



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

Appeal Number: PA/06798/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 25 January 2019**

**Decision & Reasons Promulgated  
On 5 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**R. H.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Cleghorn, Counsel, Halliday Reeves & Co

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

The Appellant is a national of Iran who entered the UK unlawfully on an unknown date, and made a protection claim on 27 November 2017 claiming to be a child. His application was refused on 20 May 2018, and the Respondent also refused to accept his claimed age.

The Appellant's appeal against that refusal came before the First-tier Tribunal at Bradford, when it was heard by First-tier Tribunal Judge Caswell. The appeal was allowed in a decision promulgated on 4 July 2018.

The Respondent's application for permission to appeal the decision was granted by First tier Tribunal Judge Alis on 8 August 2018 on the basis it was arguable that the Judge's approach to the age assessment was flawed, because she had failed to engage with all of the concerns raised by the social workers who had spoken to the Appellant and assessed him to be an adult.

There has been no application to adduce further evidence pursuant to Rule 15(2A) and there has been no response to the grant of permission by way of Rule 24 Notice. Thus the matter comes before me.

Before me Mr Diwnycz pointed to paragraphs 14-15 of the decision and noted that they did not accurately reflect the contents of a detailed and lengthy age assessment of some twenty pages. He argued that as a result the criticisms of that age assessment offered by the Judge were therefore unsafe, as was her conclusion that the Appellant was the age he claimed to be. Those errors went in turn to the core of the question of whether he had given a credible account of who he was, and, his reasons for leaving Iran.

Ms Cleghorn accepted that there was no evidence before the Judge which would have allowed her to conclude that young Iranian men were as a general rule more hirsute or physically developed than their British counterparts. Ultimately she also accepted that the report expressly noted that it was important to bear in mind that different ethnicities would develop at different ages [p1] - although the Judge had read the report as omitting any such recognition, as indeed she initially had too. Ms Cleghorn also accepted that the Judge had been wrong to find that the Appellant had been given no opportunity to deal with the age assessment prior to the hearing of the appeal. The report recorded that the authors had discussed their findings and reasons with the Appellant on the occasion of the assessment, some six months earlier. They had also recorded that they had provided him with a written copy of their assessment. The assessment was also referred to in the reasons given for the refusal of the protection claim, and there was no suggestion that the Appellant's legal advisers had tried and failed to obtain a copy in advance of the hearing. The Appellant and his legal advisers had therefore had ample time to reflect upon the assessment, and to consider whether they wished to obtain any expert evidence to deal with either his physical maturity, or, the account he had offered to the social workers of how he knew his date of birth when he claimed to be both illiterate and innumerate.

The authors of the age assessment were on the face of it experienced social workers, who had prepared a 20 page report recording their enquiries on the day of the assessment, their findings, and the reasons for their overall assessment of the Appellant's age. That report was inevitably a mixture of evidence of both primary fact concerning what they were told and what they saw, and also opinion evidence as to whether they considered the Appellant was telling the truth about his age. In my judgement the Judge failed to recognise that the evidence of primary fact they offered was unchallenged before her. The Appellant did not dispute that he had said what had been recorded. That error was compounded by her failure (as set out above) to engage accurately with the content of the report. It was further compounded

by a failure to treat the opinion evidence as that offered by persons who should be treated by the Tribunal as being expert in dealing with children. Thus in my judgement the Respondent makes out the complaint that the Judge erred in her approach to the report, with the consequence that she failed to give to the age assessment the weight that it deserved.

In my judgement the proper approach to be taken by the Tribunal to evidence of this sort is that set out in TF and MA v SSHD [2018] CSIH 58, since the evidence offered by a Pastor upon whether an individual genuinely holds a particular religious faith is clearly an analogous mixture of evidence of primary fact and opinion evidence offered by an individual who should be treated by the Tribunal as having expertise in the field upon which that opinion evidence is offered.

In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the overriding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge Caswell, at the North Shields Hearing Centre. A Kurdish Sorani interpreter is required. Both parties have today, wisely, indicated an intention to file and serve further evidence in relation to Iranian birth certificates and identity cards, when they are issued, and what details they contain. In addition the Appellant proposes to seek his own independent age assessment. To allow for those steps to be taken the appeal will be listed at North Shields on the first available date after 1 March 2019.

## **DECISION**

The Decision of the First Tier Tribunal which was promulgated on 4 July 2018 did involve the making of an error of law that requires the decision upon the asylum appeal to be set aside and remade.

Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

### 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. 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  
Deputy Upper Tribunal Judge J M Holmes

Date 25 January 2018

A handwritten signature in black ink, appearing to be 'J M Holmes', written in a cursive style.