



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

Appeal Number: PA/08972/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 30 November 2017**

**Decision & Reasons  
Promulgated  
On 11 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**[D M]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Waheed instructed by Whitefield Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is [DM], who claims to be a citizen of Iran, was born on [ ] 1993. He appealed to the First-tier Tribunal (Judge Hillis) against a decision of the respondent dated 8 August 2016 refusing him asylum. The First-tier Tribunal, in a decision which is dated 8 February 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The parties agree that the decision of the First-tier Tribunal is vitiated by error of law. The judge found that the appellant's conduct had engaged

Section 8 of the 2004 Act “and that his credibility is damaged as a result.” The judge goes on [24] to “remind [himself] that [Section 8] is only one factor to be weighed in the balance of the evidence taken as a whole” it is apparent from his analysis that it assumed a paramount position in his reasoning. At [25], [28] and [34] when considering the appellant’s account of past events and his reasons for claiming asylum the judge has rejected out of hand the appellant’s evidence on the basis that the appellant “cannot be given the benefit of the doubt in respect of any evidence he relies on that cannot be verified by the respondent.”

3. Whilst the judge was entitled to take into account Section 8 conduct, he should not have allowed it to distort and dictate what should have been findings based on the totality of the evidence. Both the appellant and the respondent agree that the decision cannot stand in consequence.
4. Since the error of the judge goes to the very matter of the appellant’s credibility, there will need to be a new thorough fact-finding exercise. That exercise is better carried out by the First-tier Tribunal to which this appeal is now returned.

### **Notice of Decision**

5. The decision of the First-tier Tribunal which is rather dated 8 February 2017, is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Hillis) for that Tribunal to remake the decision.
6. No anonymity direction is made.

Signed

Date 1 December 2017

Upper Tribunal Judge Lane