



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/05547/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 17 October 2017**

**Decision & Reasons
Promulgated
On 19 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**MO
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Brown of Counsel
For the Respondent: Mr Diwyncz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify MO. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings. I do so in order to preserve the anonymity of MO whose asylum claim remains outstanding.
2. The Respondent refused MO's application for asylum or ancillary protection on 1 August 2014. His appeal against this was dismissed by

First-tier Tribunal Judge Gillespie following a hearing on 11 August 2014 under the “Fast Track Rules”. That decision was set aside by the President of the First-tier Tribunal following a determination that the “Fast Track Rules” was inherently unfair. His appeal was relisted and dismissed by First-tier Tribunal Judge Hussain (“the Judge”) following a hearing on 26 January 2016.

The grant of permission

3. Upper Tribunal Judge Perkins granted permission to appeal (14 June 2017). He said it is arguable that

“by stating that he “found no basis on which to interfere with the findings of the earlier first-tier judge” First-tier Tribunal Judge Hussain showed that he was not making up his own mind on the evidence but was reviewing an earlier decision. Arguably, as that earlier decision had been set aside, Judge Hussain should not have had any regard to that decision. The point is that the first decision was under the “Fast Track Rules” and was procedurally flawed. However experienced and careful the Judge may have been he was operating within the constraints of an unfair system.”

Respondent’s position

4. It was submitted in the rule 24 notice (7 July 2017) that the Judge did not err by not adjourning the proceedings for him to obtain representation. I note that no mention was made of the ground relating to the “Fast Track Rules” point, or the third ground of application which related to the lack of reference to medical evidence that had not previously been considered. Mr Dywnicz conceded that the “Fast Track Rules” point was the best. I indicated that not only was it the best, but that it was also one that was hard to argue against. He agreed and indicated that he did not intend to. No further submissions were therefore necessary in relation to the other grounds in support of the application.

Discussion

5. Given the obvious material error of law in relation to the reliance placed on findings made in an unfair hearing where the decision and findings had been set aside, I was satisfied I must set aside Judge Hussain’s decision and findings.
6. I was also satisfied having heard from the representatives that, despite this matter have been set aside once already, it is appropriate to remit the matter de novo as the errors go beyond those contained within the Presidential Guidance for retention in the Upper Tribunal.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a de novo hearing with no findings from any previous hearing being preserved, not before Judge Hussain or Judge Gillespie.

A handwritten signature in black ink, appearing to read 'Deputy Upper Tribunal Judge Saffer'. The signature is written in a cursive, flowing style.

Deputy Upper Tribunal Judge Saffer
18 October 2017