



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

Appeal Number: PA/06684/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11 June 2019**

**Decision & Reasons Promulgated  
On 18 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**HS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. N. Paramjorthy, Counsel

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

**DECISION AND REASONS**

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Davidson, promulgated on 28 March 2019, in which he refused the Appellant's appeal against the Respondent's decision to refuse a grant of asylum.
2. As this is an asylum appeal I make an anonymity direction, continuing that made in the First-tier Tribunal.

3. Permission to appeal was granted on the basis that it was “arguable that the judge failed at all to consider the evidence of Dr Chris Smith upon which the Appellant relies”.
4. At the hearing Mr. Avery accepted that the failure to take into account the country expert report of Dr. Smith was a material error of law. I stated that I agreed that this amounted to a material error of law and set the decision aside. I remitted it to the First-tier Tribunal to be remade.

### **Error of Law**

5. The Judge sets out the evidence which was before him at [8]. At [8c] he refers to the “opinion of Dr Chris Smith regarding the position in India in relation to the matters in issue including his opinion that bribery is widespread in India and that there is a risk in requesting the arrest warrant as that could mark the person as being associated with the Khalistan movement”.
6. At [20] to [26] the Judge sets out the Appellant’s case, and refers in these paragraphs to Dr. Smith’s report.
7. However, despite clearly being aware of Dr. Smith’s report, there is no reference at all to this report in the findings from [29] onwards. There is no consideration of this report at all. I find that the Judge has failed to engage with the report of Dr. Smith. Given that he acknowledged that this report went to the matters in issue at [9], it is clearly material to the Appellant’s appeal. I find, as accepted by Mr. Avery, that this failure to engage with the expert report of Dr. Smith is a material error of law.
8. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. The nature of the error means that the credibility findings cannot stand and so, given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

### **Notice of Decision**

9. The decision involves the making of a material error of law. I set the decision aside. The appeal is remitted to the First-tier Tribunal to be reheard.

**Directions**

1. Mr. Paramjorthy is representing the Appellant on a pro bono basis. Prior to this appeal being listed, the listing team at Hatton Cross is to contact Mr. Paramjorthy's clerk on [~] to ascertain his availability.
2. A Punjabi interpreter is required.
3. The appeal is not to be listed before Judge Davidson.

**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

Date 13 June 2019



**Deputy Upper Tribunal Judge Chamberlain**