



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number: PA/08112/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 January 2019**

**Decision & Reasons  
Promulgated  
On 12 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**A R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G Brown of Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mr I Jarvis Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The appellant appeals against a decision of Judge Craft (the judge) of the First-tier Tribunal (the FTT) promulgated on 7 September 2018.
2. The appellant is a national of Kosovo who made an asylum and human rights claim in the UK. The application was refused on 10 May 2018 and the appeal heard by the FTT on 2 August 2018.

3. The judge dismissed the appeal on all grounds.
4. The appellant applied for permission to appeal to the Upper Tribunal. It was contended, in summary, that the judge had erred by failing to take into account and/or resolve conflicts of fact and/or opinion on material matters, and had made perverse or irrational findings on material matters, and failed to provide adequate reasoning.
5. Permission to appeal was granted by Upper Tribunal Judge Rintoul who found it arguable that the judge had erred when considering court documents produced by the appellant, and had also failed to take into account relevant evidence.
6. Following the grant of permission the respondent lodged a response pursuant to rule 24 of the 2008 Procedure Rules, contending in summary, that the judge had not materially erred in law and had produced a well reasoned decision and engaged with the evidence.
7. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

### **My Consideration and Conclusions**

8. At the oral hearing Mr Jarvis indicated that he did not rely upon the rule 24 response and conceded that the judge had materially erred in law as contended in the grounds upon which permission to appeal had been granted by Judge Rintoul. It was accepted that the decision of the FTT must be set aside and remade.
9. I found the concession to be rightly made. The judge erred in assessing the credibility of the appellant. By way of example the judge found at paragraph 40 that the appellant had not been able to offer an explanation as to how court documents were obtained by his mother, but that explanation was provided by the appellant in his witness statement dated 26 July 2018 which he relied upon before the FTT.
10. The judge also accepted a point made in the respondent's refusal decision that the appellant had failed to provide details of the official translators of the court documents, whereas the official translators' details were included.
11. The judge failed to consider evidence from the appellant's brother which was relevant to the blood feud. This letter was dated 29 May 2018 and contained within the appellant's bundle. The judge also failed to consider an explanation given by the appellant's sister in a letter dated 17 February 2017, again contained within the appellant's bundle of documents.
12. The judge materially erred by failing to give adequate reasons for rejecting an expert report prepared on behalf of the appellant.

13. The cumulative effect of the errors means that the credibility findings are unsafe and the decision of the FTT is set aside with no findings preserved.
14. Both representatives suggested that it was appropriate to remit the appeal back to the FTT to be heard afresh. Having considered the Senior President's Practice Statements, in particular paragraph 7.2 I find that it is appropriate to remit the appeal to the FTT because there will be extensive judicial fact-finding required.
15. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FTT judge other than Judge Craft.

### **Notice of Decision**

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

### **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. This direction is made because the appellant has made a claim for international protection.

Signed  
2019



Date 28 January

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the FTT.

Signed  
2019



Date 28 January

Deputy Upper Tribunal Judge M A Hall