



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004082

First-tier Tribunal No: HU-54973-2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

17<sup>th</sup> January 2024

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**  
**DEPUTY UPPER TRIBUNAL JUDGE FROOM**

**Between**

**JC**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Badar, counsel instructed by Connaughts Law  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Heard at Field House on 11 January 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or any member of his family. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

## Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Rastogi heard on 26 April 2023.
2. Permission to appeal was granted by Deputy Upper Tribunal Judge Malik KC on 30 November 2023.

## Anonymity

3. An anonymity direction was made previously and is maintained as this appeal concerns a protection claim.

## Factual Background

4. The appellant is a national of Honduras now aged thirty-eight. He entered the United Kingdom on 14 February 2018 and sought asylum upon entry. The appellant failed to attend an interview arranged for 31 July 2018 and was treated as an absconder. On 17 February 2021, the appellant submitted further submissions. That claim was based on the appellant's fear of a gang who were threatening him in Honduras and taking extortion payments from him for two years. In addition, the appellant relied upon the private life he had established in the United Kingdom.
5. The appellant's protection claim was refused by way of a letter dated 5 July 2022. In short, the Secretary of State considered did not accept that the appellant feared the gang, that the gang was looking for him in Honduras or that he was at risk of a breach of his rights in respect of Articles 2 and 3 ECHR. In addition, the respondent concluded that the appellant could obtain sufficient protection from the authorities in Honduras,

## The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the Secretary of State declined to consent to the appellant raising his family life with his partner and child. The judge rejected the protection claim on the basis that it lacked detail, clarity, or consistency. The refusal of his Article 8 private life claim was found to be a proportionate interference with the appellant's rights.

## The grounds of appeal

7. The grounds of appeal argued, firstly, that the judge erred in her treatment of inconsistencies in the appellant's account. Secondly, there had been a failure to apply anxious scrutiny. Thirdly, there was a failure to consider the evidence in the round. Lastly, there was a failure to consider supporting evidence.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the Judge failed to direct herself as to the applicability of *R v Lucas* [1981] QB 720, which was referred to by the Court of Appeal in the context of asylum claims in *Uddin v Secretary of State for the Home Department* [2020] EWCA Civ 338, at [11]. As those judgments arguably show, there can be many reasons why a person may lie, for example to bolster their case or to avoid embarrassment, and that these are not necessarily inconsistent with their telling the truth about the issue of fact which has to

be determined. Genuine asylum applicants might exaggerate or fabricate evidence in order to reduce the risk of the appeal being wrongly dismissed.

I am mindful that the judges sitting in the First-tier Tribunal are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear from their language that they have failed to do so. However, the question as to whether the Judge in the present case failed to follow the relevant authorities on the subject is suitable to be addressed at an oral hearing. An appeal from the Judge's decision would have a real, as opposed to merely fanciful, prospect of success. The grounds of appeal are arguable and merit the grant of permission to appeal.

9. The respondent filed no Rule 24 response.

#### The error of law hearing

10. When this matter came before us, Mr Walker confirmed that there was no Rule 24 response prepared for this appeal. Having discussed the matter with Mr Badar, Mr Walker explained that the Secretary of State agreed with the comments of the judge granting permission, describing the appellant's grounds as 'strong.' When pressed for clarification, Mr Walker stated that the Secretary of State was conceding the appellant's appeal against the decision of the First-tier Tribunal. Mr Badar added only that a de novo hearing was sought before the First-tier Tribunal.
11. At the end of the hearing, the panel confirmed that in light of the lack of opposition by the respondent to the appellant's appeal, we would set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing.

#### Decision on error of law

12. We can be brief given the Secretary of State's concession, which we are entitled to accept, applying, among other authorities, *AK (Sierra Leone) [2016] EWCA Civ 999*. In addition, we consider that there are no exceptional circumstances which justify going behind that concession and conclude that to do so would result in unfairness to the appellant.
13. We canvassed the views of the parties as to the venue of any remaking and have taken them into account. Applying *AEB [2022] EWCA Civ 1512* and *Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)*, the panel carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. We took into consideration the history of this case, the nature and extent of the findings to be made as well as the respondent's concession that the appellant was deprived of a fair determination of his case. We further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and we therefore remit the appeal to the First-tier Tribunal.

### **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Rastogi.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**12 January 2024**

### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email