



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

Appeal Number: PA/14066/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 July 2017**

**Decision Promulgated  
On 25 July 2017**

**Before**

**Deputy Upper Tribunal Judge Pickup  
Between**

**Secretary of State for the Home Department**

Appellant

**and**

**PK**

**[Anonymity direction made]**

Claimant

**Representation:**

For the claimant: Mr J Gajjar, instructed by M-R Solicitors  
For the appellant: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Steer promulgated 10.2.17, allowing on asylum grounds the claimant's appeal against the decision of the Secretary of State, dated 12.12.16, to refuse his protection claim.
2. The Judge heard the appeal on 19.1.17.
3. First-tier Tribunal Judge Page granted permission to appeal on 25.5.17.
4. Thus the matter came before me on 17.7.17 as an appeal in the Upper Tribunal.

**Error of Law**

5. For the reasons summarised below, I found such error of law in the making of the decision of the First-tier Tribunal as to require the decision of Judge Steer to be set aside and remitted to the First-tier Tribunal to be remade afresh.
6. The decision of the First-tier Tribunal is flawed in that the judge appears to have concluded that as a Bihari the claimant would have a well-founded fear of persecution on return to Bangladesh. However, the evidence and submissions on behalf of the Secretary of State were to the effect that whilst there may be discrimination, this does not amount to persecution.
7. At [38] the judge found that there would be discrimination, but failed to clearly explain why that discrimination amounted to persecution. The decision is devoid of cogent reasoning on this issue, the judge turning from discrimination to an HJ (Iran) consideration as to whether the claimant would live discretely on return. Merely stating that he would do so out of fear of persecution, is insufficient to demonstrate that there was a well-founded fear of persecution.
8. It was conceded at the First-tier Tribunal appeal hearing that the country guidance of GA (Risk – Bihari) Bangladesh [2002] UKAIT 05810, to the effect that there is no risk to Biharis was out of date, it having been taken off the CG list. However, there remained scant evidence that Biharis are at risk in Bangladesh, one incident in 2014 notwithstanding, that which is referred to at [39] of the decision. As the Secretary of State has submitted, if Biharis are at general risk, one would expect to see more than one isolated incident. The Tribunal failed to properly grapple with the issue and to provide cogent reasoning.
9. I also find that the HJ (Iran) issue was inadequately dealt with at [41] of the decision. In the absence of a general risk to Biharis, how the claimant would live in Bangladesh cannot be determinative of the Convention claim. In other words, that he would choose to live discretely does not provide evidence that there is persecution.
10. In the circumstances, the decision is flawed for error of law and cannot stand.
11. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts are unclear on a crucial issue at the heart of an appeal, as they are in this case, effectively there has not been a valid determination of those issues.
12. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's

Practice Statement at paragraph 7.2. The effect of the error has been to deprive the parties of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

### **Conclusions:**

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**8 September 2017**

Deputy Upper Tribunal Judge Pickup

### **Consequential Directions**

1. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross;
2. The appeal is to be decided afresh with no findings of fact preserved;
3. The ELH is 3 hours;
4. The appellant will require a Bengali (Sylheti) interpreter.
5. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Steer.

### **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal made an anonymity direction. Given the circumstances, I continue the anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I make no fee award.

Reasons: The outcome of the appeal remains to be decided.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**8 September 2017**