



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

Appeal Number: DA/01954/2013

THE IMMIGRATION ACTS

**Heard at the Royal Courts of Justice
On 8 February 2016**

Decision & Reasons Promulgated

On 11 February 2016

Before

Upper Tribunal Judge Southern

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

NASIH FAITH SHAWKAT

Respondent

Representation:

For the Appellant: Mr K. Norton, Senior Home Office Presenting Officer

For the Respondent: Mr J. Collins of counsel

DECISION

1. The Secretary of State has been granted permission to appeal against the decision of First-tier Tribunal Judge Moore who allowed the respondent's appeal. The respondent is represented before the Upper Tribunal by Mr Collins who appeared also before the First-tier Tribunal. He has, quite properly, taken a realistic view of the decision and does not seek to defend it before the Upper Tribunal, recognising that the grounds of appeal set out an unanswerable challenge to the determination of First-tier Tribunal Judge Moore and that the Upper Tribunal has no alternative

but to set aside that decision and to remit the appeal to the First-tier Tribunal for the appeal to be determined afresh by a different judge of that Tribunal.

2. As it is common ground and agreed between the parties that the decision of the First-tier Tribunal judge discloses a number of errors of law that are material to the outcome of this appeal, it is necessary for me only to record my agreement and to explain briefly the nature of those errors.
3. In a number of respects, as identified by the grounds for seeking permission to appeal and reiterated in the grant of permission, the judge failed to provide any reasoned basis to support his conclusions. His findings in respect of the respondent's state of health and need for treatment, in the absence of any sufficient or sustainable analysis of the evidence before him, were not reasonably open to him. The judge failed adequately to resolve conflicts in the evidence where they were relevant to his conclusions and key aspects of his conclusions were based upon speculation rather than a reasoned analysis of the evidence. Drawing all this together, the position is that the decision of the judge is replete with legal error and cannot stand.

Summary of Decision

4. The decision of First-tier Tribunal Judge Moore discloses error of law such as to require that his decision be set aside in its entirety.
5. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern
Date: 8 February 2016