



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09229/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
on 30 April 2018**

**Decision & Reasons
Promulgated
on 3 May 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AY
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Frantzis, Counsel

For the respondent: Ms Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. I have anonymised the appellant's name because this decision refers to his international protection claim.

2. This is an appeal by the appellant, a citizen of Afghanistan, against a decision of the First-tier Tribunal dated 24 October 2017 in which it dismissed his asylum appeal.
3. In a decision dated 18 December 2017, First-tier Tribunal Judge Chamberlain granted permission to appeal observing it to be arguable that the First-tier Tribunal erred in failing to adjourn the hearing, given the appellant's claimed difficulties in understanding the interpreter, as corroborated by the record of proceedings.

Hearing

4. The matter came before me as a case-management review ('CMR') hearing. Although originally listed as an error of law hearing, the appellant's solicitors had been unable to obtain legal aid as they were unable to provide confirmation that the appellant receives NASS support. Ms Petterson agreed that it would be straightforward for the respondent to provide such confirmation.
5. As the appellant was represented, and I had considered the background to the appeal in depth prior to the hearing being converted to a CMR, I enquired with Ms Petterson as to whether she was able to agree that there was an error of law in failing to adjourn the hearing, given the appellant's articulated difficulties with the interpreter. Ms Petterson conceded that the approach to the appellant's difficulties demonstrated an error of law and agreed that the decision needs to be remade in its entirety. She was entirely correct to do so for the reasons I set out below.
6. Both representatives agreed that the error of law is such that the decision needs to be remade completely. I had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I decided that this is an appropriate case to remit to the First-tier Tribunal.

Error of law discussion

7. I can state my reasons briefly given Ms Peterson's concession. I am satisfied that the appellant, who was unrepresented before the First-tier Tribunal, clearly raised important concerns regarding his ability to understand the interpreter. This is recorded within the decision itself and in the record of proceedings. It is very difficult to see, how the First-tier Tribunal was able to satisfy itself that the appellant "*did not have any particular difficulties in understanding the interpreter*", when the appellant consistently indicated that he did and in circumstances wherein the First-tier Tribunal regarded his oral evidence to be vague, lacking in detail and evasive (see [27] to [29]). As observed by the First-tier Tribunal when granting permission to appeal, the appellant has been able to demonstrate that a straightforward aspect of his evidence was recorded

erroneously (the number of sisters he has), in support of his claim regarding the interpreter. Given the absence of any evidence impugning the appellant's claim that he did not understand the dialect used by the interpreter, fairness demanded that the First-tier Tribunal at least enquired further into the dialect being used by the interpreter. As Ms Petterson conceded there was procedural unfairness in not doing so or alternatively in not adjourning the hearing.

Decision

8. The First-tier Tribunal decision contains an error of law. Its decision cannot stand and is set aside.
9. The appeal shall be remade by a judge other than First-tier Tribunal Judge Atkinson, in the First-tier Tribunal de novo.

Directions

- (1)The respondent shall as soon as possible but before 12noon on 4 May 2018 provide the appellant's solicitors with written confirmation that he is entitled to NASS support.
- (2)The appellant's solicitors shall as soon as possible, but in any event within 28 days take instructions from the appellant using an interpreter, with a view to providing written confirmation to the First-tier Tribunal regarding the specific type of interpreter requested.
- (3)The hearing shall be relisted before the First-tier Tribunal on the first available date with an Afghan Pashto interpreter (unless the appellant's solicitors specifically indicate an alternative type of interpreter is required).

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

30 April 2018