Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02963/2017

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 17 April 2018	**On 23 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

[M K]
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chelvan, Counsel
For the Respondent: Ms Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on [ ] 1985. He appealed against the decision of the respondent dated 20 March 2017 refusing his application for refugee status, his application for humanitarian protection and his claim under ECHR. His appeal was heard by Judge of the First-Tier Tribunal Herbert and dismissed on all grounds in a decision promulgated on 8 January 2018.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal Chohan on 31 January 2018. The grounds argue that the Judge erred in the assessment of internal relocation and by failing to consider the medical and expert reports. Although at paragraph 8 of the decision the Judge makes reference to medical evidence and the expert report, when he assesses the appellant's

case, particularly in relation to internal relocation, the Judge makes no reference to either report. The permission states that had that evidence been properly considered it is possible that the outcome may have been different.

The Hearing

3. Counsel referred me to emails between him and the Home Office regarding this appeal. With these emails is the case of ***MSM (Somalia) v Secretary of State for the Home Department*** [2015] UKUT 00413 (IAC). Outline submissions also form part of the emails. These point out that there is no Rule 24 response from the respondent. The submissions state that the appellant is ethnically Pashtu and was a teacher targeted by the Taliban and was shot at in November 2016. As well as the said case of ***MSM,*** the submissions state that past persecution is probative of future risk and protection requires preventative measures where there is a known risk, and that teachers are in a risk group. The submissions go on to state that the First-Tier Tribunal accepted that the appellant was a teacher for a refugee NGO. Having studied the decision the First-Tier Tribunal also accepted that the appellant was probably threatened by the Taliban verbally but the Judge doubted whether he was given a letter by the Deputy Head of the Taliban, as the person who signed the letter is not referred to in the objective evidence. The submissions then refer to mistakes within the decision, including the statement that the appellant taught Pashtu and not Pashtu and English. I noted however that in his screening interview the appellant stated that he taught Pashtu and English so this is not a mistake on the part of the First-Tier Judge. The appellant did change his answer when he answered question 234 of the substantive interview, referring only to teaching Pashtu but that is not what he originally stated.

4. The appellant also taught boys and girls and the Taliban threatened him because he was teaching girls.

5. There are errors of law in the First-Tier Tribunal's decision. The emails show that the respondent accepts this. The Judge did not properly consider the medical and expert reports when dealing with risk on return and when the case of ***MSM*** is considered the Judge has to distinguish between actual and imputed political opinion. Paragraph 33 in the said case of ***MSM*** is referred to.

6. The lack of a Rule 24 Response is not significant. A Rule 24 Response is now more the exception than the Rule.

7. Counsel appeared to believe that the respondent granted a concession relating to all the matters raised in the outline submissions but I find the concession is merely that the respondent accepts that there are errors of law in the First-tier Tribunal's decision and that it should be remitted. The details of the outline submissions are arguable. The submissions refer to the motorbike attack taking place in 2016. This should of course be 2010.

8. The respondent agreed in the emails that this claim does have material errors of law therein and it should be remitted to the First-Tier Tribunal.

9. I agree and am therefore going to remit this appeal back to the First-Tier Tribunal. The only concession made by the respondent is that there are errors of law in the first-tier Tribunal's decision.

Notice of Decision

I find that there are material errors of law in First-Tier Tribunal's decision and under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the case should be remitted to the First-Tier Tribunal for an entirely fresh hearing.

The decision of the First-tier Tribunal has to be set aside. None of its findings are to stand other than as a record of what was said on that occasion.

The members of the First-tier Tribunal chosen to consider the case are not to include Judge Herbert.

Anonymity has been directed.

Signed Date 21st May 2018

Deputy Upper Tribunal Judge Murray