



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

Appeal Number: PA/12647/2016

THE IMMIGRATION ACTS

Heard at Field House

On 4 July 2017

**Decision &
Promulgated
On 11 July 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**K E
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Kotak, Counsel instructed by Lupins, Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought with the leave of Judge Page in respect of a determination of First-tier Tribunal Judge Fox promulgated on 19 January 2017. The primary ground of appeal, as originally advanced, was that an exchange took place between the judge and Counsel for the appellant which indicated a hostile animus not merely to Counsel but to her chambers generally. There is a short witness statement in support of that allegation.

2. When the matter was opened before me it was obvious I could make no findings on this primary ground in the absence of an investigation into what took place which would include seeking comment from the judge. I was taken to correspondence indicating the judge's comments had been sought, but due to a misreading of that enquiry no information was supplied. Accordingly I cannot today investigate that matter.
3. However, Counsel for the appellant, Miss Kotak, indicated that the matter could be cut short in that one could avoid that enquiry and focus instead on what she considered to be a powerful independent ground, namely the failure by the judge to consider or give any weight to a medical report by a Dr Juliette Cohen which is found at pages J1 to 22 of the Home Office bundle. This expert report dealt with scarring on the body of the appellant and the causes of it.
4. In reading the determination it is apparent that although the judge makes frequent references to items elsewhere in the Home Office bundle, there is no reference at all to the report of Dr Cohen. In the circumstances of this case that I cannot be satisfied that that report has been considered and left on one side. It seems to be more likely it was either overlooked or not accorded the weight it evidently deserved. Counsel for the Secretary of State did not argue against this preliminary indication.
5. In all the circumstances I cannot be satisfied that this appeal received anxious scrutiny before the First-tier Tribunal Judge. The determination is therefore set aside and remitted to the First-tier Tribunal for a fresh hearing.
6. This is sufficient to be dispositive of the appeal, and it is therefore unnecessary for the Upper Tribunal to investigate the primary ground of apparent bias or judicial misconduct.

Notice of Decision

- (1) An error of law having been found, the decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to the First-tier Tribunal at Hatton Cross to be decided afresh by a judge other than Judge Fox.
- (3) No findings of fact are preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill*

Date

10 July 2017

Deputy Upper Tribunal Judge Hill QC