



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/06709/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 17 September 2015**

**Decision & Reasons Promulgated  
On 18 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**VQN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Ms H Gore instructed by Eagle Solicitors

For the respondent: Mr S Whitwell, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a national of Vietnam, appealed to the First-tier Tribunal against a decision made by the Secretary of State on 20 August 2014 to refuse his application for asylum and to remove him from the UK. Judge of the First-tier Tribunal Plumptre dismissed the appeal on asylum, humanitarian protection and human rights grounds. The appellant now appeals with permission to this Tribunal.

2. The appellant claims to be a minor with a date of birth of 10 June 1998. The respondent considers that his date of birth is 10 June 1995. The issue of the

appellant's age was therefore before the First-tier Tribunal Judge. In the grounds of appeal it is contended on behalf of the appellant that it was agreed between the representatives and the Judge at the hearing in the First-tier Tribunal that, as the respondent had not yet considered the documentation submitted by the appellant going to his age, the Judge should either accept the appellant's documents unchallenged or remit the matter to the respondent to consider the issue of the appellant's age afresh in light of the new documents. At the hearing before me Mr Whitwell said that Mr Liddel, who represented the respondent in the First-tier Tribunal, was external counsel instructed by the respondent and that there was no note from him as to what had transpired at that hearing. The Judge's record of proceedings was not clear on this issue. There was therefore a lack of evidence as to the contention that the Judge had gone beyond the agreed scope of the hearing and I cannot make a finding that the proceedings were unfair for that reason.

3. The appellant did not give oral evidence in the First-tier Tribunal. It is submitted that this is because there was no appropriate adult to sit with him and because the respondent's representative indicated that he did not wish to cross-examine the appellant. This is noted by the Judge at paragraph 16. The Judge heard submissions only. It is not clear from the determination whether the respondent's representative made any submissions. In any event it appeal that there was no specific challenge recorded in relation to the documents provided by the appellant.

4. The First-tier Tribunal Judge decided that the appellant' date of birth is 10 June 1995. In reaching her decision as to the appellant's age the Judge considered the documents provided by the appellant at paragraphs 59-64. The Judge identified a number of discrepancies and inconsistencies within the documents and concluded that they were incomplete and inconsistent, she found that they were unreliable and attached little weight to them. The difficulty with the Judge's findings in relation to these documents is that none of the Judge's concerns were put to the appellant. I accept Mr Whitwell's submission that it appears that both parties may have been at fault in relation to how the hearing was run. However I cannot escape the conclusion that the failure of the Judge to give the appellant an opportunity to respond to her concerns about the documents amounts to procedural unfairness.

5. Having attached little weight to the appellant's documents the Judge accepted the conclusions of the age assessment carried out by Croydon Social Services. The difficulty with this is that the full report was not before the Judge. Mr Whitwell pointed out that neither party applied for an adjournment so that this report could be obtained and I accept that the Judge did her best with the evidence she had on this issue. However it is difficult to see how the Judge could have been satisfied that the age assessment was Merton compliant without seeing the age assessment report.

6. In these circumstances I am satisfied that the decision of the First-tier Tribunal contains an error of law in that it is infected by procedural unfairness. The parties agreed that none of the findings of fact in relation to the age assessment or the substantive asylum appeal could stand as the assessment of

the asylum appeal is inevitably affected by the age assessment. I therefore set aside the decision of the First-tier Tribunal in its entirety.

7. I am satisfied that the appellant has not had his case properly considered by the First-tier Tribunal. The parties were in agreement with my view that the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

### Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed

Date: 17 September 2015

A Grimes  
**Deputy Upper Tribunal Judge**