IAC-AH-KRL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11608/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 17th August 2017.	**on 25th August 2017**

Before

Upper Tribunal Judge Chalkley

Between

[M N]
~~**(ANONYMITY DIRECTION NOT MADE)**~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: *Ms C Rayan, an assistant solicitor with Duncan Lewis & Company Limited*
For the Respondent: *Mr Steven Walker, a Senior Home Office Presenting Officer*

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Afghanistan, who was born on [ ] 2001. He entered the United Kingdom clandestinely in a vehicle on 8th April 2016, and claimed asylum the

same day. The respondent refused his asylum claim on 7th October 2016 and the appellant appealed to the First-tier Tribunal.

2. His appeal was heard at Hatton Cross on 22nd November 2016, and was dismissed on asylum grounds, dismissed on humanitarian protection grounds and dismissed on human rights grounds.

3. Dissatisfied with the decision the appellant sought and was granted permission to appeal to the Upper Tribunal. In a permission dated 29th June 2017 Upper Tribunal Judge Plimmer said this

> "*1. For the reasons set out in the renewal grounds of appeal it is arguable the First-tier Tribunal failed to take relevant evidence into account when determining the credibility of the appellant's claim to have been kidnapped and threatened by the Taliban in light of the acceptance that his father was in the Afghan Army.*
>
> *2. It is also arguable that the First-tier Tribunal's assessment of the country expert report prepared by Dr Giustozzi is irrational for the reasons set out at paragraphs 5 and 6 of the renewal grounds of appeal.*"

4. At the hearing before me today, Mr Walker was in some difficulties in identifying the error of law, because a Rule 24 response submitted on behalf of the respondent simply suggests that the respondent does not oppose the appellant's application and invites the Tribunal to determine the appeal with a fresh oral continuance hearing to consider whether the appellant's appeal should be remitted.

5. It seems clear to me that the second ground does identify a material error of law in any event, in the judge's treatment of the expert's report. Since the parties are agreed I set aside the decision.

6. Given the fact that the appellant has effectively not had a fair hearing and that the determination is flawed, I have concluded that the correct course is to remit this appeal for hearing afresh by the First-tier Tribunal. Were I to retain the appeal of the hearing in the Upper Tribunal by me, it could be several months before the matter were to come back to me. The matter is remitted to the First-tier Tribunal for hearing afresh by a judge other than First-tier Tribunal Judge Roots. No findings are preserved.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley
17th August 2017.