IDRESS WAZEER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Mellon, Counsel, instructed by Kesar & Co, Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Malins sitting at Hatton Cross on 12 December 2013. In her determination, promulgated on 5 January 2014, she dismissed the appellant's appeal against the decision of the respondent made on 31 October 2013 to refuse to grant

him further leave to remain in the United Kingdom on the basis that he was not entitled to recognition as a refugee and that his removal would not be in breach of the United Kingdom's obligations pursuant to the Human Rights Convention.

2. The appellant's case is in summary that he is a citizen of Afghanistan who faces persecution on return to Afghanistan. His family have been targeted by the Taliban and he also faces problems from the government on the basis that they would have an adverse attitude to him due to his brother being perceived to be with the Taliban.
3. The respondent did not accept the appellant's case, nor for that matter did she accept the appellant's claim that he was born in 1998, accepting instead an assessment from Kent Social Services that he is two years older than claimed. Initially after his claim for asylum the respondent granted the appellant discretionary leave until 13 September 2013, the age by which he would, on the basis of the age assessment, have reached 17½ years of age.
4. First-tier Tribunal Judge Malins disbelieved everything that the appellant had said and did not accept the appellant's claim as to his age. She accepted the age assessment undertaken Kent County Council, but does refer to the appellant in her determination as being an adult.
5. The appellant applied for permission to appeal to the Upper Tribunal. That was granted on 30th January 2014 by First-tier Tribunal Judge Levin who stated:

"Although in accordance with the Kent Social Services age assessment the appellant will shortly attain his 18th birthday given that his assessed date of birth of 13 March 2014 [that is clearly an error] was estimated and not precise it is arguable that the judge erred in law in treating the appellant as an adult and/or failing to give her reasons for so doing. It is also arguable that the judge's adverse credibility findings generally flowed from her adverse credibility finding in relation to the appellant's age thereby tainting her determination as a whole."

6. The respondent replied to that by way of a letter pursuant to Rule 24 dated 12 February 2014 in which it is asserted that, considering the entirety of the age assessment report and the judge's own experience at the hearing of the appellant's behaviour, demeanour and appearance, it was arguable that it was open to her to find that he was in fact an adult and she was entitled to treat him as such.
7. When the matter came before me, I heard submissions from Ms Mellon on behalf of the appellant and Ms Everett on behalf of the Secretary of State. Ms Mellon accepted that the strongest of the five grounds of appeal on which permission was granted was that the judge had erred in that while she appears to accept the age assessment from Kent Social Services stating that he is 17, she then proceeded to treat him as an adult as is clear from her finding at paragraph 14(f) of her determination.
8. There is a significant difficulty in the judge's determination in that while accepting the age assessment in full (and thus that he was a minor) she has then gone on to say

that the appellant is now an adult. There is a clear conflict here. Whilst it would have been open to the judge to say that she did not accept the age assessment and to find on the basis of the evidence before her that the appellant was not 18, it cannot be discerned from the determination that that is what she did.

9. I have considered whether the judge's reference to the appellant being an adult was simply a slip but I am not satisfied that referring to the appellant as now being an adult could, in the context in which it is expressed, be a slip on the part of the judge.
10. Taking at the determination as a whole, it is clear that the judge found the appellant's age to be a matter central to assessing his credibility. The inconsistency in the findings as to whether he was a minor or whether he was an adult, undermines the credibility findings to the extent that it is material. On that basis the error is such that the determination does need to be set aside.
11. Given the nature of the error which undermines the credibility findings and thus many of the findings of fact, it will be necessary for this matter to be reheard and for a fresh determination on all issues and on that basis, bearing in mind the Procedure Rules as well as the Senior President's Practice Statement, it is appropriate for this matter to be remitted to the First-tier Tribunal for a fresh determination on all issues.

SUMMARY OF CONCLUSIONS

- 1 The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- 2 The appeal is remitted to the First-tier Tribunal for a fresh determination on all issues. None of the findings of fact in the determination of First-tier Tribunal Judge Malins are preserved.

Signed

Date

Upper Tribunal Judge Rintoul