



IAC-MD-BFD-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/19578/2014

THE IMMIGRATION ACTS

Heard at Bradford

Decision & Reasons

Promulgated

On 22nd October 2014

On 5th November 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR AHMED GUL HALEEMZAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Marshall

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is an Afghan citizen whose date of birth is disputed but appears to be either 1989 or 1995. He appealed to the First-tier Tribunal (Judge Gordon) against a decision of the Respondent dated 17th April 2014 refusing him leave to remain in the United Kingdom by reference to paragraph 298(i) and (vi) and 322(ii) of the Immigration Rules. It was said he had made false representations to obtain leave to enter or remain in

the United Kingdom in a previous application made in 2008. The false representations related to his claimed to date of birth and his fingerprints.

2. Judge Gordon dismissed the appellant's appeal, although by the same determination, she allowed the related appeals of the Appellant's mother and brother. Following the dismissal of his appeal the Appellant now appeals with permission to the Upper Tribunal.
3. I find that the determination of the FtT should be set aside. I reach that conclusion for the following reasons.
4. The basis of the claim that the Appellant had made false representations, centred around an application made in 2008 wherein the Respondent claimed that the Appellant had applied for entry clearance. It was asserted by the Respondent that there was fingerprints and photographic evidence confirming this application made by the Appellant. Therefore, it was claimed false representations had been made in the present application because the 2008 application showed a different date of birth for the Appellant.
5. At the appeal hearing before Judge Gordon, there was produced a determination by UTJ Reeds. This dealt with an entry clearance application by the Appellant in 2010 when the Appellant had applied for entry as the dependent of his father. Judge Reeds made a finding in that determination that the Appellant's date of birth was 1995. Nowhere in the proceedings before UTJ Reeds had any mention been made of the Appellant having made an application (or false representations) in 2008. The Appellant therefore specifically raised this point in the hearing before Judge Gordon. Suffice to say the Appellant has throughout denied that he ever made any application for entry clearance in 2008 and disputes the photographic and fingerprint evidence.
6. It seems there was no evidence in the documents served on the Tribunal to support the Respondent's claim that the biometrics obtained in the 2008 "false application" match the biometrics obtained in respect of the Appellant in the 2010 other than a bare assertion. It was incumbent on the Judge therefore to engage with this point and give full reasons for reaching the conclusion which she did in paragraph 11 of her determination which is set out here.

"I consider that the respondent has satisfactorily evidenced that the third appellant made a false representation in 2008 when he applied for a student visa to the UK, in that he falsely stated his date of birth as being in 1989 and he failed to disclose his full name. I find that he failed to disclose this relevant information and the fact of the refusal in his current application and I find that he repeated his false statements at the hearing by continuing to deny knowledge of the 2008 application. I find that the immigration rules paragraph 322 is discharged".

7. As I said earlier the Appellant's case was linked to that of his mother and brother. The Judge found for the other two Appellants but failed to

recognise that the grounds of appeal included a claim under Article 8 ECHR. In the circumstances of finding in favour of the related family members, it was incumbent upon the Judge to deal with the Article 8 claim in the light of her dismissal of the Appellant's appeal. The failure to give full reasons and the failure to deal with Article 8 ECHR, renders the determination legally unsustainable.

8. So far as disposal is concerned both representatives agreed that none of the findings made by Judge Gordon can stand. The matter needs to be heard afresh with new findings of fact made. The appropriate course therefore is for this matter to be remitted to the First-tier Tribunal (not Judge Gordon), for that Tribunal to remake the decision.

DECISION

9. The determination of the FtT is set aside and the matter is remitted to the FtT (not Judge Gordon) for the decision to be remade.

No anonymity direction is made.

Signed

Date

Judge C Roberts

Judge of the Upper Tribunal

22nd October 2014