



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/12481/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke

**Decision & Reasons
Promulgated
On 15th June 2017**

On 2nd June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**BH
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Crowther of Counsel instructed by Paragon Law
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Juss of the First-tier Tribunal (the FtT) promulgated on 10th January 2017.
2. The Appellant is a male Afghan citizen born 1st January 1984 whose asylum and human rights claim was refused on 15th September 2015.
3. The Appellant appealed to the FtT, and his appeal was heard on 7th December 2016 and dismissed on all grounds.

4. The Appellant applied for permission to appeal to the Upper Tribunal relying upon four grounds which are summarised below.
5. Firstly the FtT erred by failing to take into account material evidence and make a finding on a material issue, in relation to the medical report of Dr Sinha. This report found the Appellant's scars to be "highly consistent with the attributed case". The FtT made no reference to Dr Sinha's findings as to scarring, and did not give reasons why Dr Sinha's report should not be taken into account.
6. Secondly the FtT erred by failing to take into account material evidence or make a finding on a material issue, that being the expert report of Dr Guistozzi. It was contended that the FtT had failed to make any reference to this report, and gave no reasoned findings why the report should be rejected.
7. Thirdly the FtT erred by failing to take into account material evidence and to make a finding on a material issue, that being the medical report of Dr Winton. This report concluded that the Appellant's PTSD was likely to lead to inconsistencies in his account. It was contended that this report therefore provided a reasonable explanation for those inconsistencies, but the FtT made no reference to Dr Winton's specific finding that the Appellant's PTSD was likely to lead to inconsistencies in his account of events.
8. Fourthly the FtT made a misdirection in law when assessing the Appellant's Article 8 rights. The FtT considered whether it is reasonable to expect the child to accompany the Appellant to Afghanistan for him to make a proper application to re-enter. The Appellant's case is that this is not the question which requires consideration under section 117B(6), which requires consideration of simply whether it is reasonable for a qualifying child to leave the United Kingdom. No period or purpose is contained within the statutory test. It is contended that the FtT did not apply the correct test, and failed to reach a conclusion as to whether it would be reasonable to expect the child to leave.
9. Permission to appeal was granted by Judge Kinnell of the FtT.
10. Following the grant of permission the Respondent did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008.
11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

12. Mr Bates conceded on behalf of the Respondent, that the FtT had erred in law as contended in the grounds seeking permission to appeal.

13. Both representatives submitted that the appropriate course of action was to set aside the decision of the FtT with no findings preserved, and remit the appeal back to the FtT to be considered afresh.

My Conclusions and Reasons

14. As I indicated at the hearing, I accept that the concession made by the Respondent is rightly made. I find the FtT materially erred in law as contended in the grounds seeking permission to appeal.
15. Having considered paragraph 7 of the Senior President's Practice Statements I conclude that the appropriate course is to remit this appeal back to the FtT to be considered afresh. This is because of the nature and extent of judicial fact-finding that will be necessary, and it is more appropriate that this is carried out by the FtT rather than the Upper Tribunal.
16. The parties will be advised of the time and date of the hearing before the FtT in due course. The appeal is to be heard by an FtT Judge other than Judge Juss.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Anonymity

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. This anonymity direction is made because the Appellant has made an international protection claim, and is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed _____ Date 6th June 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed _____ Date 6th June 2017

Deputy Upper Tribunal Judge M A Hall