



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

Appeal Number: DA/01650/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 March 2015**

**Determination Promulgated
On 23 March 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

HAYATULLAH HAUMI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Chapman, Counsel

For the Respondent: Mr. T Wilding, HOPO

DETERMINATION AND REASONS

1. The appellant is a national of Afghanistan, born on 1 January 1995. His appeal against the respondent's decision dated 8 August 2014 to make a deportation order against him was dismissed by FtTJ Page on Article 8 grounds.
2. The appellant appealed the judge's decision. Ground 1 argued that the judge erred in law in deciding the appeal on Article 8 grounds only and not including the asylum grounds raised in the grounds of appeal. The respondent in the Rule 24 response did not oppose the appellant's

application and invited the Tribunal to remit the matter to the FTT to consider the asylum claim which was in fact not outstanding and had been decided on 2 October 2014. The respondent requested that the remittal to the FTT should be confined to asylum and Article 3 as there had been no challenge to the dismissed Article 8 appeal.

2. From what Ms Chapman said the asylum decision dated 2 October 2014 had not been served on the appellant. The FtTJ was not aware that there was this decision. Indeed it appeared that the parties below were not aware of this decision and the appeal had proceeded on the basis that the decision to deport the appellant would breach his rights under Article 8.
4. In the light of the fact that the appellant's asylum claim had been considered and refused prior to the hearing on 19 November 2014, it was not outstanding and therefore the judge's failure to determine the appellant's asylum grounds that were raised in the notice of appeal and argued at the hearing was an error of law.
5. As to Article 8, even though there was no direct challenge to the judge's findings on the Article 8 appeal, I find that ground 2 touches on the physical and moral integrity of the appellant' removal and his ability to relocate as a consequence of his medical condition. Therefore ground 2 also raises an arguable error of law.
6. For the above reasons, I find that the judge erred in law and his decision cannot stand. I set it aside in order that the decision is remade on all issues by a judge other than FtTJ Page.

Signed

Date **20 March 2015**

Upper Tribunal Judge Eshun

Directions

- 1. The appeal is listed for hearing on 8 September 2015**
- 2. An interpreter in the Afghan Pashto dialect is required**
- 3. Time Estimate - 3 hours**
- 4. Witnesses - 3 including appellant**
- 5. All documentary evidence to be relied on at the hearing to be submitted to the court 7 days before the hearing**