



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07515/2014**

THE IMMIGRATION ACTS

**Heard at Liverpool
On 31 August 2017**

**Decision & Reasons
Promulgated
On 7 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**HADI KHALED MIZBAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq, Adam Solicitors
For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Hadi Khaled Mizban, was born on 1 January 1950 and claims to be a Kuwaiti citizen. His appeal against the decision by the Secretary of State to remove him following revocation of his asylum status was allowed in the First-tier Tribunal (Judge Morris) in a decision promulgated on 26 March 2015. The Secretary of State appealed to the Upper Tribunal. In a decision promulgated on 20 January 2016, Deputy Upper Tribunal Judge Birrell, found that Judge Morris had erred in law such that his decision fell to be set aside. Having set aside the decision, Judge Birrell remade the decision dismissing the appeal on all grounds. The appellant appealed to the Court of Appeal which, by a consent order dated

30 May 2017, allowed the appeal and remitted the appeal to the Upper Tribunal “for a determination of the issues”.

2. I note from the grounds of appeal to the Court of Appeal submitted by Adam, Solicitors for the appellant, that it was accepted by the appellant that the Upper Tribunal had been correct to find an error of law in Judge Morris’s decision. The grounds state that, “it is accepted that the First-tier Tribunal failed at all or appropriately to delineate reasons for finding in favour of the appellant”. Before me, Mr Sadiq agreed that the First-tier Tribunal had erred in law. He told me that several witnesses would need to be called to give evidence at a *de novo* hearing. One witness was currently abroad and unavailable. In the circumstances, I find that the First-tier Tribunal erred in law such that its decision falls to be set aside. Since there will need to be a fresh hearing and a new fact-finding exercise, I find it appropriate for that to be conducted in the First-tier Tribunal to which I now return this appeal. The First-tier Tribunal will remake the decision. By doing so, I correct the error found in the Court of Appeal to have been perpetrated by Deputy Judge Birrell; as both parties now agree, she had unequivocally stated at the hearing before her that the appeal should be remitted to the First-tier Tribunal but, for reasons that remain unclear, she had failed to adopt that course of action .

Notice of Decision

3. The decision of the First-tier Tribunal promulgated on 26 March 2015 is set aside. This appeal is returned to the First-tier Tribunal (not Judges Morris or Birrell) for that Tribunal to remake the decision.
4. No anonymity direction is made.

Signed

Date 5 September 2017

Upper Tribunal Judge Clive Lane