



IAC-FH-NL-V1

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

Appeal Number: AA/04806/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2015**

**Decision & Reasons Promulgated
On 19 November 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

F M

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mackenzie, Counsel, instructed by Coram Children's Legal Centre

For the Respondent: Mr T. Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant is a national of Afghanistan. His date of birth has been treated as 01 January 1995 and, for the purpose of the appeal, he accepts this as his age. He appeals against the decision of Judge of the First-tier Tribunal Chana who, in a determination dated 11 December 2014, dismissed his appeal against the Respondent's decision of 24 June 2014 to remove the Appellant from the United Kingdom following the

Respondent's refusal to recognise him as a refugee or to grant him Humanitarian Protection.

2. The Appellant maintains that he fears serious ill-treatment if removed to Afghanistan as a result of a land dispute between his family and his paternal uncle and cousins. The Appellant claims that his father and brother were killed pursuant to the land dispute sometime in 2008 while he was attending his maternal uncle's wedding in Pakistan. Arrangements were made for the Appellant to flee to a safe country as he would be at risk on the basis that his paternal uncle and cousins would believe he would seek revenge on them.

Decision of the First-tier Tribunal

3. At the start of the appeal before the First-tier Tribunal an application was made to adjourn the hearing in order for the Appellant to undergo a cognitive assessment following concerns expressed in a psychiatric report that he may be suffering neurological symptoms. The application was refused and the Appellant was not tendered as the psychiatric report indicated he may be re-traumatised by the experience.
4. The First-tier Tribunal did not believe the Appellant was a credible witness. The First-tier Tribunal Judge gave a number of reasons in support of this conclusion. The First-tier Tribunal attached no weight to the psychiatric report as it was, in her view, based on an acceptance of the Appellant's account, which she found incredible. The First-tier Tribunal was not satisfied the Appellant would be at risk of suicide if removed and was satisfied the Appellant would be able to avail himself of the internal relocation alternative. The appeal was, accordingly, dismissed.

The Grounds of Appeal

5. The Grounds raise concerns with several aspects of the First-tier Tribunal decision. It is alleged that the Judge acted unfairly by refusing the adjournment application. It was submitted that the Judge failed to adequately take account of the Appellant's age when assessing his credibility. It was argued that the Judge materially erred in law in rejecting the psychiatric evidence and in her approach to the claimed suicide risk. It was submitted that the Judge's decision was vitiated by a number of errors of fact. Permission to appeal was granted on all Grounds.

Discussion before the Upper Tribunal

6. At the commencement of the 'error of law' hearing I was informed by Mr Wilding that the Respondent accepted that the First-tier Tribunal made a number of material factual errors that amounted, in the Respondent's view, to a material error of law. Both representatives agreed that the

most appropriate course of action would be to send the appeal back to the First-tier Tribunal for a fresh hearing.

7. Having carefully considered the First-tier Tribunal's decision, I am satisfied that the First-tier Tribunal did materially err in law for the reasons agreed by the parties. These errors include the Judge's belief that the Appellant denied saying in his asylum interview that he fled from Pakistan, and the Judge's assertion that the Appellant described his family as powerful (this was in fact a description of his paternal uncle and cousins). The Judge additionally erred in holding that the Appellant said no warnings were given before his family were attacked, and there was no engagement with the report from Dr Giustozzi in respect of internal relocation. In relying on these erroneous factual findings I am satisfied the First-tier Tribunal Judge gave weight to irrelevant factors, or failed to take account of relevant considerations. I am satisfied that this error of law was material. It cannot be said that, had the Judge not made these mistakes, her decision would have been the same.
8. It has not been necessary for me to consider whether the other Grounds of Appeal have been made out and I did not hear any oral argument relating to the other Grounds. Given that the Judge's unsafe adverse credibility findings underpinned the remainder of her other findings and conclusions, it is appropriate for the appeal to be returned to the First-tier Tribunal for a fresh hearing.

Notice of Decision and Directions

The Judge made a material error of law in her determination.

The appeal will be sent back to the First-tier Tribunal for a full rehearing, all issues open. No findings are retained.

The fresh appeal hearing is to be heard by a judge other than First-tier Tribunal Judge Chana.

The Appellant's representatives are to serve on the First-tier Tribunal and the Respondent, a fully paginated and indexed bundle containing all the documentation upon which he relies, to be served no later than 7 days prior to the next hearing.



Signed

17 November 2015
Date

Upper Tribunal Judge Blum