



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

Appeal Number: PA/01754/2016

THE IMMIGRATION ACTS

**Heard at North Shields
On 11 May 2017
Prepared on 11 May 2017**

**Decision & Reasons Promulgated
On 12 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**S. A.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sanders, Counsel instructed by JD Spicer Zeb Solicitors
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant says that he is a citizen of Afghanistan. He entered the UK illegally and made an application for protection on 26 June 2015. The Respondent refused that application on 7 January 2016, and the Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 18 October 2016. It was dismissed on all grounds, in a decision promulgated on 31 October 2016 by First Tier Tribunal Judge MJH Wilson.
2. The Appellant was granted permission to appeal that decision on 9 February 2017 by Upper Tribunal Judge Coker on the basis that it was arguable the decision did not engage with the evidence relied upon, or,

the submissions that had been made on behalf of the Appellant. Thus it was arguable the Appellant had not enjoyed a fair hearing of his appeal.

3. The Respondent has filed a Rule 24 Notice in relation to the grant of permission dated 22 February 2017, although as Mr Diwnycz accepts it does not properly engage with the Appellant's case. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

4. The refusal decision quoted a passage from a website (the link to which was provided) which indicated from an interview in 2007, how it was thought a Jirga might respond to a situation that required the Jirga to appoint individual(s) to carry out its will. Before the Judge the Appellant complained that when that website was examined it was impossible to ascertain who had provided the information relied upon, or their experience and expertise in relation to the issue – indeed it was impossible to see whether the information was specific to a particular region, or applied to the whole country, or was even current. Whilst neither representative had the foresight to provide the Judge with a full copy of the website document in question, it is accepted before me that this point was fully taken before the Judge by Ms Sanders orally, and, that it was set out in her skeleton argument for the hearing, which the Respondent also accepts was provided by her to the Judge at the hearing. That skeleton argument receives no reference in the decision or in the Judge's record of proceedings, which gives rise to the inference its content was not considered by him, an inference which is only strengthened by the absence of that skeleton from the Tribunal file. Thus paragraph 5 of the grounds is made out.
5. There is a further complaint, which also touches upon the skeleton argument. It is accepted before me that Ms Sanders also drew the Judge's attention to a number of passages of objective evidence both in oral argument, and in her skeleton. The Judge has made no reference to this aspect of the Appellant's case, or to the evidence in question in his decision.
6. In the circumstances, as the Respondent now accepts, the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25

September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;

- i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing at the North Shields hearing centre. The appeal is not to be listed before Judge MJH Wilson.
- ii) A Pushtu interpreter is required for the hearing of the appeal.
- iii) The time estimate is estimated to be 3 hours.
- iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a short further witness statement may be filed. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 25 May 2017
- v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 29 May 2017 for final hearing, but given the location of the Appellant's representatives it shall only be listed after consultation with the Appellant's solicitors. Whilst it is desirable that Ms Sanders be available to present the appeal it is not necessary that she should do so.
- vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
- vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

7. The decision promulgated on 31 October 2016 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes

Dated 11 May 2017