



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

Appeal Number: PA/07654/2016

THE IMMIGRATION ACTS

**Heard at North Shields
On 11 May 2017
Prepared on 11 May 2017**

**Decision & Reasons Promulgated
On 12 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**S. V.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Gayle, Solicitor, Elder Rahimi Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant says that he is a citizen of Iran. He entered the UK illegally and made an application for protection on 20 January 2016. The Respondent refused that application on 11 July 2016, and the Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 25 November 2016. It was dismissed on all grounds, in a decision promulgated on 25 January 2017 by First Tier Tribunal Judge Mensah.
2. The Appellant was granted permission to appeal that decision on 20 February 2017 by First tier Tribunal Judge Gillespie on the basis that the decision contained a number of errors and appeared to be an incomplete

draft lacking adequate reasoning for the decision. Thus it was arguable the Appellant had not enjoyed a fair hearing of his appeal.

3. The Respondent has filed no Rule 24 Notice in relation to the grant of permission. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

4. The grounds note that the decision incorrectly records the representative who appeared at the hearing on behalf of the Appellant, and that the section of the decision entitled "Findings" contains none. Both points are fairly made.
5. In the circumstances the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;
 - i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing at the North Shields hearing centre. The appeal is not to be listed before Judge Mensah.
 - ii) A Farsi interpreter is required for the hearing of the appeal.
 - iii) The time estimate is estimated to be 3 hours.
 - iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a short further witness statement may be filed. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 25 May 2017
 - v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 29 May 2017 for final hearing, but given the location of the Appellant's representatives it shall only be listed after consultation with the Appellant's solicitors. Whilst it is desirable that Mr Gayle be available to present the appeal it is not necessary that he should do so.
 - vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
 - vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

6. The decision promulgated on 25 January 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 11 May 2017