



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

Appeal Number: AA/01436/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 February 2016**

**Decision & Reasons Promulgated
On 19 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**ST
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, in-house advocate of Elder Rahimi Solicitors
For the Respondent: Mr S Kotas, a Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Reeds dated 10 December 2015. The appeal relates to a decision by First-tier Tribunal Judge Kelly whereby a Decision was promulgated on 15 October. The Judge at the First-tier Tribunal had dismissed the appeal on asylum and all other grounds.
2. The Appellant had appealed against the First-tier Tribunal Judge's decision and relied on three grounds:

- (1) A failure to make any findings on the Appellant's background in Afghanistan and in particular in respect of his father (said to be a Mujahedin commander);
 - (2) A failure to provide adequate reasons for findings made because there are mere assertions only;
 - (3) Unsustainable reasons for making adverse credibility findings and a failure to take into account other evidence including that of the Appellant's sister who had given evidence at the hearing;
 - (4) Errors of approach in respect of the Appellant's age;
 - (5) A material misdirection in law in respect of internal relocation; and
 - (6) A failure to take into account the latest background material and instead reliance on older country guidance.
3. In readiness for this appeal the Respondent had lodged a Rule 24 reply dated 5 January 2016.
 4. At the hearing before me this morning, after brief submissions from Mr Hodson, Mr Kotas said on behalf of the Respondent very carefully and thoughtfully that in reality he could take the case no further. He said he had discussed the matter with Mr Hodson before the hearing and that he agreed that there has been no proper findings by the Judge. There were questions in respect of paragraphs 40 and 43 of the Judge's decision as to whether internal relocation was unduly harsh. He said that there ought to be a remittal of the case for a further hearing, but that there ought to be preserved findings in respect of the age assessment. Mr Hodson replied and said that he agreed that the findings in respect of the age assessment ought to remain.
 5. Therefore there is an agreed position in respect of this case. Both parties agree that the decision of the Judge cannot stand. That is not only because of the relatively long time which elapsed between the date of the hearing and the making of the decision but because of more fundamental problems with the findings as identified in the written grounds and amplified orally before me today.
 6. Having considered the decision of the Judge and the grounds of appeal, in my judgment, Mr Kotas is quite right to have made the concession that he did that the decision is fundamentally flawed and cannot stand. Similarly Mr Hodson is also right to concede that the Judge's findings in respect of the age assessment were adequately reasoned and ought to remain.
 7. Accordingly I allow the Appellant's appeal. There will be a re-hearing at the First-tier Tribunal, not before Judge Kelly. Only the Judge's findings at paragraphs 29 to 33 in respect of the age assessment shall stand. The appeal will be re-heard on protection and human rights grounds.

Notice of Decision

The decision of the First tier Tribunal Judge discloses material errors of law and is set aside save in respect of the findings referred to above in relation to the age assessment.

The appeal shall be re-heard at the First-tier Tribunal.

An anonymity direction is made.

Signed

Date: 15 February 2016

Deputy Upper Tribunal Judge Mahmood