



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

Appeal Number: PA/11556/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 24 May 2019**

**Decision & Reasons
Promulgated
On 28 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**M. K.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person

For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of Afghanistan, entered the UK illegally in October 2016 and made a protection claim which was refused on 16 September 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Bircher, in a decision promulgated on 22 November 2018. The Appellant's application for permission to appeal was granted by Upper Tribunal Judge Kamara on 1 March 2019 on all the grounds advanced. The Respondent did not reply to that grant with a Rule 24 response.

The Appellant's case was that he had come to the adverse attention of the Taleban, and that as a result he faced a real risk of harm upon return to Afghanistan. He also argued that his removal from the UK would be a disproportionate breach of his Article 8 rights.

Before me the Respondent accepts that the Judge's approach to the evidence concerning the Appellant's experiences in Afghanistan suggested that she was both employing the wrong standard of proof, and, speculating as to how members of the Taleban might behave. It is also accepted that the Judge failed to make any findings at all in relation to the Article 8 ground of appeal. The Article 8 appeal was not withdrawn; it was advanced not only in the grounds of appeal, but also specifically in the Appellant's witness statement. No concessions were made before me as to whether the Appellant's evidence would lead to a finding that he had established a "private life" in the UK in the two years he had lived here, of sufficient strength and quality to engage Article 8(1), but it was accepted that the Appellant was entitled to at least have this ground of appeal addressed by the Tribunal.

In the circumstances both parties agree that a fresh hearing is the only pragmatic course open. I agree. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge Bircher, at the North Shields Hearing Centre.

A Pushtu interpreter is required.

The remitted appeal is suitable for the short warned list. The parties should expect the appeal to be called on for hearing at short notice after 10 June 2019.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

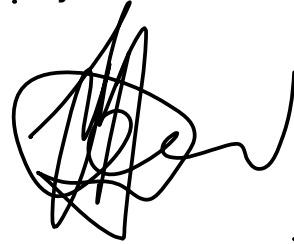
Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 his 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 24 May 2019

Deputy Upper Tribunal Judge J M Holmes

A handwritten signature in black ink, appearing to be 'J M Holmes', written over a circular stamp or seal.