



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

Appeal Number: AA/04910/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 November 2013**

**Date Sent  
On 13 December 2013**

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**Before**

**UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**MR AHIJAZ NABIZADA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Hoshi, Counsel

For the Respondent: Mr P Deller, Home Office Presenting Officer

**DECISION ON AN ERROR OF LAW**

1. The appellant is a citizen of Afghanistan, born on 1 October 1995. He claims to have left Afghanistan two to three months before his screening interview held on 23 August 2011. He was a minor when he arrived in the UK. His appeal against the decision of the respondent made on 8 May 2013 refusing to grant him asylum and giving directions for his removal

from the UK by way of directions under Section 10 of the Asylum and Immigration Act 1999 was dismissed by First-tier Tribunal Judge Lal. The judge also dismissed the appellant's appeal under Article 8 of the ECHR.

2. On 18 July 2013 the appellant's application for permission to appeal against the judge's decision was refused by First-tier Tribunal Judge Ford. FTTJ Ford held that the appellant's application was out of time, against a decision of the judge promulgated on 28 June 2013. The appellant served the application for permission to appeal on 8 July. No application was made for an extension of time under paragraph 24 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended).
3. Upper Tribunal Judge Freeman granted permission saying that the lateness of the First-tier application (for which the appellant blames his lawyers) was not picked up by the administration: in any event, it was relatively small, and arguably the judge who refused permission in the First-tier Tribunal should not have done so on the sole basis that there had been no application for an extension of time, without referring to the merits of the case at all. He granted permission limited in the first place to the question of whether an extension should have been given. If that is decided in the appellant's favour, he and his representatives should expect immediately to be called on to argue the question of whether the grounds showed any error of law on the part of the judge.
4. A skeleton argument was submitted by Counsel on 28 November 2013. At paragraph 9 he stated that the determination was sent by recorded delivery on Friday 28 June 2013. It was actually received by his solicitors on 1 July 2013, which was a Monday. The time limit for applying for permission to appeal was therefore Monday 8 July 2013. On this basis he submitted that the appellant's application was in time.
5. I found, as submitted by Mr Deller, that the application for permission to appeal which was made on 8 July was in time.
6. I then had to consider what to do next as a result of the failure by the First-tier Tribunal Judge to consider the merits of the grounds of appeal lodged with the application. In the absence of a grant of permission we could not proceed to consider whether the grounds showed any error of law on the part of the judge as directed by Upper Tribunal Judge Freeman. In order to consider whether the grounds disclosed an arguable error of law, I heard oral submissions from the parties.
7. I agreed with Mr Deller's submission that there were two identifiable errors in the judge's decision and these errors were fundamental and therefore I could grant permission on those issues and at the same time set aside the judge's decision.
8. The errors were as follows:

9. The first error is that nowhere in the determination is it apparent that the judge was considering an appeal from a child. The Upper Tribunal has set out guidance on how to consider appeals from children. The judge failed to apply the guidance. The judge unnecessarily focused on the discrepancies in the evidence, in particular the discrepancy in relation to the appellant's journey to the UK and his failure to claim asylum en route.
10. The second error was the judge's treatment of the documentary evidence. He erred by discounting the Jirga and police report on the basis of his earlier finding that the appellant's account was incredible. This error was material in that the judge failed to determine whether the report corroborated the appellant's account.
11. On these errors alone I find that the judge erred in law. His decision cannot stand. I set it aside in order for it to be re-made.

### **DIRECTIONS**

12. By virtue of paragraph 7.2 of the Practice Statements issued by the Senior President of Tribunals on 25 September 2012, I am satisfied that the effect of the error has been to deprive the appellant of a fair hearing. I therefore remit the appellant's appeal to **Hatton Cross** for a fresh hearing.
13. None of the judge's findings shall last.
14. The appeal is to be re-heard by a different First-tier Tribunal and not First-tier Tribunal Judge Lal.
15. The agreed date for the hearing of this case is 25 February 2014.

Signed

Date

Upper Tribunal Judge Eshun