



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

Appeal Number: DA/00081/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2019**

**Decision & Reasons Promulgated
On 15 October 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Ms R Chapman, instructed by Wilson Solicitors LLP

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal to allow on asylum grounds the appeal of EA against the Secretary of State's decision of 23 December 2013 to deport him from the United Kingdom. The claim was brought on the basis of international protection and human rights grounds.
2. I refer hereafter to EA as the appellant, as he was before the judge, and to the Secretary of State as the respondent, as she was before the judge.

3. There was also a cross-appeal brought by EA in respect of the judge's failure to come to conclusions on Article 3 and Article 8 of the Human Rights Convention.
4. It was common ground that the judge had erred in law. On the one hand, the decision not to explore any further the Article 3 issue in light of his allowing of the appeal on asylum grounds was flawed by the failure to consider detailed medical evidence and submissions in relation to that point. Ms Chapman accepted that the judge's reasoning in respect of international protection grounds and the refugee claim was flawed in that the judge in effect went no further than setting out the background evidence and, in noting that the evidence showed that mentally ill people were perceived to be a distinct group in Afghanistan and discriminated against because of their illness did not go far enough to amount to a proper assessment of risk on return on grounds of reasonable degree of likelihood of persecution.
5. Ms Chapman suggested that the matter might best be dealt with, given the fact that it had been heard over three separate days, by the same First-tier Judge who heard it originally, and was therefore familiar with the issues. Mr Tufan was opposed to this course of action on the basis that there were clear errors and the judge had made clear findings, for example at paragraph 27 of his decision in respect of risk on return.
6. On consideration, I consider that the most economical course of action in this case will be for the matter to be returned to the same judge to come to proper findings on the asylum and humanitarian protection issues, bearing in mind the need not just to set out the background evidence but to assess whether it is such, bearing in mind also the appellant's particular health concerns, as to put him in a situation where he faces a real risk of persecution or a real need of humanitarian protection on the basis of that evidence and bearing in mind the correct legal threshold. There will be no need to address section 72 since that is a matter that, it appears, was conceded in the First-tier.
7. The judge will also have to consider Article 3 and Article 8 in light of the subjective and background evidence also in respect of the correct legal tests with regard to those elements of the claim. The matter is therefore remitted for a rehearing on this basis before Judge Callow at Taylor House.

Notice of Decision

The appeal is allowed to the extent set out above.

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.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date 10 October 2019

Upper Tribunal Judge Allen