



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

Appeal number: PA/09735/2018 (P)

**THE IMMIGRATION ACTS**

**Determined without a hearing  
under rule 34**

**Decision & Reasons Promulgated  
On 9 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE GILL**

**Between**

**A P M M  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. The parties at liberty to apply to discharge this order, with reasons.

**DECISION AND REASONS**

1. By my decision granting permission signed on 11 March 2020 and sent to the parties under cover of a notice dated 16 March 2020, the Upper

Tribunal notified the parties of its proposal to set aside the decision of Judge of the First-tier Tribunal D.P. Herbert OBE and remit the appeal to the First-tier Tribunal for a Judge of that Tribunal other than Judge Herbert to re-make the decision on the appellant's appeal. The reasons for the proposal were set out in the decision granting permission.

2. In my decision granting permission, the parties were informed that the Upper Tribunal will proceed to issue a decision to give effect to its proposal unless the parties objected, with reasons, by 4 pm on the 14<sup>th</sup> calendar day after the date of the Tribunal's notice.
3. To date, no response has been received from the appellant or from the respondent.
4. Permission was granted in relation to grounds 1, 3 and 4, i.e. that the judge arguably erred in law by applying the wrong standard of proof in assessing the applicant's credibility and that he arguably made errors of fact and other errors in assessing the applicant's credibility.
5. Permission was refused on ground 2. As I explained in giving my reasons for refusing permission on ground 2, the applicant's claim under Article 3 of the ECHR stands or falls with his asylum claim. It was not argued before Judge Herbert that his appeal was capable of succeeding under Article 2 even if his asylum claim failed. There was no mention at all of Article 8 in the skeleton argument that was before Judge Herbert, nor did the applicant mention in his witness statements any facts that could form the basis of an Article 8 claim.
6. In all of the circumstances, I am satisfied that the decision of Judge Herbert involved the making of an error on a point of law such that the decision to dismiss the appeal falls to be set aside. I set it aside the decision of Judge Herbert to dismiss the appeal.
7. For the reasons given at paras 3-5 above and in my decision notice of March 2020, this appeal is remitted to the First-tier Tribunal for a Judge of that Tribunal other than Judge Herbert to re-make the decision on the appellant's appeal, such remittal being on the merits and limited to the following: the applicant's asylum claim, his humanitarian protection claim and his related Article 3 ECHR claim.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside. This case is remitted to the First-tier Tribunal for the decision on the appellant's appeal to be re-made on the merits but limited to the appellant's asylum claim, his humanitarian protection claim and the related Article 3 claim, by a judge other than Judge of the First-tier Tribunal Herbert.

Upper Tribunal Judge Gill

Date: 15 June 2020