



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

Appeal Number: PA/04045/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 23 May 2017**

**Decision & Reasons Promulgated
On 2 June 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**TB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Khan, instructed by Parker Rhodes Hickmotts Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, TB, claims to have been born in 2000 and to be a citizen of Afghanistan. The appellant applied for asylum but his application was refused by the Secretary of State in a decision dated 18 December 2015. He appealed to the First-tier Tribunal (Judge I Howard) which, in a decision promulgated on 13 October 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the appeal hearing at Bradford on 23 May 2017, I informed the representatives that I intended to set aside the decision of the First-tier Tribunal. I now briefly give my reasons.

3. Judge Howard had found that the appellant was not 16 years old as he had claimed. At [25], he wrote, “when assessing all the evidence available the appellant has not satisfied me it is more likely than not he is 16”. It is clear the judge has applied the standard of proof of the balance of probabilities. In doing so, he erred in law (*Rawofi* [2012] UKUT 00197). The correct standard of proof was the so-called lower standard, that is the standard of reasonable likelihood. Secondly, at [24], the judge wrote:

“Finally and it is a small point but at his initial interview the appellant is asked his occupation to which he replied ‘brickmaker’. Given his account and claimed age it is impossible to reason how he ever came by that occupation.”
4. I accept Miss Khan’s submission that the judge has applied the standards of 21st Century Britain to the economy of Afghanistan. The judge has not found by reference to any evidence before him that there is no child labour in Afghanistan; accordingly, the appellant’s claim to have been a brick maker at an age under 16 years was, at the very least, plausible. Indeed, had the same question been asked of a child of similar age in Britain in 1850, a positive response would not have appeared surprising. Thirdly, I find that the judge has made this finding without giving the appellant or his representative any opportunity to explain what he considered to be an anomaly in the evidence. That the appellant had worked as a child in Afghanistan did not appear to have troubled the Secretary of State (the refusal letter is silent on the matter) and nor does it appear from the record of proceedings that the matter was ever put to the appellant at the hearing. By failing to give the appellant that chance to comment, the judge perpetrated a procedural unfairness. The First-tier Tribunal’s entire analysis of the evidence has been vitiated by these errors and a new fact-finding exercise will need to be conducted. The First-tier Tribunal is best placed to conduct that exercise and the appeal is remitted to that Tribunal to remake the decision.

Notice of Decision

5. The decision of the First-tier Tribunal promulgated on 13 October 2016 is set aside. None of the findings of fact shall stand. The appeal will be returned to the First-tier Tribunal (not Judge Ian Howard) for that Tribunal to remake the decision.

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 30 MAY 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 30 MAY 2017

Upper Tribunal Judge Clive Lane