



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

Appeal Number: PA/10757/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 February 2019**

**Decision & Reasons  
Promulgated  
On 5 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**MR A S A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Radford, Counsel, instructed by J D Spicer Zeb Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant claimed to be a citizen of Syria, born on 5 April 1993. The respondent believed him to be a citizen of Egypt. In a decision promulgated on 7 December 2018, Judge of the First-tier Tribunal O'Brien dismissed the appellant's protection appeal on all grounds.
2. The appellant appeals with permission on grounds that:

- (a) Ground 1 procedural fairness – it was argued that it was procedurally unfair of the judge to proceed following an adjournment request, without an assessment of the appellant’s mental health.
- (b) Ground 2 – it was irrational for the First-tier Tribunal Judge to give any weight to a document verification report which did not specify the author had any expertise.
- (c) Ground 3 – the judge gave inadequate reasons for concluding that the appellant did not speak “Syrian Arabic” and in the alternative for concluding that it is incredible for a Syrian national to speak Arabic in the way the appellant did.

### **Error of Law Hearing**

- 3. Mr Jarvis conceded that in light of all the information, including the witness statement from Ms Radford which the respondent had no reason to question and which was not inconsistent with the records taken by Counsel instructed for the Secretary of State on the day that there was an adjournment request, the Secretary of State accepted that the judge ought to have adjourned to allow the appellant to obtain further evidence in relation to his mental health difficulties which had manifested themselves at the hearing centre (Ms Radford having indicated in the grounds and in her witness statement that the appellant had been in extreme distress and hitting his head against the walls in the minutes before the hearing commenced). That adjournment application had been unopposed by the respondent.
- 4. Considering the relevant guidance and authorities including **AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123** with reference to the Practice Direction: First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses and the Joint Presidential Guidance Note No 2 of 2010 I am of the view that the judge erred.
- 5. Although the judge purported to treat the appellant as a vulnerable witness on the basis of medical evidence which indicated he had anxiety associated with a physical health problem but no specific mental health diagnosis, it was difficult to see how the First-tier Tribunal could properly identify the appellant’s vulnerability and make the appropriate provision for his welfare, or assess his participation and evidence in light of such vulnerability, without being aware of the extent of that vulnerability. This is particularly the case in light of what I accept were the indications made by Ms Radford at the hearing (which the judge refers to as a concern on the part of Ms Radford about the appellant’s capacity to participate in proceedings).
- 6. Accordingly, with the consent of the parties, I set aside the decision of the First-tier Tribunal for error of law (Rule 40(3)(a) of The Tribunal Procedure

(Upper Tribunal) Rules 2008). The decision is remitted to the First-tier Tribunal, to be heard, de novo, other than by Judge O'Brien.

**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: 1 March 2019

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT  
FEE AWARD**

No fee was paid or payable so no fee award is made.

Signed

Date: 1 March 2019

Deputy Upper Tribunal Judge Hutchinson