



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

Appeal Number: AA130452015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 May 2016**

**Decision & Reasons Promulgated  
On 23 May 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**A P  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss G Brown, Counsel, instructed by Leonard & Co  
Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The appellant is a citizen of Afghanistan and claimed to have been born on [ ] 1998, maintained that he had lost contact with his family and that a return to Afghanistan would place him at risk of persecution. The respondent maintained that he was born in 1997 and refused his claim for

international protection for a second time on 26<sup>th</sup> October 2015 (the first being on 28<sup>th</sup> June 2013 although he was granted discretionary leave) and he appealed. There was some confusion over the date of his age in the decision by First-tier Tribunal Judge whereby she dismissed his appeal. The appellant challenged, with permission, the First-tier Tribunal decision.

2. There was, it is stated by both respondent and appellant, a **Merton** compliant age assessment which does not appear to have been served. The point being made is that the appellant at the hearing on 4 March 2016 was candid in what he was representing about his age, not least that the date of birth given to the appellant after assessment by social services was 27 March 1997. He still maintained that his date of birth was on 27 March 1998 but did not disguise the fact that his age as found by Social Services was one year older. There seemed to be some confusion in paragraph 9 of the judge's assessment, not least that she referred to him as being born on 27 March 1998 (as he claimed) in which case he would have been 17, if that was correct, as at the date of the hearing, but the point being made by his Counsel was that, notwithstanding the Merton report, the appellant had not presented any other case than as it was set out in the chronology of events and it was a not a matter of contention in the appeal. He had maintained that he was born on 27<sup>th</sup> March 1998 (but declared that the Home Office had found him to have been born in 1997 see witness statement). There was even reference to this date of birth being accepted by the Home Office in the previous Reasons for Refusal letter of 28<sup>th</sup> June 2013 and to which the judge refers. Paragraph 19 of that letter referred to the Merton compliant age assessment as having found the appellant to be born on 27 March 1998. Nevertheless the matter of the contention over his age was held against the appellant despite the confusion over his age, and despite the acceptance by the respondent as cited above and despite the fact that the Merton report was not disclosed. I find this an error when assessing credibility.
3. As Mr Bramble concedes, the judge states that she complied with the Presidential guidance relating to vulnerable witnesses but in fact in the next sentence, within paragraph 8 she continues with regards the credibility assessment and immediately pronounced that he was not credible and that he had fabricated his claim and at that point did not appear to have appreciated the issues in relation to his age.
4. There are further issues in relation to the credibility assessment. Part of the assessment by the Judge was that he had been misleading by using aliases and this was held against him. The appellant stated that he had not used aliases and in fact at 2.7 of the screening interview that is what is recorded. The response when asked about aliases was in the Screening Interview "None".
5. Case law demonstrates that an effective credibility assessment is important when addressing the issue on tracing. When referring to the tracing requirement the judge referred to the appellant thwarting efforts regarding tracing. The judge did not grapple with the point made that

women did not have ID cards in Afghanistan. The judge stated at paragraph 16 that 'at no point when he was first interviewed did the appellant mention this individual'. That was incorrect.

6. There are further issues which suggest that the judge had not engaged with the country expert reports as served by the appellant, not least that it challenged the background material as put forward by the Home Office. There was a lack of engagement with the appellant's responses to the material used by the Home Office or the material presented by the appellant such as Dr Guistozzi's report.

### **Notice of Decision**

7. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

### **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.

Signed

Date 20<sup>th</sup> May 2016

Deputy Upper Tribunal Judge Rimington