Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11761/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 13 March 2018	**On 15th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

S. N.
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Selway, Solicitor, Brar & Co
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Afghanistan who entered the UK illegally, and who then claimed asylum on 19 April 2016. That protection claim was refused on 13 October 2017. His appeal against that refusal came before the First-tier Tribunal at North Shields on 26 June 2017, when it was heard by First-tier Tribunal Judge Heatherington. The appeal was allowed on asylum grounds in a decision promulgated on 4 July 2017, although no reference was made to either the humanitarian protection appeal, or, the human rights appeal that were before him within that decision.

2. The Respondent's application for permission to appeal was granted by Upper Tribunal Judge Storey on 21 November 2017 on all of the grounds advanced. The Respondent had taken a number of credibility points against the Appellant in the course of giving reasons for the refusal of his protection claim. She argues that the Judge failed to engage with them in the course of his decision. Moreover, the Appellant having failed to attend the hearing and thus submit himself to cross-examination, she argues that it was not open to the Judge to baldly accept as truthful the contents of his most recent witness statement, and then without more, simply allow the appeal. She argues that there is no adequate consideration of the issue of internal relocation. She argues that there is no reference to any of the current country guidance decisions upon Afghanistan in the course of the decision.

3. Before me Mr McVeety confirmed that he did not seek to argue that the Judge was bound to dismiss the appeal simply because the Appellant had failed to attend the hearing. His argument was that the Judge was duty bound to engage with the Respondent's case, and to consider what (if any) weight could be attached to the written evidence of an Appellant who had failed to attend the hearing of his own appeal, without offering any explanation for that failure, and who had thus failed to adopt that written evidence as his own, confirm its truth, or answer any questions upon it.

4. Neither party criticised before me the Judge's conclusion that the Appellant had been properly served with notice of the hearing, and that he had failed to attend that hearing without offering any explanation for his failure. (None has been offered subsequently either.) Neither party criticises the Judge's conclusion that in those circumstances it was appropriate to proceed with the hearing in the Appellant's absence. Moreover, both parties accept that the question of the weight that could be attached to the content of the Appellant's written evidence, and, the record of his interviews, was a matter for the Judge.

5. Stripped of its recitals, and the passage dealing with the Judge's decision concerning whether or not he should adjourn the hearing, this was on any view a very brief decision. Whereas the three sentences of paragraph 8.3 are each devoted to what had been identified in paragraph 3.2 as the undisputed question of the Appellant's nationality of Afghanistan, the only reference to the credibility points taken by the Respondent is the single sentence in paragraph 8.6 that asserts that the witness statement filed for the hearing "*reconciles*" the Appellant's previous and inconsistent accounts. The Judge appears to have been entirely untroubled by the failure of the Appellant to adopt that evidence at the hearing, and the decision fails to explain to the reader what effect that failure had upon the assessment of the weight the Judge felt able to accord that material. There are in fact two witness statements within the Appellant's bundle of documents, together running for fourteen pages. There is no analysis of their content to be found within the decision, nor any analysis of the credibility points taken by the Respondent.

6. The parties were agreed before me that the only reference to the issue of internal relocation within the decision is the six word sentence that is to be found within paragraph 8.9 "*He cannot relocate and remain safe*". I am satisfied that this finding is entirely unexplained, and that no evidential basis is offered by the Judge for it within the decision. The parties were further agreed that the decision contains no reference to any of the relevant jurisprudence concerning Afghanistan. For my own part I am satisfied that not only is there no express reference to any of the country guidance, but the decision cannot be fairly read as demonstrating that the Judge had any of the relevant guidance in mind, or, that he rehearsed adequately within the decision any of the salient issues.

7. Although Mr Selway was not prepared to concede any of the criticisms of the decision advanced by the Respondent it is in my judgement plain that this is a decision that is unsafe. I am not satisfied that its content demonstrates that either of the parties enjoyed a fair hearing of the appeal.

8. Thus the decision must be set aside and remade. 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 parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required 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 13 November 2014. To that end I remit the appeal for a fresh hearing by a judge other than Judge Heatherington at the North Shields Hearing Centre, with a Dari interpreter booked.

9. As directed at the hearing, the Appellant shall file any further evidence to be relied upon by 5pm on 3 April 2018. The remitted hearing shall be listed on the first available date after 10 April 2018.

Notice of decision

10. The decision promulgated on 4 July 2017 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 for rehearing de novo with the directions set out above.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 14 March 2018

Deputy Upper Tribunal Judge J M Holmes