



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

Appeal Number: AA/11634/2011

THE IMMIGRATION ACTS

Heard at Field House

**On 10 September 2015
Prepared 10 September 2015**

**Decision & Reasons
Promulgated
On 30 September 2015**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MOHAMMED ULLAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Draycott, Counsel instructed by Messrs Paragon Law
For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on 23 May 1995. He entered Britain on 23 May 2011 and claimed asylum on 30 August that year. His application was refused on 3 October 2011 because he was a minor he was given discretionary leave to remain until 3 September 2012. The appellant applied for an “upgrade” appeal under the provisions of Section 83 of the Nationality, Immigration and Asylum Act 2002. His appeal was

heard by Immigration Judge Ford on 18 November 2011 and dismissed. She did not consider that the appellant's claim was credible nor did she find that he was entitled to humanitarian protection under Article 15 of the Directive. She commented on the respondent's failure to trace the appellant's family.

2. The decision of Judge Ford was appealed and on 8 December 2011 Designated Judge of the First-tier Tribunal Woodcraft granted permission to appeal on humanitarian protection grounds.
3. Further grounds of appeal were submitted and these were considered in the Upper Tribunal by Upper Tribunal Judge Lane who on 20 December 2011 refused further permission.
4. It appears, that at that stage the file was incorrectly archived at Field House and indeed at some stage parts of the file were destroyed. The papers therefore held by the Tribunal were incomplete. The appeal seems only to have been listed for hearing this year.
5. In the meantime, however, before the appellant's discretionary leave to remain ended a further application for an extension of stay on asylum grounds was made on 23 August 2011, before the expiry of the appellant's discretionary leave to remain on 1 September 2011. That application was extant on 7 August 2014 when the respondent wrote to the appellant's then representatives, Cambridge Immigration Legal Centre, confirming that the application was pending and that his discretionary leave to remain would continue until his application had been considered. When the original Section 83 appeal was resurrected in the Upper Tribunal two case management hearings were heard before Upper Tribunal Judge Craig at which pressure was placed on the parties to reconstruct the file and in particular the documentary evidence that was before Judge Ford. That has only been partially successful. The appeal was then set down for the error of law hearing before me.
6. At the hearing Mr Norton referred to a letter written on 22 December 2011 by Mr Melvin of the Specialist Appeals Team stating that the Secretary of State:-

"does not oppose the appellant's appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider the only issue, that of humanitarian protection, as set out in the grant of application".
7. At the hearing of the appeal before me Mr Norton indicated that he was minded to argue that the findings of the judge regarding credibility should stand. He did not oppose the appeal being remitted to the First-tier Tribunal.
8. I have considered the limited evidence before me and in particular the issues relating to the circumstances in the appellant's home province of

Kandahar and whether or not they would have impacted on a consideration of the issue of humanitarian protection.

9. Taking account of the passage of time let alone the fact that I do not have the material on which the judge based her decision I consider that the appropriate decision for me is to set aside the determination of Judge Ford and order that the appeal proceed to a hearing afresh on all issues.
10. However it is clear that the passage of time will impact on the appellant's claim for asylum and humanitarian protection as well as any rights which he may have built up under Article 8 of the ECHR. He is entitled to a decision on the application for asylum which was made in 2011 and it is appropriate for the respondent to consider the appellant's Article 8 claim. I consider that decisions on these matters should be made as a matter of urgency and that, should the appellant be refused further leave to remain by the respondent that he should be granted an appeal against that further refusal which appeal could be heard at the same time as this remitted appeal.
11. I therefore make the following decision and directions:

Decision

12. The decision of the judge of the First-tier Tribunal be set aside and the appeal will proceed to a hearing afresh in the First-tier Tribunal (IAC) Birmingham after four months.

Directions

- (1) Within 14 days hereof the appellant's representatives will serve on the respondent any submissions they wish to make regarding the appellant's claim for protection under Article 8 of the ECHR.
- (2) Within two months the respondent will make a decision on the appellant's application for asylum made in 2011 together with a decision on any application relating to his rights under Article 8 of the ECHR.
- (3) The appeal will be set down for a Case Management Review after four months.

Signed:

Date:

Upper Tribunal Judge McGeachy