



IAC-BH-PMP-V1

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

Appeal Number: AA/09031/2014

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 17<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 1<sup>st</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**MAHDI MAHMOODI IBRAHIMI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Smith of Counsel instructed by CAB, Hanley

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. On 29<sup>th</sup> June 2015 Upper Tribunal Judge Deans gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Holt in which she dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, an adult citizen of Iran.
2. Upper Tribunal Judge Deans granted permission noting that the grounds of application challenged aspects of the judge's adverse credibility findings. He thought it arguable that the judge was wrong to draw an adverse inference from an alleged failure by the appellant to appeal against an earlier refusal of asylum on 25<sup>th</sup> May 2012 when the appellant, a minor, had been given less than twelve months' leave and so actually had no right of appeal against that decision. Further, it was arguable

that the judge was wrong to fail to have proper regard to a response given by the appellant in asylum interview (question 90) which casts light on his responses in the previous two questions.

3. At the commencement of the hearing Mr McVeety informed me that he had agreed with Ms Smith that the two matters raised in the grant of permission amounted to errors on points of law in the decision of the First-tier Judge. These material errors tainted the judge's overall negative credibility findings and so the matter ought to be remitted to the First-tier Tribunal for re-hearing.
4. I noted that the judge reached the erroneous conclusion in paragraph 22 of the decision that the appellant's credibility was undermined by his failure to appeal the original refusal decision of 25<sup>th</sup> May 2012, when it was clear that, because the appellant had been granted leave at that time of less than twelve months, Section 83 of the Nationality, Immigration and Asylum Act 2002 operated to exclude any right of appeal. Additionally, I noted that the judge appeared to have misunderstood the appellant's responses to questions 88, 89 and 90 of the asylum interview which revealed that, although the appellant could not read what was on the papers given to him by Ali, that person had told him that the papers were about PAJAK. In paragraph 23 of the decision the judge erroneously indicates that the appellant had claimed that he, the appellant, had told Ali that the papers were about PAJAK.
5. On the basis that the two errors were material to the judge's overall credibility findings I announced that I was satisfied that the decision showed errors on points of law such that it should be re-made.

#### **DIRECTIONS**

6. The decision of the First-tier Judge shows an error on a point of law such that it should be set aside and re-made.
7. As it is necessary for fresh findings of fact are to be made at the re-hearing, the provisions of paragraph 7.2(b) of the Practice Statements by the Senior President of Tribunals of 25<sup>th</sup> September 2012 make it appropriate for the appeal to be re-made by remitting it to the First-tier Tribunal.
8. The re-hearing before the First-tier Tribunal will take place at the Stoke hearing centre on 5<sup>th</sup> April 2016.
9. The appeal must not be heard before Judge of the First-tier Tribunal Holt.
10. A Kurdish Sorani interpreter will be required for the re-hearing which is estimated to take three hours.
11. No anonymity direction was made before the First-tier Tribunal nor was a request made for such a direction before the Upper Tribunal. Accordingly no anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Garratt