



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/00328/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On October 20, 2014

Determination Sent  
On October 27, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MISS LR N  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Cronin, Counsel, instructed by Islington Law  
Centre

For the Respondent: Mr Whitell (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant, claims to be a citizen of Burundi, and claimed to have been born on February 12, 1993. Her age and country of origin are disputed. On August 19, 2007 she arrived in the United Kingdom and in March 2009 she presented herself at Barking police station and sought help. On April 2, 2009 she applied for asylum but on April 29, 2009 she was arrested and remanded

into custody on suspicion of obtaining leave by deception and remaining here unlawfully as the respondent had evidence to suggest that she had given false details including a false name, date of birth and country of origin.

2. On August 28, 2009 she was granted a temporary release and following a judicial review in January 2010 all criminal charges were dropped and the London Borough of Southwark agreed to provide services for her as a child in need. On December 21, 2012 the UKBA accepted her as a potential victim of trafficking but refused her application for asylum and on the same day a decision was taken to remove her as an illegal entrant under paragraph 8-10 of schedule 2 to the Immigration Act 1971.
3. On January 11, 2013 the Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended. The matter came before Judge of the First-tier Tribunal Suchak (hereinafter called "the FtTJ") on April 4, 2014 and he dismissed the appeal after an oral hearing in a determination promulgated on April 24, 2014.
4. The Appellant lodged grounds of appeal on May 6, 2014. Permission to appeal was initially refused by Judge of the First-tier Tribunal Frankish on May 9, 2014 but following renewed grounds of appeal Upper Tribunal Judge Storey found there was an arguable error in law and gave permission to appeal.
5. The matter came before me on the date set out above. Ms Cronin attended on behalf of the appellant There was no need for the appellant to attend this hearing.
6. During her lengthy submissions as recorded in my record of proceedings Ms Cronin argued that the FtTJ had failed to have regard to large elements of the evidence that went to the credibility of the appellant's age and country of origin. He had relied solely on a couple of documents when there was evidence from three independent and professional witnesses and a number of reports that supported her claimed age. By failing to have regard to these matters or balance them against the evidence, he negatively accepted against the appellant, he erred in law.
7. Mr Whitell had a limited file and was unable to comment whether the FtTJ had considered any of the documents Ms Cronin said were before the FtTJ although he accepted the court index suggested they were even though some of the pages were missing. He argued the FtTJ had given reasons for finding the appellant to be an incredible witness. However, he agreed with me that if the FtTJ had not considered the various reports and witness evidence in deciding her age and where she came from then that would amount to an error in law.

8. I was satisfied the FtTJ had not had full regard to significant evidential matters and whilst this evidence may not have altered his approach he had erred by not dealing with them especially when they went to the heart of the appellant's age and nationality.
9. Other issues were raised by Ms Cronin but I agreed that there was an error of law on this issue alone.
10. Having established there was an error in law I invited submissions on what should happen to the appeal. I was advised the key issue was credibility and fresh oral evidence would be necessary requiring a number of professional witnesses to be called. I considered Part 3, Section 7.1 to 7.3 of the Practice Statement.
11. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

“Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.”

12. In light of the Practice Direction I agreed the case should be remitted to the First-tier Tribunal. The case previously took all day and Ms Cronin suggested a similar estimate would be necessary albeit she asked for 1½ days. I indicated the case was capable of being dealt with in one day as long as it was properly managed.

13. I indicated I would issue directions separately and I invited the parties to submit to me any directions they wanted me to consider. Due to time restraints we were unable to deal with these at the hearing. It may be useful for the matter to be listed for a CMR to ensure that everything that is needed for the final hearing is available.
14. I have listed the matter on March 30, 2015 at Taylor House. Attempts were made to confirm Ms Cronin's availability on that date via her instructing solicitors, her clerk's office and direct. It was not possible to speak to her so in the event this date is not convenient an application should be made to Taylor House to vary the date and if such an application is made within seven days of today's date I would hope that any change in date could be accommodated as Counsel has been involved in this appeal throughout.
15. The parties should ensure compliance with all directions issued in light of the fact the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 will apply to this appeal from hereon.

### **Decision**

16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
17. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.
18. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order has been made and no application has been made to alter the position.

Date:  
October 27, 2014



DEPUTY UPPER TRIBUNAL JUDGE ALIS  
IMMIGRATION AND ASYLUM CHAMBER