



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06756/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> February 2018

Decision & Reasons Promulgated  
On 6<sup>th</sup> March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR S.F.  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Grailsford, Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction is made. As a protection claim, it is appropriate to do so.

**DECISION AND REASONS**

1. The Appellant, a citizen of Afghanistan, appeals with permission against the decision of a First-tier Tribunal (Judge Onoufriou) in which he dismissed the Appellant's appeal against the Respondent's refusal to grant him protection. The starting point in this appeal revolves around the issue of an age dispute. The Appellant claims he was born on 11<sup>th</sup> January 2001 and thus when he made his claim to asylum in July 2016, he was 15½ years of age. The Respondent puts the Appellant's date of birth as 1<sup>st</sup> September 1997.
2. It is correct to say that for the purposes of the Appellant's asylum interview, he was treated as an adult.
3. The Respondent based the Appellant's age upon the contents of an age assessment report obtained from Leicestershire County Council. It has been the Appellant's case, certainly since the date of his Home Office interview, that his age is in dispute.
4. When the Appellant's appeal came before the First-tier Tribunal the judge correctly identified, in what he termed as preliminary discussions, the issue of the Appellant's age. At the outset of the hearing it seems there was no age assessment report available. The judge raised a query about this during the course of the proceedings and pointed out to the Respondent that the Appellant had raised an age dispute.
5. Following a brief adjournment the Respondent's representative produced a document from Leicestershire County Council entitled "Outcome of Age Assessment". This document assessed the Appellant's date of birth as 1<sup>st</sup> January 1997 (and thus made him 19 years of age at the date of hearing).
6. The Appellant's representative however pointed out that the Leicestershire County Council document which had been produced:
  - (i) was merely a summary; and
  - (ii) there was no evidence that the summary report was "Merton" compliant.

She asked for an adjournment in order that the full report (namely one upon which the summary was based) be produced.

7. The Respondent at this point intimated that there was no guarantee that a fuller document was available and rather than have the case adjourned she would prefer that the age assessment summary document be withdrawn and that the judge make his own deductions regarding the Appellant's age.
8. The judge then said this at [9]:

"I pointed out that the appellant did make it clear in his AIR that he disputed the age attributed to him by the respondent but as Ms Karbani stated that the respondent did not have any further documents, I would admit the document but attach much less weight to it than otherwise if it was **Merton** compliant. I did note that the summary assessment stated that it complied "with guidance

arising from the **Merton** judgment and subsequent case law”, but I considered that without the full report upon which the summary was based, I could not treat it as **Merton** compliant. I therefore indicated to Ms Karbani that she needed to deal with the case as if the appellant was either an adult or a child prior to me making an assessment on his age following the evidence.”

9. It would appear that at that point the judge’s decision was to admit the document.
10. He then went on to hear evidence from both the Appellant and his witness. In [41] he set out his analysis of the evidence dealing with the Appellant’s age. He noted discrepant evidence from the Appellant and his brother and therefore placed no reliance on that evidence. He then said that “... the appellant certainly physically looked more than 18 years and his demeanour in answering the questions certainly suggested someone comparatively mature.” The judge then made a declaration at the conclusion of [41] saying the following:

“I therefore conclude that the Appellant is over 18 and I reach this conclusion totally ignoring the age assessment prepared by Leicestershire County Council which I considered to be non-**Merton** compliant.”
11. Thereafter in [42] in his assessment of the Appellant’s credibility, the judge states:

“... Likewise, the fact that he traced his brother through Facebook when he had no contact with him and no idea of his whereabouts is also highly implausible.”
12. Following these declarations the judge then analysed evidence concerning risk on return to Afghanistan, treating the Appellant as an adult. He then dismissed the appeal.
13. The Appellant sought and was granted permission to appeal. The grant of permission, simply said:

“It is arguable that the judge has misdirected himself in assessing

  - (i) the Appellant’s age; and
  - (ii) the plausibility of the evidence in relation to the Appellant reconnecting with his brother via Facebook.”
14. Thus the matter comes before me to determine whether the decision of the First-tier Tribunal contains such error of law that it requires to be set aside and remade.

### **Error of Law Hearing**

15. Before me Mr Grailsford appeared for the Appellant, and Ms Everett for the Respondent. Mr Grailsford, following the lines of the grounds seeking permission, emphasised that once the FtTJ had said that he was totally ignoring the summary age assessment document, then there was no evidence left to counter the oral evidence given by the Appellant, and his brother, that he was under the age of 18 years.
16. Additionally, stepping back to the question of the report itself, the judge was in error in not granting an adjournment so that an enquiry could be made of Leicestershire

County Council on whether or not there was a full report available. An Appellant is entitled to know and have placed before him any relevant evidence which may be available. He is entitled to know the extent of such evidence, not least in that it allows him an opportunity to challenge it.

17. Mr Grailsford then addressed me on the assessment made of the plausibility of the Appellant tracing his brother through Facebook. He said that the whole point of Facebook is that it enables people to make contact with Facebook subscribers, simply by searching for a name. To use that fact to discredit the Appellant, together with the errors concerning the evidence of the age assessment report, meant that the decision was infected by material error. It should therefore be set aside to be remade in the First-tier Tribunal.
18. Ms Everett filed a Rule 24 response defending the decision. She submitted that the Respondent had withdrawn the summary age assessment report. It was then up to the judge to assess the Appellant's age on the evidence before him. There was no error in the judge proceeding this way.
19. So far as the second ground is concerned she did accept that Facebook does provide a mechanism for contacting people simply by searching for their name, but said that the judge in this matter found as a fact that it was highly implausible that the Appellant recognised his brother whom he had not seen for ten years, simply by looking at a photograph. That was a finding open to the judge.
20. At the end of submissions I reserved my decision which I now give with reasons.

### **Consideration and Findings**

21. I find force in Mr Grailsford's submission and am satisfied that the decision of the First-tier Tribunal must be set aside for legal error. I say this because at [9] at the start of the proceedings it appears that the FtTJ was admitting the age assessment summary report, albeit with lesser weight as it was not Merton compliant. Added into this I note that it was the judge who made the enquiry about the age assessment report, which then produced the result that there was available a summary assessment only. The Appellant's representative at that stage properly asked for the full report to be made available. The answer came back that there was no guarantee that a fuller document was available, but certainly it appears that no proper enquiry was made on the availability or otherwise of the full assessment report.
22. It is my judgment that if there is relevant evidence which may be available, then a proper enquiry should be made to determine whether or not that evidence can be made available to the Tribunal and to the Appellant. The availability of such evidence to the Tribunal would no doubt assist it in coming to a proper decision. The point here is that the Respondent has not made any enquiry as to whether a full report is available. Not to do so deprives the Appellant of the opportunity to challenge the evidence upon which his age has been determined.

23. Having stated at [9] that he would admit the age assessment summary but attach much less weight to it than if it were Merton compliant, the FtTJ has gone on to state at [41] that he has reached his conclusion that the Appellant is over 18 having totally ignored the age assessment. These two statements are contradictory; it is not open to a judge to totally ignore evidence that he has previously admitted.
24. I find that the above errors are material ones and are ones which are capable of affecting the whole decision. If the appellant is indeed a minor then his evidence must viewed in that light and any risk on return evaluated likewise. I therefore set aside the decision in its entirety. That is sufficient to dispose of this appeal and I find it is unnecessary to make any separate finding on the plausibility or otherwise of the point raised in the ground 2 concerning the Appellant reconnecting with his brother through Facebook.
25. The decision will have to be re-made and fresh findings of fact made. It is right that the matter be remitted to the First-tier Tribunal for a fresh hearing before a judge other than FtTJ Onoufriou.
26. I direct the Respondent to make the appropriate enquiry with Leicestershire County Council to obtain the full age assessment report, or if none is available to provide an explanation as to why it has not been possible to access the same.

### **Notice of Decision**

The appeal before the Upper Tribunal is allowed to the extent that the decision of the First-tier Tribunal promulgated on 30<sup>th</sup> August 2017 is set aside. The matter is remitted to the First-tier Tribunal for a full rehearing, before a judge other than Judge Onoufriou.

### **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

C E Roberts

Date

03 March 2018

Deputy Upper Tribunal Judge Roberts