



IAC-FH-CK-VI

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

Appeal Number: PA/04553/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 11th September 2018**

**Decision & Reasons Promulgated
On 20th September 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**KHAIR [Z]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar, Counsel, instructed by SMA Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan whose appeal was dismissed by First-tier Tribunal Judge NMK Lawrence in a decision promulgated on 27th June 2017. The judge noted (paragraph 8) that the asylum decision had been certified as clearly unfounded and that the certificate had not been quashed and therefore the issue of asylum was not before the Tribunal. The judge went on to consider the merits of the

Appellant's case that he was an elderly man who argued that he needed specialist care and with reference to case law the judge concluded that the Appellant did not meet the threshold to justify his appeal being allowed on medical grounds.

2. The judge concluded that there was no evidence of any compelling or exceptional circumstances and therefore dismissed the appeal.
3. The Grounds of application submit that the judge materially erred in law because it was not open to the judge to find that the clearly unfounded certificate had not been "quashed". In so finding he made an error and the matter ought to be remitted back to the First-tier Tribunal for a de novo hearing as to the Appellant's asylum claim. The grounds note that the Appellant and his wife had claimed asylum on 25th June 2013 and the application had been refused by the Secretary of State and certified as clearly unfounded under Section 94 of the Nationality, Immigration and Asylum Act 2002. That decision was judicially reviewed and on 3rd December 2015 further submissions were filed and initially refused under paragraph 353 as not amounting to a fresh claim. The Appellant filed a further application for judicial review and the Secretary of State agreed to reconsider.
4. The product of that reconsideration was the refusal letter dated 24th April 2017 where the Secretary of State granted the Appellant a right of appeal.
5. Permission to appeal was granted on the basis of what was said in the grounds and thus the matter came before me on the above date.
6. Before me parties were in agreement. The judge should have determined the asylum claim. As such, it was appropriate to remit the case to the First-tier Tribunal.
7. What seems to have happened in this case is that the judge relied on a historical unfounded certificate which he considered had to be "quashed" before he could hear an asylum appeal. However, the certificate was historical only and the Secretary of State considered the Appellant's case on asylum in the refusal letter dated 24th April 2017 and granted the Appellant an unrestricted right of appeal. Had the Secretary of State wished to certify the case that was the moment to do it but he did not. As such, the judge wrongly concluded that the certificate required to be quashed and was wrong to conclude that he did not have to assess the issue of asylum.
8. The decision of Judge Lawrence is dated over a year ago and rather than maintain any of the findings (no doubt the medical evidence will be updated) it seems to me appropriate that the decision of the First-tier Tribunal is set aside in its entirety. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of any judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

No anonymity order is made.

Signed *JG Macdonald*

Date 18th September 2018

Deputy Upper Tribunal Judge J G Macdonald