



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11186/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 5th October 2015

Decision & Reasons Promulgated
On 16th October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

MASTER KOCHI MALANGKHAIL
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tetley of Counsel instructed by Halliday Reeves Law Firm
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Master Kochi Malangkhail, date of birth claimed to be 1st January 1997 is a citizen of Afghanistan. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to make such a direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge De Haney promulgated on 17th February 2015. By that decision the judge dismissed the Appellant's appeal against the decision of the Respondent to remove the Appellant from the United Kingdom as an illegal entrant.
3. By a decision made on 16th March 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether there is an error of law in the original determination.
4. The first challenge raised to the decision by Judge De Haney is with regard to procedural unfairness. The Appellant asserts that he is a minor. The judge however on the basis of an assessment by two qualified and responsible professionals, Karen Green, social worker, and Jim Brown, AMP, treated the Appellant as an adult. It is suggested that the judge was wrong to proceed on a basis of a non-Merton compliant age assessment.
5. The Appellant had arrived in the United Kingdom on 14th August 2013. At that stage he was detained and interviewed. He was claiming asylum and claiming that he was 12 or 13 years old. He gave a date of birth of 5th October 1379 (transposed to 25th January 2001). The Appellant has since claimed that this was a mistake and that his nearest age verification is on his Tazkira, an identity document from Afghanistan. The Appellant then in his statement had stated that he was 15 years of age according to his Tazkira on 25th August 2012. At the date of hearing that would have put the Appellant as at 17 years of age. The Appellant accepted however in oral evidence that he did not know how old he was.
6. The Appellant has given an account of having an older brother, who was 25 (see A8 question 20). The Appellant otherwise has claimed that his father and mother are aged 35 and 30 years of age. Clearly that is not possible. The Appellant has also given ages for other siblings of 17 and 20 which again does not fit in with his claims as to his parents age, specifically the mother.
7. When the Appellant was originally interviewed in the United Kingdom because of his claims with regard to age, senior social workers from Manchester City Council were contacted and they, Ms Green and Mr Brown, attended to carry out an age assessment. At that point the Appellant was claiming to be 12 years of age. Having conducted an initial age assessment the social workers came to the opinion that the Appellant was not a child of under 18 but was in point of fact over 22. There is then a letter of 17th August 2013 to the Appellant which makes clear that the Appellant was found to be significantly over 18 years of age.
8. It is suggested that there is a failure to carry out a **Merton** compliant age assessment and that therefore the age assessment itself is flawed. The appropriate procedure for the assessment of age in such circumstances was given clear guidance in the case of The Queen on the application of B v London Borough of Merton [2003] EWHC 1689.
9. Guidance has developed from the Merton case in such matters as Asylum Processing Guidance on Assessing Age, the procedure to be followed in assessing the age of a

child is set out. Paragraph 2.2 deals with the assessment of children and Section 55 of the 2009 Act. Paragraph 2.2 provides:

“The assessing age policy has an in-built safeguard to ensure it is compliant with the new duty, for example, applicants whose age has not been accepted by the agency, will initially be afforded the benefit of the doubt and be treated as children unless their physical appearance/demeanour very strongly suggests they are significantly over 18.”

The policy commences at Section 2 with paragraph 2.1 which indicates:

“Where there is little or no evidence to support the applicant’s claimed age and their claim to be a child is doubted, the following policy should be applied:

1. The applicant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are significantly over 18 years of age.
2. All other applicants should be afforded the benefit of the doubt and treated as children in accordance with the ‘processing an asylum application from a child’ (sic), until a careful assessment of their age has been completed.”

10. Here the policy was clearly followed. The Appellant was claiming that he was 12 years of age but from his physical appearance and demeanour that was clearly thought not to be the case. However out of caution Manchester City Council were contacted and the Appellant was then seen by two social workers who having looked at the Appellant in 2013 determined that the Appellant was significantly over 18 years of age and was at least 22.
11. It is suggested in the Grounds of Appeal that Judge De Haney firstly failed to adjourn the hearing pending a proper translation of the Tazkira and secondly whilst a proper Merton compliant age assessment was carried out. Judge De Haney was dealing with this Appellant two years further on from the initial age assessment, which had assessed the Appellant as over 22.
12. It is to be noted that where social workers, who take their responsibility to children and the assessment of age seriously, have carried out an age assessment and come to the conclusion that an individual is significantly over the age of 18, there is no obligation in the local authority to house and accommodate the minor. Clearly the initial age assessment was carried out and it was concluded that the Appellant was four years over the age of 18.
13. That was clearly an issue that was evident on the papers but the solicitors failed to obtain a translation of the Tazkira and failed to obtain any evidence to counter the conclusions of the age assessment. There comes a point where the physical evidence is such that it is obvious that a person is not a child, equally where social workers attend and make an assessment that an applicant is clearly well over the age of majority it is an issue for the appellant and his legal representatives to seek evidence

to confirm the Appellant's claims. There was nothing to stop the solicitors seeking an age assessment or obtaining a translation of the Tazkira.

14. The judge was entitled therefore to take account of the assessment by the Social workers assessing the Appellant as at 2013 as 22. The judge was then entitled to look further at the evidence presented to counter that. The solicitors had had ample opportunity to deal with the issue but had not. That however should be dealt with carefully but if this was a genuine minor Appellant then clearly he would be much reliant upon his lawyers. However the evidence given otherwise with regard to the age of his brother and other members of his family in comparison with the age of his parents was clear. The ages were not correct. It was apparent that no reliance could be placed upon the claimed age presented by the Appellant of any of his family. The Appellant's claim to have been 12 was clearly not true. It was clearly noted by the social workers and by the Immigration Officers at the commencement of the Appellant's interview. In such circumstances the judge was entitled to conclude that a proper assessment had been made, that the Appellant was clearly over 18 at least by four years as of 2013 and therefore by the time that he was dealing with the matter the Appellant could not be said to be a minor. Accordingly the judge was entitled to deal with the issue of age in the manner that he did.
15. It is suggested in the second ground that the judge has failed to take into account a number of documents submitted by the Appellant. However the judge has referred in paragraph 9 of the decision to the fact that he is aware of the documents submitted and that he has taken account of them. The mere fact that the judge does not specifically refer to the documents does not in any way detract from the findings of fact made by the judge. The judge has properly approached the evidence presented before him and given sufficient reasons to find that the Appellant's account was not credible. The judge has therefore dealt with all of the issues that he needed to deal with. There was no necessity for the judge to deal with each and every document submitted.
16. I have considered the remaining Grounds of Appeal. The remaining grounds merely seem to be a challenge to the findings of fact made by the judge. The judge was entitled to approach the evidence on the basis that he did. He has carefully considered the evidence and given ample reasons for the findings of fact that he made. In the circumstances there is no error of law in the approach of the judge to the evidence.

Notice of Decision

17. I accordingly find that there is no error of law and that the decision to dismiss the appeal on all grounds stands.
18. No anonymity direction made.

Signed
Deputy Upper Tribunal Judge McClure

Date