



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

Appeal Number: PA/14165/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 28 June 2019**

**Decision & Reasons Promulgated
On 2 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**B. A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Ms Cleghorn, Counsel, Halliday Reeves Law Firm
Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a Palestinian formerly resident in Lebanon, entered the UK illegally and then made a protection claim which was refused on 5 December 2018. The Appellant's appeal against that decision was heard and dismissed by First tier Tribunal Judge Turnock in a decision of 27 February 2019.

The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Keith on 5 April 2019. The Respondent replied to that grant with a Rule 24 response on 1 May 2019, although neither party applied pursuant to Rule 15(2A) to introduce further evidence.

Although this was a focus of the decision to grant permission to appeal, it is conceded before me that there was no error of law in the Judge looking up the evidence referred to by the Appellant's expert, and using the reference to it that she had provided in her report [82].

The argument before me centred upon Grounds 1 and 2, and thus upon the Judge's treatment of the expert evidence, and the reasons given for the adverse credibility findings that he made. It is convenient to take those complaints together not only since they overlap, but because Ms Pettersen accepted on reflection that they were made out, with the result that the Appellant had not enjoyed a fair hearing of his appeal.

It is common ground that at times the manner in which the Appellant's expert expressed herself could give the impression that she had taken up the mantle of advocate, but equally that this did not mean that no weight could be given to any of the evidence she offered, part of which was evidence of primary fact and not opinion. There was no issue over the expert's expertise, and thus the Judge failed to give adequate reasons for his conclusion that he could give only limited weight to the expert's evidence. As such the Judge appears to have taken a broad brush approach to the weight that could be given to the expert's evidence, when a more nuanced approach was required. The Judge also identified in the answers given by the Appellant at interview in Q85-9 what he described as an inconsistency, which damaged his credibility [72]. It is common ground before me that on a fair reading of the interview record no inconsistency exists.

Whilst concerns were also raised in relation to some of the Judge's other adverse findings [79 & 62], Ms Pettersen accepted on behalf of the Respondent that the Appellant had for the reasons set out above established that a fresh hearing is the only pragmatic course open, because it cannot be said that the Appellant has yet had a fair hearing of his appeal. I agree. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than either First-tier Tribunal Judge Turnock, at the North Shields Hearing Centre.

An Arabic interpreter is required.

The remitted appeal is suitable for the short warned list. The parties should expect the appeal to be called on for hearing at short notice after 7 August 2019.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing, with the directions 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.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 28 June 2019

