



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: AA/08612/2013**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> August 2015**

**Decision and Reasons  
Promulgated  
On 14<sup>th</sup> August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**MR K. T  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Ms F Allen, Counsel instructed by A&P Solicitors.

For the Respondent: Mr. Kadola, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The proceedings before the First -tier Tribunal were anonymised. No application has been made to change this and so this should be maintained.
2. The appellant had claimed asylum on 3 August 2013. His application was refused on 2 September 2013 on the basis the claim was not credible. His appeal was initially heard by First-tier Judge Khawar on 11

October 2013 and was dismissed. Credibility was a significant feature in the appeal. The decision was critical of the appellant's oral evidence.

3. The appellant was then granted permission to appeal to the Upper Tribunal and this was heard on 26 June 2014. The decision of the First-tier Tribunal was set aside by Deputy Upper Tribunal Judge Rimington . Over four months had elapsed between the hearing and the promulgation of the First-tier Tribunal decision. This delay was a significant feature as to whether the decision could stand. There was argument over whether there had been a material error of fact on the part of the judge, with a discrepancy noted between findings in the decision from the record of proceedings. Deputy Upper Tribunal Judge Rimington set aside the determination, preserving none of the facts and directed the matter be heard de novo in the First-tier Tribunal.
4. The de novo hearing took place on 16 December 2014 before First-tier Tribunal Judge Boyd. Again, in a decision dated 29 April 2015 the appeal was dismissed. As before, credibility was central to the appeal. The judge concluded that his account had been entirely fabricated. The decision was challenged on the basis of delay. Permission to appeal was granted as it was arguable a delay of 4 1/2 months between hearing and promulgation rendered the credibility findings unsafe.
5. At today's hearing Mr Kandora acknowledged that the delay undermined the reliability of the findings. I was referred to the decision of the Court of Appeal in Secretary of State for the Home Department - v-RK(Algeria)[2007].
6. It is my conclusion that the delay between hearing and promulgation of the decision renders it unsafe. Credibility was central to the appeal and there is the risk and the perception of possible errors occurring through the passage of time. Consequently, as suggested by both representatives the decision cannot stand. The appeal is remitted to the First-tier Tribunal for a de novo hearing. The appeal should not be listed before Judge Kondora or Judge Boyd.

#### Decision.

The decision of the First-tier Tribunal is set aside and remitted to the first-tier tribunal for a de novo hearing.

Deputy Upper Tribunal Judge Farrelly

