



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

Appeal number: OA/19935/2013

THE IMMIGRATION ACTS

Heard at Field House

Decision and reasons

On July 2, 2015

Promulgated

On July 6, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE OFFICER

Appellant

and

**MR YAHYA MOTASHIR EL ENEZY
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

Appellant

Miss Fijiwala (Home Office Presenting Officer)

Respondent

Mr Adebayo (Legal Representative)

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant applied for entry clearance under paragraph 352D HC 395 but the respondent refused his application on September 18, 2013.

3. The appellant lodged an appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Judge of the First-tier Tribunal Hollingworth (hereinafter referred to as the "FtTJ") on February 4, 2015 and in a decision promulgated on February 18, 2015 he allowed his appeal under the Immigration Rules.
5. The respondent appealed this decision on March 4, 2015 and Judge of the First-tier Tribunal Page gave permission on April 22, 2015
6. The matter came before me on the above date and both parties were represented as set out above. The UK sponsor was not in attendance.
7. The First-tier Tribunal did not made an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to make an order.

PRELIMINARY ISSUE

8. Miss Fijiwala accepted there was no substance to her first ground of appeal that the FtTJ had considered documents submitted after the hearing without recourse to the respondent.

ERROR OF LAW SUBMISSIONS

9. Miss Fijiwala submitted that the FtTJ had erred because the appellant had failed to provide evidence to show he was under the age of eighteen as at the date of his application. The articles provided did not demonstrate the appellant was under the age of 18 and in the absence of any evidence to undermine the respondent's report the FtTJ erred by finding he was under the age of 18.
10. Mr Adebayo argued the FtTJ reached a finding on the appellant's age that was open to him. The respondent's own IDI 's make it clear that in assessing age, reliance should not be placed on one source. The articles showed the calculation used by Dr Aloul was the least accurate and the respondent wrongly had claimed in her grounds that the appellant was over the age of 19 at the date of hearing when the actual report assessed the appellant's age in 2014. At best the report would say he was over the age of eighteen but that provided no margin for error. The mother had given the child's age when she applied for asylum and witnesses had given evidence and confirmed he was under the age of eighteen when he applied.

FINDINGS ON ERROR IN LAW

11. Permission was given because Judge of the First-tier Tribunal Page found it arguable that the FtTJ had decided the case based on evidence that had not been before him when the case was heard.

12. Today Miss Fijiwala conceded that the respondent did have the evidence and had received it before the final hearing. Her argument was therefore confined to the second ground.
13. I pointed out to Miss Fijiwala that her second ground was intrinsically connected to the first ground because the FtTJ attached weight to that evidence and found the appellant was less than eighteen years old.
14. The doctor's report is from June 2014 and makes clear that as at that date the appellant was over nineteen based on a "radiological bone scan". The appellant did not produce his own report but produced the respondent's own guidelines and two articles.
15. Miss Fijiwala agreed that age assessment reports are not an exact science and she did not disagree with the appellant's submission that plus or minus one year would not be inappropriate in any age assessment.
16. The FtTJ considered this submission but he also had regard to the oral evidence of family members and the fact the appellant's mother had given the appellant's age when she applied for asylum.
17. The FtTJ was satisfied the appellant was less than eighteen as at the date of application and there is nothing perverse about that finding.
18. The FtTJ considered all of the evidence and the fact the respondent's own evidence was borderline meant he was entitled to reach the conclusion he did.
19. There was no error in law.

DECISION

20. There was no material error in law. I uphold the FtTJ's decision.

Signed:
Deputy Upper Tribunal Judge Alis

Dated: **July 6, 2015**

TO THE RESPONDENT FEE AWARD

I make no fee award.

Signed:
Deputy Upper Tribunal Judge Alis

Dated: **July 6, 2015**