



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

Appeal Number: PA/09669/2016

THE IMMIGRATION ACTS

Heard at Bradford

**On 14th July, 2017
Given extempore, corrected
and sent to Promulgation
on 17th July 2017.**

**Decision &
Promulgated
On 18th July 2017**

Reasons

Before

Upper Tribunal Judge Chalkley

Between

**[S S]
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Mr C R Cole, a solicitor
For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer*

DECISION AND REASONS

1. The appellant is a national of Iraq, who claims to have left that country on 4th November, 2015, and travelled to the United Kingdom with the help of an agent. He entered the United Kingdom on 29th February, 2016, concealed inside a lorry. He was served with form IS96ENF as an illegal entrant on 1st March, 2016.
2. The appellant subsequently made an application to the respondent for asylum, but that claim was refused on 26th August, 2016. The appellant subsequently appealed to the First-tier Tribunal and his appeal was heard in Bradford on 30th January this year by First-tier Tribunal Judge Spencer.
3. At issue was the appellant's date of birth. He claims that he was born on 1st October, 2000, but his date of birth is not accepted by the respondent. Judge Spencer was aware of this at the hearing and he noted an age assessment which had been carried out. He examined the age assessment and concluded that it was not Merton compliant. Unfortunately, the judge does not say whether he accepts that the appellant is an adult, or whether he believes him to be a minor, and in the event that he is a minor, then of course he should have treated him as such when considering his evidence.
4. The appellant challenges the judge's decision for not making a finding as to the appellant's age and not taking account of the appellant's age in assessing credibility.
5. Ms Pettersen quite properly accepted that the determination could not stand and both representatives have agreed that the determination should be remitted to the First-tier Tribunal in order that clear and properly reasoned findings can be made. The errors in the determination effectively mean that the appellant has been denied a fair hearing before the First Tier Tribunal. The appeal is remitted to the First Tier Tribunal to be heard by a judge other than Judge Spencer. If the judge rehearing the appeal is satisfied on the evidence that the appellant is a minor, then he should treat the appellant as a minor. If, on the other hand, he can make no such finding or is satisfied on the evidence that the appellant is an adult, then he should give clear and full reasons for such finding. Two hours should be allowed for the hearing of the appeal and a Kurdish interpreter will be required.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Richard Chalkley

Upper Tribunal Judge Chalkley