



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

Appeal Number: AA/08486/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13th August 2015**

**Determination Promulgated
On 17th August 2015**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**B A
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Chelvin (instructed by Luqmani Thompson and Partners, Solicitors)

For the Respondents: Mr K Norton (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a decision of the First-tier Tribunal (Judge Asjad) promulgated on 7th April 2015 by which it dismissed his appeal against the Secretary of State's decision to refuse him leave to remain in the UK and to remove him to Afghanistan.
2. The Appellant came to the UK in 2010 and claimed asylum. He was then aged 13. His claim was rejected on 9th April 2010 but he was given leave

to remain in accordance with the Secretary of State's policy until 8th April 2013. He did not then appeal the asylum decision.

3. He made an application for further leave to remain within the currency of his leave on asylum grounds. It was the refusal of that application that was the substance of the appeal before the First-tier Tribunal.
4. The grounds assert that the First-tier Tribunal erred in excluding the evidence of the Appellant's social worker and in making adverse credibility findings based on inconsistencies between his evidence in 2015 and his asylum interview in 2010 without making allowances for his youth then.
5. I agree that the Decision and Reasons is unsustainable.
6. At paragraphs 2 to 4 of the Decision and Reasons the Judge explains that the Appellant's representatives wished to call the Appellant's Social Worker to give evidence. There was no statement of evidence although the Social Worker had written a letter but, due to an error by the representatives, it was absent from the bundle. The Judge noted that the bundle itself had been lodged late in breach of directions and the evidence sought to be adduced was also in breach of directions. She set out the chronology of the proceedings up to that date and excluded the evidence. In so doing she erred. It is lamentably the case that both Appellants' representatives and the Secretary of State all too frequently ignore directions from the Tribunal as to the filing of evidence. In asylum appeals in particular, given what is at stake, it is never appropriate to exclude evidence. The Secretary of State will not be disadvantaged because if the Home Office Presenting Officer needs time to consider/investigate late evidence an adjournment would be appropriate. In this case the evidence, according to the grounds was potentially crucial. The Social Worker was the person responsible for the Appellant's ongoing care and would inform the Tribunal why it was that he was still not living independently despite having reached 18, as would normally be the case. The Social Worker would also be able to inform the Tribunal about the Appellant's mental state. It is difficult to see how his risk on return to Afghanistan and his ability to live safely there could be given the anxious scrutiny necessary without that evidence.
7. It was also an error of law to make adverse credibility findings based on inconsistent evidence without explaining why that was appropriate given the Appellant was only 13 at the time of his substantive asylum interview. No allowance was made for that.
8. Additionally, I note that although the Judge referred to there being an expert report before her she then does not deal with it. It is clear from the file that it related to documents and the Judge did not deal with that report. That is also an error of law.
9. For these reasons the Decision and Reasons cannot stand and I set it aside in its entirety. As the Appellant has not had a fair hearing before the First-

tier Tribunal it is appropriate to remit it for a fresh hearing on all issues before that Tribunal.

10. The First-tier Tribunal having made an anonymity direction I see no reason not to continue it.

Signed

Date 13th August 2015

Upper Tribunal Judge Martin

Direction regarding anonymity

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 their 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

Date 13th August 2015

Upper Tribunal Judge Martin