



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/05122/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 31 January 2018**

**Decision & Reasons  
Promulgated  
On 16 April 2018**

**Before**

**THE RIGHT HON. LORD BOYD  
(sitting as a Judge of the Upper Tribunal)  
UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**A S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Smith, Counsel instructed by Kesar & Co Solicitors  
For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

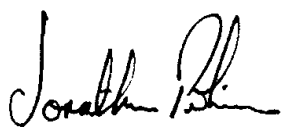
1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make this order because this is a protection case and there is invariably a risk in cases of this kind that publicity will itself create a risk.
2. This is an appeal by a citizen of Afghanistan against the decision of the First-tier Tribunal dismissing his appeal against the

decision of the Secretary of State refusing him some form of international protection.

3. We do not think it necessary or helpful to say too much. It is quite plain from the evidence before us that the First-tier Tribunal Judge on his own initiative asked to look at a mobile phone that was being used by one of the witnesses. The judge looked for things on the phone and then made no reference to having looked or what he found in his subsequent determination.
4. We do not know what he discovered. We cannot know if it made any difference. It may be that it did not. Indeed, we agree with Mr Melvin for the Secretary of State to the extent that there is nothing on the face of the Decision and Reasons which clearly shows that it had any impact at all. That is not the point. The point is that we are satisfied that the intervention without explanation gave the appearance of unfairness. It is not the function of a judge in the First-tier Tribunal to take on the role of investigating a case. It was a matter for the judge to determine the issues raised by the parties in the context of the law. He overstepped his role. He should not have asked to see the 'phone. By asking he put the witness in an impossible position because the witness really had to co-operate or risk adverse inferences being drawn. It follows that by making the request the judge gave the appearance of impartiality.
5. Having asked to see it he should have referred to the event in the Decision and Reasons. A short explanation may have been enough to allay all concerns.
6. The consequence of that is that the subsequent decision is unfair and has to be set aside and we set it aside.
7. It also means that this appellant has not had a satisfactory hearing in the First-tier Tribunal and therefore the only proper remedy on the facts of this case is remit the case to be heard again in the First-tier Tribunal because the initial decision was as a result of a decision erroneous in law.

### **Notice of Decision**

The appeal is allowed to the extent that the appeal must be heard again in the First-tier Tribunal.



Signed

Jonathan Perkins, Upper Tribunal Judge

Dated: 12 April 2018