



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

Appeal Number:

AA/03572/2014

THE IMMIGRATION ACTS

Heard	at	Field	House
			Determination Sent
On 2 October 2014		On 9 October 2014	

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Mehdi Mosawi

(Anonymity direction not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr J Trumpington of Counsel instructed by Howe & Co.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer.

DETERMINATION: ERROR OF LAW

1. This is an appeal against the decision of First-tier Tribunal Judge M A Khan promulgated on 17 July 2014, dismissing the Appellant's appeal against the Respondent's decision dated 14 May 2014 to remove him from the UK following the refusal of his application for asylum.

Background

2. The Appellant is a national of Afghanistan. His age has been a matter of dispute. The Respondent initially treated him as having a date of birth of 1 August 1993 (see, for example, the 'reasons for refusal' letter - 'RFRL' - dated 22 June 2012). However, subsequently the Respondent has treated the Appellant as having a date of birth of 1 September 1995 (see, for example, RFRL dated 14 May 2014, and the Notice of Immigration Decision of the same date).

3. The background to the Appellant's asylum claim and his claimed immigration history are summarised in the RFRL dated 14 May 2014, and are otherwise a matter of record: accordingly I do not rehearse such details here, but make reference as is incidental for the purposes of this document.

4. For present purposes I note in particular that following being encountered by the police at an address in Preston on 14 June 2012 the Appellant made an application for asylum. The application was refused for reasons given in the RFRL of 22 June 2012 and a removal decision was made on the same date. An appeal was dismissed by First-tier Tribunal Judge Chana sitting at Harmondsworth in a determination promulgated on 9 July 2012 (ref AA/06106/2012), but a challenge to that decision before the Upper Tribunal was successful, following a hearing at Field House before Deputy Upper Tribunal Judge Frances on 19 December 2012. The Appellant's case was relisted before the First-tier Tribunal, but the Respondent withdrew the decision at a hearing on 6 March 2013 before First-tier Tribunal Judge O'Garro. The Respondent then made a new decision on the Appellant's application for asylum, refusing it for the reasons set out in the RFRL of 14 May 2014, and a removal decision was made by way of a Notice of Immigration Decision on the same date. It is against this latter removal decision that the current appeal was brought.

5. The Appellant's current appeal was dismissed by the First-tier Tribunal for reasons set out in the determination promulgated on 17 July 2014.

6. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Cruthers on 7 August 2014.

Error of Law

7. In reaching my decision I have had regard to **ML (Nigeria) [2013] EWCA Civ 844** upon which the Appellant placed particular

reliance. That decision happened to involve the same First-tier Tribunal Judge as the instant case, but I do not accord any weight to that circumstance. Further I recognise that there is scope for determinations to contain slips and errors without it inevitably constituting a material error of law. The significance of any such factual errors is a matter for evaluation and judgement on a case specific basis, bearing in mind the requirement of 'anxious scrutiny' imposed upon the Judge and the entitlement of the parties to a fair hearing.

8. However, in all of the particular circumstances of this case I find that the errors identified below are such that it cannot be concluded that the Appellant received a fair hearing, and that consequently the determination must be set aside for error of law.

9. The Judge erred in the following respects:

(i) The Judge identified the Appellant's date of birth as 1 August 1993 (determination at paragraph 1). This was to disregard the Respondent's reassessment of his age as being 2 years and 1 month younger. This suggests a lack of anxious scrutiny. It also obfuscates the extent to which the Judge made allowance for the Appellant having been a child at relevant significant moments in his claimed history, and being a minor on his arrival in the UK.

(ii) The Judge made inconsistent references to the date of the RFRL. At paragraph 4 he made a passing reference, correctly, to the RFRL being dated 14 May 2014. However, in setting out the Respondent's case, at paragraph 24, he referred to the RFRL being dated 22 June 2014. There is no RFRL of that date, although there is an RFRL dated 22 June 2012.

(iii) Further to the above the Judge, at paragraph 8, incompletely sets out the history of the appeal (as summarised at paragraph 4 above), and in so doing appears to indicate that he was dealing with a remitted appeal consequent upon the setting aside of Judge Chana's determination. This was not the case. However, in combination with the confusion over the RFRL and the utilisation of a date of birth that arises from the previous (subsequently withdrawn) decision, it is not clear that the Judge focused upon the decision that was at the core of the appeal. Again this indicates a lack of anxious scrutiny.

(iv) The Judge made reference to a "*37 page bundle of documents which includes the appellant's written statements*

and his wife's written statements", which have no bearing to this particular case: (paragraph 11).

(v) Similarly at paragraph 11, the Judge made reference to the provision of "*background information on Mongolia*".

(vi) The judge also made erroneous reference to "*removal to Albania*" (paragraph 23).

(vii) At paragraph 43 of the determination the Judge states that he found the Appellant's evidence concerning events which led him to leave Afghanistan as not credible because of the answers given at questions 53 and 54 of the substantive asylum interview. I am unable to discern from paragraph 43, or elsewhere in the determination, the nature of the Judge's difficulty with these particular answers. If, which is not clear, the Judge is suggesting the answers are discrepant, such a characterisation is wholly unsustainable. If, in the alternative, the Judge is suggesting that the notion that the family's farmland would be taken by another person whilst leaving the family house in their possession was inherently incredible, I am unable to discern the reasoning process that lead the Judge to such a conclusion. I do not see how the matters described by the Judge at paragraph 43 are indicative of a lack of credibility, and to that extent the determination lacks adequate reasoning.

10. Although there is some coherency to other aspects of the Judge's adverse assessment of the Appellant's credibility (as there was in **ML**) - I am not persuaded that it is such that the errors identified can be considered to be of insignificant consequence and that an adverse decision in the appeal is inevitable - albeit, as in **ML**, the Appellant may face "*a very difficult run*".

11. It is not necessary to make any specific Directions for the further conduct of the appeal. Both parties are at liberty to file any further evidence upon which they seek to rely up to 7 days prior to the re-listed hearing.

Decision

12. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

13. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge M A Khan or First-tier Tribunal Judge Chana.

**Deputy Judge of the Upper Tribunal I. A. Lewis 2 October
2014**