



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11657/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower Birmingham
On 8th May 2018

Decision & Reasons Promulgated
On 16th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

AG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Bedford of Counsel instructed by Sultan Lloyd Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a of Judge Grimmett (the judge) of the First-tier Tribunal (the FTT) promulgated on 7th April 2017. The Appellant is a male citizen of Afghanistan who claimed asylum on 18th March 2016. The application was refused on 16th September 2016 and the appeal heard by the FTT on 5th April 2017. The judge heard evidence from the Appellant and his foster carer and dismissed the appeal on all grounds.

3. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by Judge Davies on 14th August 2017. A renewed application was made the relevant part of which is summarised below.
4. It was submitted that the judge had erred in concluding that the Appellant was over 18 years of age on arrival in the UK. The judge had placed weight upon a letter dated 18th March 2016 from Oxfordshire County Council which made reference to a Merton compliant age assessment being satisfied, but no such assessment had been produced. The Appellant relied on VS [2015] EWCA Civ 1142 submitting that a decision maker must see the full age assessment.
5. It was submitted that the error is material because the judge was required to apply the Joint Presidential Guidance Note No.2 of 2010 in every case involving a child, to consider whether inconsistencies or discrepancies in the evidence are capable of being explained by the fact that the Appellant was a child at the relevant time. The Appellant's case was that he was 15 years of age when he claimed asylum in the UK, but he was treated as an adult in the screening and asylum interview.
6. Permission to appeal was granted by Upper Tribunal Judge Blum and I set out below the grant of permission;
 - "1. At [13] the FTJ satisfies herself that the Appellant was over the age of 18 on arrival in view of a letter from Oxford County Council dated 18th March 2016, which states that the conclusion was 'Merton compliant', and the absence of any evidence produced by the Appellant even though the FTJ found he was still in contact with his family. While the latter reason may support the FTJ's conclusion, there is little evidence that there was a formal age assessment by Oxford County Council, let alone a Merton compliant one, and the GCID Note at pages 7 and 8 of the Appellant's bundle suggests that Birmingham Social Services were treating the Appellant as a child. Despite this issue being raised in the skeleton argument, the FTJ failed to engage with it.
 2. Even though the FTJ subsequently gave a number of reasons for rejecting the Appellant's credibility, primarily based on inconsistent evidence, it is, at this stage, arguable that the FTJ was not reasonably entitled to rely on a one page letter from Oxford County Council, which appears to have been based on a visual assessment alone, in concluding that the Appellant was over the age of 18, and that this may have infected her other adverse credibility findings in the absence of any further consideration that the Appellant may have been a child at the time of his asylum interview.
 3. I do not find the remaining grounds at paragraphs 5 to 7 persuasive. Permission is only granted on the basis set out above."
7. Following the grant of permission, the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, contending, in summary, that the grounds disclose no error of law.
8. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

9. Mr Bedford relied upon the grounds upon which permission to appeal had been granted, and submitted that the judge was in error at paragraph 13 in relying upon the letter from Oxfordshire County Council, and finding that the Appellant had produced no evidence of his age. Mr Bedford pointed out that at pages 7 and 8 of the Appellant's bundle, there was a GCID case record sheet, which confirmed Birmingham Social Services had been treating the Appellant as a minor since he initially claimed asylum. The judge had not taken this evidence into account.
10. Mrs Aboni, on behalf of the Respondent, stated that she did not rely upon the rule 24 response, but conceded that the judge had materially erred in law in considering the Appellant's age. Mrs Aboni accepted that the judge had not engaged with the evidence referred to by Mr Bedford, at pages 7-8 of the Appellant's bundle which ran contrary to the letter dated 18th March 2016 from Oxfordshire County Council. In addition, Mrs Aboni advised that there had in fact been an age assessment carried out by Birmingham Social Services on 12th January 2017, and the Appellant's date of birth had been assessed as 1st January 1999 and therefore the Appellant was a minor when he entered the UK in March 2016 and when he was interviewed in connection with his asylum claim.
11. Both representatives therefore submitted that the decision of the FTT was unsafe, and should be set aside, and the appeal remitted to the FTT to be heard afresh with no findings preserved.

My Conclusions and Reasons

12. I find the judge erred in considering the Appellant's age, although it is clear in my view, that the parties were not aware that there had been an age assessment carried out by Birmingham Social Services in January 2017, and therefore the judge cannot be blamed for not being aware of that. There was however evidence contained within the Appellant's bundle to counter the opinion given in the Oxfordshire County Council letter of 18th March 2016, and the judge did not engage with that evidence.
13. The error is material for the reasons given in the grounds seeking permission to appeal, in that it appears that the Appellant was a minor when he entered the UK and was a minor when interviewed, although he was treated by the Respondent as an adult. The judge therefore needed to consider the Joint Presidential Guidance Note No.2 of 2010.
14. The decision of the FTT is set aside with no findings preserved. The error in relation to age may have infected the other credibility findings that were made. The decision needs to be re-made. I have taken into account paragraph 7.2 of the Senior President's Practice Statements and find that it is appropriate to remit this appeal back to the FTT. This is because there is substantial fact-finding to be undertaken, and it is more appropriate for this to be undertaken by the FTT rather than the Upper Tribunal.
15. The appeal is to be heard by an FTT Judge other than Judge Grimmett. The parties will be advised of the time and date of hearing in due course. The Appellant's

representatives should note that the full bundle of documents submitted to the FTT on behalf of the Appellant is not on the Tribunal file. All that is on the Tribunal file is the first 70 pages of the bundle. It is understood that the Respondent still has the full bundle, but the Tribunal will need to receive a full Appellant's bundle.

Notice of Decision

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

Anonymity

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 8th May 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FTT.

Signed

Date 8th May 2018

Deputy Upper Tribunal Judge M A Hall