



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/14298/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16<sup>th</sup> December 2019

Decision & Reasons Promulgated  
On 21<sup>st</sup> January 2020

Before

UPPER TRIBUNAL JUDGE RIMINGTON  
UPPER TRIBUNAL JUDGE KEITH

Between

MR A S  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms D Revill, Counsel, instructed by Ata & Co Solicitors  
For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

**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 his 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.

1. The appellant appealed with permission against the decision of Judge Minhas promulgated on 7<sup>th</sup> August 2019 on four grounds.
2. In relation to the first ground, which stated the judge failed to regard the appellant's minority as he travelled through Europe, we pointed out at the hearing that the appellant was in fact an adult when he travelled through France because he was an adult when he travelled to the United Kingdom.
3. The second ground of appeal contested that the judge failed to apply **JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 876** correctly. At paragraph 21 the judge states in the determination that as required by Section 8 of The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the appellant's credibility *should* be regarded as damaged, which was incorrect, because the Court of Appeal in **JT (Cameroon)** held that even where the circumstances listed in Section 8 apply this does not mean that credibility is inevitably damaged.
4. We find that that is a material legal error in the decision of the judge because Section 8 of the Treatment of Claimants Act refers to 'shall take into account' rather than a mandatory provision dictating that the credibility was inevitably damaged.
5. In the third ground the judge erred in relation to the significance of the age assessment to credibility. The appellant claimed to have been born on 14<sup>th</sup> October 1999 but was in fact assessed as having been born two years earlier on 14<sup>th</sup> October 1997. The judge states at paragraph 17 and towards the start of her findings that the outcome of the age assessment procedure undermines the credibility of the appellant from the outset of his asylum claim. That wrongly assumes that the appellant had knowingly declared himself to be younger than he actually was.
6. There are, as we note, issues in relation to the production of Taskeras which give estimated ages and the judge failed to take into account the possibility that the appellant himself honestly was mistaken about his age. Even if it was not accepted it is something that the judge should have considered and addressed in relation to credibility. That was a material error of law.
7. In the fourth ground, which challenged the reasoning on the house fire (a house did not need to be vast for it to be impossible to rescue its occupants), we would not go so far as saying that the reasoning was perverse, which is a very high threshold, but more that there is inadequate reasoning.
8. In relation to the overall credibility findings the judge states at paragraph 22, "*the appellant's case depends entirely on my assessment of his credibility. Each inconsistency highlighted in the paragraphs above undermines the credibility of the appellant*".
9. The fifth ground raised a challenge to the ambiguous credibility findings. The judge stated at [22] '[t]he core incidents said to have taken place are not, in my view, likely to have taken place at all'. We agree this statement demonstrates not only a failure to make a clear finding but also appears to apply the wrong standard of proof which in asylum claims is not the civil standard.

10. There was some discussion as to whether the report of Dr Giustozzi 'saved the day' but, as Ms Revill pointed out, it was not just whether the appellant would be recruited by the Taliban but also whether he would be perceived by the Taliban as a spy and his case was put in the alternative on that basis. The report did not assist on this basis. Although the most recent country guidance case of **AS (Safety of Kabul) CG [2018] UKUT 00118** was raised, we accept there was some force in Ms Revill's argument that if the appellant was perceived as a spy he might be found anywhere even if he relocated to Kabul but that is a matter which will have to be determined by the First-tier Tribunal.
11. We note that the credibility findings were a holistic and cumulative assessment and yet contain some fundamental flaws in approach. We consider therefore that the judge has materially erred in law. The decision should be set aside for the reasons we have given. There are no preserved findings of fact.
12. The judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed *Helen Rimington*

Date 16th January 2020

Upper Tribunal Judge Rimington