



IAC-FH-NL-V1

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

Appeal Number: PA/01864/2018

**THE IMMIGRATION ACTS**

**Determined at Field House  
On 5<sup>th</sup> July 2018**

**Determination Promulgated  
On 17<sup>th</sup> July 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAINI**

**Between**

**[A E]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms L. Longhurst-Woods, Counsel instructed by Direct Access

For the Respondent: Mr C. Howells, Senior Presenting Officer

**DETERMINATION BY CONSENT AND DIRECTIONS**

1. Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:

Upon the parties' agreement that the decision of the First-tier Tribunal promulgated on 28<sup>th</sup> March 2018 discloses a material error of law, it is hereby ordered by consent as follows:

- (1) The First-tier Tribunal Judge made errors of law in relation to the grounds as pleaded by the Appellant's Counsel and which may be summarised as follows:
  - (i) There is an appearance of unfairness present in the proceedings and the decision of the First-tier Tribunal, albeit a wholly inadvertent one, in that it transpires that the Appellant's Counsel – who was instructed since the refusal of the protection claim – has never had the Respondent's bundle till date. Two copies of the Respondent's bundle were provided by the Upper Tribunal to the Appellant's Counsel today which is the first opportunity that either the Appellant or his representative have had to address or engage with that evidence. It was made clear in the response to the CMR by the Appellant's Counsel that she did not have the Respondent's bundle as expressed in her letter dated 1<sup>st</sup> March 2018.
  - (ii) Looking at paragraphs 6 and 24 of the First-tier Tribunal's decision it is unclear whether the First-tier Tribunal appreciated that the Appellant's Counsel did not have the Respondent's bundle, particularly as paragraph 24 reads in part that "for some reason she (meaning, Ms. Longhurst-Woods) had not seen the record of the interview...".
  - (iii) Whilst the First-tier Tribunal may not have known that the Appellant's Counsel did not have the Respondent's bundle, equally, a fairly serious omission transpired in that the Appellant's Counsel did not either request the Respondent's bundle be copied by the First-tier Tribunal on the day of the hearing and time given to her to consider the matter before proceeding, nor was an application made for any adjournment as far as I can see from the Record of Proceedings.
  - (iv) However, given that this is a protection claim and given the fact that the Respondent has not sought to verify the original documents despite being presented with them when the protection claim was made, in my view, the proceedings and the decision do give the appearance of unfairness in that the Appellant should have the opportunity to know the contents of, and be in a position to challenge, the Respondent's evidence and the Appellant was further disadvantaged by not having either the original documents presented with the protection claim returned to him nor having a copy of the Respondent's bundle which contained a copy of those documents, so that they could be the subject of further investigation before the protection claim proceeded at a substantive appeal hearing.
  - (v) As such it is claimed that the Appellant was not given the opportunity to present his case as fully or coherently as he may have wished and for those reasons it is agreed by the parties that there was an appearance of unfairness to the Appellant in this way, albeit an inadvertent one which has arisen owing to a series of unfortunate events.
  - (vi) The decision is set aside in its entirety with no findings preserved.

- (vii) The matter is to be remitted to be heard by a judge of the First-tier Tribunal other than Judge Cary.
- (2) The Appellant's appeal to the Upper Tribunal is therefore allowed.
- (3) The decision of the First-tier Tribunal is set aside for legal error by consent.

**Directions**

- 2. Directions as requested by the parties shall follow in writing, which include that the Respondent is to return the original documents to the Appellant's Direct Access Counsel at her address (which I have also confirmed on the Tribunal's file).

Signed

Date 15 July 2018

Deputy Upper Tribunal Judge Saini