



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/10645/2012

THE IMMIGRATION ACTS

Heard at Field House
Without an Oral hearing
On 18th November, 2013

Determination Promulgated
On 21st November 2013

.....

Before

Upper Tribunal Judge Chalkley

Between

SHAHBIR TARAKHIL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. Having regard to the Decision and Directions sent to the parties by the Upper Tribunal by prepaid first class post on 10th June, 2013, a copy of which is at Appendix A of this determination, and not having received any response from either party as of 15th November, 2013, I hereby set aside the determination of First-tier Tribunal Judge Moore promulgated on 10th April, 2013, following the hearing at Taylor House on 10th March, 2013.

2. In making his findings of fact, the First-tier Tribunal Judge did not demonstrate that he had considered the expert report, either adequately or at all, and in the circumstances I believe that he erred in law.
3. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice statement, given the length of time the parties would have to wait for the matter to be relisted before me, and that it could, conversely, be heard relatively speedily by the First-tier Tribunal. In view of the overriding objective informing the onward conduct of this appeal, I have decided that this appeal be remitted to the First-tier Tribunal for a hearing afresh before a First-tier Tribunal judge, other than First-tier Tribunal Judge Moore. None of the findings of fact made by First-tier Tribunal Judge Moore are preserved.

18th November, 2013

Richard Chalkley
Judge of the Upper Tribunal

APPENDIX A

**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

Appeal No: AA/10645/2012

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Name of appellant before First-tier Tribunal: Shahbir Tarakhil

Respondent before First-tier Tribunal: Secretary of State for the Home Department

Application by appellant

NOTICE OF DECISION OF APPLICATION FOR PERMISSION TO APPEAL

It is unnecessary to hold an oral hearing of the application for permission to appeal because I consider that it can properly be dealt with on the papers.

Permission to appeal is granted.

REASONS (including any decision on extending time)

1. I believe that the First-tier Tribunal Judge was perfectly entitled to conclude as he did at paragraph 43 of the determination. The respondent cannot be expected to perform miracles; the British Embassy have explained why tracing is not possible and the grounds simply say that this is inadequate; they do not suggest what more the respondent could do in the circumstances.
2. As to the second challenge, the First-tier Tribunal judge actually refers to the guidance for assessing the claims of minors and acknowledges the appellant's age at paragraph 33 of the determination. However, he did not demonstrate that in making his findings of fact he considered the expert's report and in that respect I believe that he may have erred in law. I grant permission for this reason alone.

DIRECTIONS

- a) Subject to any comments, observations or submissions either party may wish to make to the Upper Tribunal within 21 days of the date this decision was posted to the parties, I propose to decide this appeal under Rule 34 and to set it aside without preserving any findings of the judge.

- b) I believe that this appeal may be one which falls squarely within paragraph 7 of the Senior President's Practice Statement, given the length of time the parties would have to wait for the matter to be relisted before me in Field House and that it could, conversely, be heard relatively speedily by the First-tier Tribunal, and in view of the overriding objective informing the onward conduct of this appeal, I am likely to decide that this appeal be remitted to the First-tier Tribunal for hearing afresh before a First-tier Tribunal judge other than First-tier Tribunal Judge Moore.

Richard Chalkley
Judge of the Upper Tribunal
5th June, 2013