



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

Appeal Number: PA/01635/2017

THE IMMIGRATION ACTS

**Heard at North Shields
On 22 August 2017**

**Decision & Reasons Promulgated
On 27 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

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

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Afghanistan who entered the UK illegally. He made an application for protection on 11 August 2016 when encountered, and a fingerprint match revealed that he had previously been fingerprinted at Dunkirk on 29 July 2016. On that occasion he had given a different name, and had claimed to be two years older. The Respondent refused the protection application on 28 January 2017, but granted him a period of leave, accepting that he was a minor.

2. The Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 16 March 2017. It was dismissed on all grounds, in a decision promulgated on 5 April 2017 by First Tier Tribunal Judge Fox.
3. The Appellant was granted permission to appeal that decision on 27 April 2017 by First tier Tribunal Judge Froom on the basis that it was arguable the Judge had made a number of errors. He had wrongly identified the decision under appeal as a removal decision, when it was not. He had arguably taken an inconsistent approach to whether he was assessing risk at the date of the hearing, or at the date of some future hypothetical removal.
4. The Respondent filed a Rule 24 Notice dated 19 May 2017 in relation to the grant of permission, opposing it. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

5. When the appeal was called on for hearing, Mr McVeety confirmed that notwithstanding the Rule 24 Notice that had been filed, the Respondent did not seek to defend the Judge's decision. The Respondent accepted that the contents of paragraphs 32 and 35 of the decision were inconsistent with one another, and, that the Judge had failed to make it clear whether he was addressing himself to the issue of risk upon return at the date of the hearing, or at some future date. Furthermore passages in the decision were lacking in clarity.
6. In the circumstances it is common ground that the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances 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 Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise 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 25 September 2012.
7. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge Fox.
 - ii) A Dari interpreter is required for the hearing of the appeal.
 - iii) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 3 hours.
 - iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a witness statement from the Appellant will be filed. Further enquiries may need to be made in relation to the

availability of corroborative evidence. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 19 September 2017

- v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 26 September 2017.
- vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
- vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

8. The decision promulgated on 5 April 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 22 August 2017