



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

Appeal Number: PA/07466/2018

THE IMMIGRATION ACTS

Heard at Manchester

On 17th April 2019

**Decision & Reasons
Promulgated**

On 25th April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**[H K P]
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. R O’Ryan, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr. A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. Although an anonymity direction was not made by the First-tier Tribunal (“FtT”), and no application is made before me, as this a protection claim, it is appropriate that a direction is made. 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. This direction

applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Juss promulgated on 16th December 2016. The underlying decision that was the subject of the appeal before FtT was the decision of the respondent dated 30th May 2018.
3. There were two strands to the appellant’s claim for international protection. First, his claim to have provided practical support for the Kurdish opposition group, the PJAK, and second, his *sur place* political activity in the UK. At paragraphs [6] to [14] of the decision, the FtT Judge sets out the evidence received by the Tribunal from the appellant. At paragraph [18] of his decision, the Judge confirms that he has given careful consideration to all the evidence before him and states that appellant’s evidence “... *is not coherent and plausible for the following reasons.*”. The reasons follow, at paragraphs [19] to [27] of the decision.
4. The appellant advances two grounds of appeal. First, with regard to the first strand of his claim, the Judge failed to take relevant evidence into account, and failed to give reasons that are adequate in law. It is said that the Judge failed to consider a key reason advanced by the appellant as to why leaflets that he was distributing, were printed in the Farsi language. It is said that the explanation offered by the appellant was one that is supported by objective background material. Second, with regard to the second strand of the appellant’s claim, the Judge failed to make any findings as to the extent of the appellant’s *sur place* activities in the UK, and whether the appellant would be at risk upon return in light of his activities. It is said that it was insufficient for the Judge to simply recite the relevant authorities without determining the issue based upon adequate findings of fact.
5. Permission to appeal was granted by FtT Judge Chohan on 18th October 2018. The matter comes before me to consider whether the decision of

the FtT involved the making of a material error of law, and if so, to remake the decision.

6. Before me, Mr McVeety confirmed that having had the opportunity of considering the decision of the FtT Judge, the Judge does not appear to have considered all of the evidence that was before him relating to the core of the appellant's claim. He also accepts that it is difficult to discern any findings of fact that would be relevant to an assessment of the risk upon return in light of the appellant's *sur place* activities. He concedes, rightly in my judgment, that in the circumstances, the decision of the FtT cannot stand. He concedes that the decision of the FtT contains a material error of law and should be set aside.
7. I must then consider whether to remit the case to the First-tier Tribunal, or to re-make the decision myself. As the Judge failed to consider material evidence and did not adequately address a core part of the appellant's claim, the matter will need to be heard afresh with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
8. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

9. The appeal is allowed and the appeal is remitted the FtT for a fresh hearing of the appeal with no findings preserved.
10. I make an anonymity direction.

Signed

Date

17th April 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter to the FtT for hearing afresh. In any event, no fee is payable and there can be no fee award.

Signed

17th April 2019

Deputy Upper Tribunal Judge Mandalia

Deputy Upper Tribunal Judge Mandalia