



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12484/2017

THE IMMIGRATION ACTS

Heard at Field House
On 31st July 2018

Decision and Reasons
On 07 August 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

BM
(Anonymity Direction Made)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Collins instructed by Sentinel Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of a First-tier Tribunal Judge promulgated on 29th January 2018 in which he dismissed the appellant's appeal against the Secretary of State's refusal grant asylum, humanitarian protection and protection under the European Convention on Human Rights.

The appellant appealed arguing the judge had failed to take into account her age when considering credibility and there was no Section 55 of the Borders Citizenship and Immigration Act 2009 assessment. Permission to appeal was granted by Upper Tribunal Judge Gill on both grounds.

2. Despite a record of the appellants' age, she was born on 7th August 2000, within the decision the judge did not specifically make reference to her age when assessing the evidence or credibility. There were cogent findings made with respect the aunt and further aspects of the evidence but the appellant was initially interviewed on entry to the United Kingdom when she was 13 years old. She was still not eighteen years old at the date of the decision of the Secretary of State, at the date of the hearing before the judge or at the date of hearing before me.
3. The judge's appreciation of her age appeared to be directed only towards the previous withdrawal of an asylum claim which was decided in her absence. Although the judge placed no weight on the findings in that determination, at [31] the judge found that the appellant *'failed to explain the clear discrepancies in her various accounts and in her oral evidence added a further inconsistency in respect of the delay in her travelling with her siblings to her uncle Guy'*. The judge went on to make cogent findings with respect to the authorities in the Congo at [32] but it is clear the appellant's own evidence was an important aspect of the credibility findings. AM (Afghanistan) [2017] EWCA Civ 1123 has set out the importance of following fair procedure and determination of claims with regards children, young people and vulnerable witnesses. No reference was made to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance
4. Nor was there any reference to, assessment or application regarding Section 55 of the Borders Citizenship and Immigration Act 2009 within Article 8. I can accept that this will not be such a key issue because the appellant will be eighteen years at the date of any subsequent hearing but as Mr Collins argued, there was no 'bright line'. In the light of paragraph 3 the matter is remitted for a hearing de novo.
5. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 *Helen Rimington*

Date 31st July 2018

Upper Tribunal Judge Rimington