



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10385/2014

THE IMMIGRATION ACTS

Heard at Stoke on Trent
On 3 November 2015

Determination Promulgated
On 5 November 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

ZN

[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms K Smith, instructed by Paragon Law

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The appellant ZN, date of birth 3.10.95, is a citizen of Afghanistan.
2. This is his appeal against the determination of First-tier Tribunal Judge North promulgated 24.4.15, dismissing his appeal against the decision of the Secretary of State, dated 17.11.14, to refuse his asylum, humanitarian protection, and human rights claims. The Judge heard the appeal on 10.4.15.

3. First-tier Tribunal Judge Shimmin refused permission to appeal on 18.5.15. However, when the application was renewed to the Upper Tribunal, Deputy Upper Tribunal Judge Chamberlain granted permission to appeal on 23.7.15.
4. Thus the matter came before me on 3.11.15 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons set out below I find that there was such error of law in the making of the decision of the First-tier Tribunal that the decision of Judge North should be set aside in its entirety and remitted to the First-tier Tribunal to be heard de novo.
6. The primary ground of appeal is that Judge North mistook the appellant's age, stating at §6 that the appellant stated he was born in October 1986. That is not correct. The appellant's age has been given as 3.10.95, which is stated at the top of the refusal decision, on the file jacket, and confirmed in an age assessment by Staffordshire Social Services. He was therefore 16 years of age when entering the UK and claiming asylum. In consequence, the refusal decision of 2.6.11 granted discretionary leave to remain as an unaccompanied child. In March 2013 the appellant applied for further leave to remain, when aged 18 and had turned 19 by the date of the refusal.
7. Judge North did not take any account of the appellant's youth when considering the credibility of his account as to events in Afghanistan including allegedly assisting his father in the delivery of goods for the government during a period when the appellant would have been between approximately 13 and 16 years of age. At §8 of the decision, Judge North found that the appellant's inability to provide descriptive detail undermined his credibility. The judge also relied on inconsistencies in the account.
8. Whilst he did not concede the issue, Mr McVeety was unable to offer any effective resistance to this primary ground of appeal. He accepted that the judge made no relevant reference to the appellant's age, other than getting the appellant's age completely wrong at §6 of the decision.
9. I find that the judge should have taken account of the appellant's youth and made due allowance for that factor when assessing the appellant's credibility. The failure to do so entirely undermines the findings and the conclusions to be drawn therefrom, so that the reasoning of the judge amounts to material error of law, which infects the entirety of the decision.
10. The other grounds of appeal, including health issues, the expert report, and whether the appellant would be able to resume contact with family members in Afghanistan, are far less persuasive. However, given the fundamental error of law disclosed by the first ground of appeal, it is not necessary to reach a conclusion on those other issues, as the decision must be set aside to be remade afresh.
11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted

to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

12. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so, on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusions:

13. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the decision in the appeal to be made afresh in the First-tier Tribunal.



Signed

Deputy Upper Tribunal Judge Pickup

Consequential Directions

14. The appeal is to be reheard afresh, with no findings preserved, in the First-tier Tribunal at Stoke-on-Trent;
15. The time estimate is 3 hours, with two witnesses including the appellant;

16. The appeal may be listed before any First-tier Tribunal Judge other than Judge North and Judge Shimmin.
17. A Pushto interpreter will be required.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. However, given the circumstances of the appellant's age, I make an anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup