



The Upper Tribunal

**(Immigration and Asylum Chamber) Appeal Number: PA/10179/2019
(P)**

THE IMMIGRATION ACTS

Decided under Rule 34

**Decision & Reasons
Promulgated**

On 7th July 2020

On 17th July 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

AI

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. An anonymity direction was made by Upper Tribunal Judge O'Connor in the directions sent to the parties on 6th May 2020. As this a protection claim, it is appropriate that a direction is made. Unless and

until a Tribunal or Court directs otherwise, AI is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of El Salvador. He arrived in the UK on 29th May 2019 and claimed asylum. The claim was refused by the respondent for reasons set out in a decision dated 9th October 2019. The appellant's appeal was heard by First-tier Tribunal Judge Foudy on 25th November 2019 and dismissed for reasons set out in a decision promulgated on 4th December 2019. the appellant applied for permission to appeal to the Upper Tribunal on five grounds. Permission was granted by Upper Tribunal Judge Coker on 19th February 2020. In doing so, she noted:

“The grounds submit the First-tier Tribunal judge undertook research after the hearing. It is correct the judge refers to two websites although it is not clear what those websites show. Of more concern is the reference to a refworld document which was not before the parties and upon which the judge appears to have placed considerable weight.

3. On 6th May 2020 directions were sent to the parties setting out a provisional view expressed by Upper Tribunal Judge O'Connor that in this case it would be appropriate to determine whether the making of the First-tier Tribunal's decision involved the making of an error of law, and if so, whether that decision should be set aside, without a hearing. He set out directions giving the appellant an opportunity to submit further submissions in writing to support the assertion that the decision of the FtT is vitiated by an error of law. The directions also provided an opportunity for the respondent to respond in writing, and, for the appellant to file and serve any further reply.
4. In response to the directions issued, the appellant's representatives sent a letter to the Tribunal dated 26th May 2020. They request a

face to face oral hearing as the appellant does not speak English and requires an interpreter for the proceedings. They submit the appellant does not have access to modern technology where he would be able to actively take part in a video hearing. Furthermore, they submit the FtT Judge relied upon her own post-hearing research and as the parties were not given any opportunity to make submissions upon the material, it is important that the appellant is present and can comment upon what was before the FtT Judge. The appellant's representatives submit that this is not an appeal that is suitable for determination by written submissions, and the appeal is not suitable for a remote hearing, by video.

5. The respondent has provided a written response dated 28th May 2020. The respondent accepts the 'Refworld' document was not a document that was before the FtT and accepts that the appellant had no opportunity to address the evidence referred to by the Judge in reaching her conclusion that there would be sufficiency of protection for the appellant and his family. In the circumstances, the respondent, quite properly in my judgment, does not oppose the appeal and submits that the appropriate course is for the decision of the FtT to be set aside and the appeal to be remitted to the FtT for hearing afresh.
6. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides that the Upper Tribunal may make any decision without a hearing. The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider a matter, and the form of any such hearing. In reaching my decision, I have had regard to the matters set out in the letter from the appellant's representatives dated 26 May 2020 and the concerns that they express.
7. In light of the concession made by the respondent, I am satisfied that it is in accordance with the overriding objective and the interests of

justice for there to be a timely determination of the question whether there is an error of law in the decision of the FtT. Taking into account the view expressed by the appellant, it is entirely appropriate for the error of law decision to be determined on the papers, to secure the proper administration of justice. There is no procedural unfairness to the appellant by my setting aside the decision of First-tier Tribunal Judge Foudy and remitting the appeal to the First-tier Tribunal for hearing afresh as proposed by the respondent. The appellant will have a full and proper opportunity to have his appeal heard by the First-tier Tribunal when the necessary arrangements can be made.

8. There was, as the respondent accepts, a material error of law in the decision of the FtT, and it follows that the decision of First-tier Tribunal Judge Foudy promulgated on 4th December 2019 is set aside.
9. As to disposal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012 I am satisfied that the nature and extent of any judicial fact-finding necessary will be extensive and in my judgement, the appropriate course is for the matter to be remitted to the FtT for hearing afresh with no findings preserved. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

10. The appeal is allowed. The decision of FtT Judge Foudy promulgated on 4th December 2019 is set aside, and I remit the matter for re-hearing de novo in the First-tier Tribunal, with no findings preserved.

Signed **V. Mandalia**

Date 7th July 2020

Upper Tribunal Judge Mandalia