Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02076/2014

THE IMMIGRATION ACTS

Heard at Field House
On 18th December 2014

Decision and Reasons Promulgated
On 12th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

M K
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, Counsel, instructed by AP Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who is a citizen of Sri Lanka, was refused asylum, and his appeal against this decision was dismissed by First-tier Tribunal Judge Jacobs-Jones, in a determination promulgated on 14 July 2014. The appellant had arrived and claimed

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asylum in 2008, at the age of 15, but there had then been a considerable delay in processing his claim. He was not interviewed until September 2011, and his claim was not refused until December 2013.

2. Permission to appeal was initially refused by First-tier Tribunal Judge Cheales, on 19 August 2014. On a renewed application permission to appeal was then granted by Upper Tribunal Judge Taylor, on 18 November 2014. Her reasons were as follows:

> "The argument that the judge may have relied upon evidence relating to a period when the appellant was a child, without taking account of the fact of his minority in the assessment of that evidence, deserves further exploration.
>
> The appeal should be set down for an error of law hearing with a time estimate of one hour. If an error is found, the appeal will have to be reheard afresh, probably by another Judge of the First-tier Tribunal, so that credibility findings can be remade."

3. The grounds seeking permission to appeal had been concerned not only with the adverse credibility findings and the point referred to in the grant of permission, but also with the assessment of risk on return, and the assessment of Article 8. At the hearing before me it was agreed that both parties would make submissions in relation to the first ground initially. As I indicated at the hearing that that ground was made out, and the parties both agreed that remittal to the First-tier for a rehearing, as envisaged in the grant of permission, was therefore the appropriate course, there was no need for a consideration of the other two grounds.

4. In her submissions at the hearing Ms Benfield made the following points. It had not been open to the judge to find that there had been a "change of story" on the issue of whether the appellant had been a student leader. There was no inconsistency, and in any event there was a time lapse of more than three years between the screening interview and the asylum interview. Both the appellant's age at the time of the screening interview, and the passage of time between the two interviews, were relevant factors which had not been mentioned by the judge in assessing the evidence. The judge's adverse credibility reasoning was insufficient in that the passage of time in itself was a very significant point for a claimant who was a minor. The Home Office practice for unaccompanied minors seeking asylum was to keep the overall claim assessment process short, and to keep the gap between the screening interview and the asylum interview correspondingly short. The extremely long gap in this case was no fault of the appellant, and amounted to a breach of the respondent's guidance. It had clearly been accepted that he had been a minor on arrival, and his age had not been disputed.

5. The submission was not that the appellant was entitled to be believed simply because he was a minor. This was a mischaracterisation of the argument in the Rule 24 response. But the UNHCR handbook and the Joint Presidential Guidance Note 2010 both gave clear guidance on the treatment of unaccompanied minors. This failure to

take into account the appellant's age when the screening interview was conducted, and the delay, was a fundamental point that had coloured the evidence all the way through the credibility reasoning.

6. Mr Melvin, for the respondent, relied on the Rule 24 response, which had made the point that unaccompanied minor asylum seekers should not be believed simply because of their age; and that the judge was justified in concluding that the account was not credible based on concealment of an earlier return to Sri Lanka, and other matters. It was also the case that the adverse credibility findings as a whole could stand up even if those parts referring to the screening interview were taken away. Any error in relation to the treatment of the screening interview was therefore immaterial.

7. Ms Benfield responded by submitting that the adverse credibility findings ran throughout the determination. They had been applied by the judge and were fundamental. There must be a holistic assessment, and the parts of the adverse finding suggested could not be isolated.

Error of Law

8. As I indicated at the hearing I have concluded that the judge's adverse credibility reasoning did involve an error of law, and that, as predicted by Upper Tribunal Judge Taylor, the adverse credibility findings had to be set aside.

9. I accept the submission made on the appellant's behalf that both his age at the date of the screening interview, and the unusual delay between that interview and the asylum interview, were relevant factors which needed to be taken into account in assessing his credibility. This was particularly the case where weight was placed on what was regarded as a change of account between the screening interview and the asylum interview. Without going into the issue of whether it was in fact justified to describe it as a change of account it would still, even if it had been, have been necessary to consider the appellant's age at the date of the screening interview in assessing what weight to place on those answers, quite apart from the normal concerns about placing weight on screening interview answers, where such interviews are not designed to elicit the basis of an asylum claim in any detail.

10. I have considered whether paragraphs 15 to 17 of the judge's decision could be regarded as standing alone, such that the error above would not be material. On this point I accept the submissions put forward by Ms Benfield, to the effect that the adverse credibility reasoning cannot be divided in this way. It is unclear whether the chain of reasoning that starts at paragraph 14 would have been altered if the correct approach to the screening interview had been taken. The need for a holistic assessment taking account of all of the evidence presented, in the context of available background evidence, points to the conclusion that the significant point about the appellant's age, and the gap between the interviews, cannot be safely separated from the rest of the credibility reasoning.

11. For these reasons my decision is that the judge did err in law, and that the adverse credibility findings as a whole fall to be set aside.

12. The parties both agreed that the appropriate course was a remittal to the First-tier Tribunal, with no findings preserved. The assessment of risk on return was obviously closely related to the adverse credibility findings, as was that of Article 8. It was not suggested by either side that this was an appropriate appeal for a remaking to be conducted in the Upper Tribunal because of the extent of evidence and fact finding required. Within the terms of the Practice Statement this therefore fell within one of the exceptions to the normal course of remakings taking place within the Upper Tribunal.

13. Neither side mentioned the issue of anonymity, but given the nature of the appeal I have decided that it is appropriate for the matter to be anonymised, as it was at case creation. No fee was paid for the appeal, and there is therefore no question of any fee award.

Notice of Decision

14. The decision dismissing the appeal is set aside, on the basis that there was a material error of law in the adverse credibility reasoning process.

15. The appeal is remitted for a fresh hearing at the First-tier Tribunal, with no findings preserved.

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.

Signed Date

Deputy Upper Tribunal Judge Gibb