



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

Appeal Number: PA/13949/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3 June 2019**

**Decision & Reasons Promulgated
On 12 June 2019**

Before

**Upper Tribunal Judge Canavan
Upper Tribunal Judge Pickup**

Between

**MR
[Anonymity direction made]**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr R Ahmed, direct access counsel

For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), we make an anonymity direction. 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.

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Lal promulgated 21 March 2019, dismissing on all grounds his

appeal against the decision of the Secretary of State, dated 30 November 2018, to refuse his claim for international protection made on 5 June 2018.

2. First-tier Tribunal Judge Hollingworth granted permission to appeal on 24 April 2019. Thus the matter came before us sitting as a panel of the Upper Tribunal on 3 June 2019, listed for an error of law hearing.
3. At the outset of hearing, Mr Avery indicated that he was unable to resist the appeal on the grounds set out in the application for permission, on the basis of which Judge Hollingworth granted permission to appeal. In summary it is clear that the decision of the First-tier Tribunal cannot stand and is flawed for error of law in that, in a number of instances, findings were unsupported by sufficient cogent reasoning, such as in respect of the delay in claiming asylum and in rejecting the claim of political activism. Further, at [23] the judge dismissed the documents relied on in support of the protection claim as unreliable but did so in a single sentence providing no reasoning and appears to have fallen into the Mibanga [2005] EWCA Civ 367 error of failing to reach credibility findings with sufficient regard to the evidence considered as a whole.
4. In the circumstances, it was not necessary to hear from Mr Syed-Ali.
5. Pursuant to Rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal may give a decision orally at a hearing and is not required to provide written reasons for the decision where the decision is made with the consent of the parties, or the parties have consented to the Upper Tribunal not giving written reasons. Both Mr Avery and Mr Syed-Ali agreed and were content for us to proceed in disposing of the appeal without reasons.
6. We agreed with the submission of both representatives that, having set it aside, the decision should be remitted to be remade in the First-tier Tribunal. 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. 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 appellant 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 it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Notice of Decision

7. 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.

We set set aside the decision.

We remit the appeal to be decided afresh in the First-tier Tribunal.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated

Consequential Directions

- 1) The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross;
- 2) The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judges Lal and Hollingworth;

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated