



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

Appeal Number: PA/06647/2017

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 27th August 2019**

**Decision & Reasons Promulgated
On 3rd September 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**FA
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadesham, instructed by GMIAU
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as FA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. First-tier Tribunal Judge Herwald dismissed FA's appeal against a decision of the SSHD refusing him international protection. I set aside that decision, by consent, no findings preserved, on 25th September 2018.
2. There were delays in listing the resumed hearing to take account of an application by FA's claimed partner's application for permission to appeal the dismissal of his appeal to the Court of Appeal.
3. Having set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier Tribunal with directions or remake it for myself.
4. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:

'7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.'
5. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. In the instant appeal full fact-findings is required, and it is thus appropriate for this appeal to be remitted to the First-tier Tribunal to be heard afresh, no findings preserved.

Conclusions:

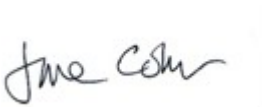
The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit it to the First-tier Tribunal to be heard afresh.

Anonymity

I continue the anonymity order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 27th August 2019



Upper Tribunal Judge Coker