



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

Appeal Number: PA/02001/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 1 March 2019**

**Decision & Reasons Promulgated  
On 6 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES**

**Between**

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

Appellant

**and**

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

Respondent

**Representation:**

For the Appellants: Ms Lieu, Solicitor, as agent for Immigration Advice Centre Ltd

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

The Appellant, a citizen of Iran, entered the UK illegally and made a protection claim which was refused on 26 January 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Saffer, in a decision promulgated on 7 September 2018.

The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Nightingale on 2 October 2018 on the ground that it was arguable the Judge had erred in his approach to the corroborative evidence he

relied upon. The Respondent did not reply to that grant with a Rule 24 response.

As the Judge records in his decision, the Appellant had provided a letter in support of his appeal which was said to be from the Komala party. The Respondent argued that no weight could be given to it, because it was not an original, and since that contention is repeated by the Judge, without comment, in his decision [19] it is now argued on behalf of the Appellant that he must have accepted it and placed weight upon it. If he did so, then it is agreed before me that the Judge was in error, because the original letter was supplied by email, from what appears to be the Komala Party directly to his solicitor.

There is also a further argument relating to the approach taken to this letter. The Judge found that there was an inconsistency between the Appellant's evidence, and the content of the letter; not just as to his date of birth, but also as to whether he was a member of the Komala Party. The Appellant has used a number of different dates of birth in his dealings with immigration authorities, both as he travelled across Europe, and once in the UK. Again it is agreed before me that to simply decline to place weight upon the letter on that ground alone, on the basis it might refer to someone else, was an error. It is also agreed that there was in fact no discrepancy between the wording of the letter, and the Appellant's evidence, over whether he was ever formally admitted to membership of the Komala party.

Since the presenting officer chose not to cross-examine the Appellant at the hearing, it is also agreed before me that the Judge's approach to the Appellant's evidence disclosed a further error. The Appellant had confirmed in evidence in chief that what he had said in his witness statement was true. His evidence was not then challenged.

In consequence, by consent, the appeal is remitted for hearing afresh. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, 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 First tier Tribunal Judge Saffer, at the North Shields Hearing Centre. A Kurdish Sorani interpreter is required. The parties accept they have already filed the evidence they wish to place before the Tribunal. Accordingly the remitted appeal is suitable for the short warned list. The parties should expect the appeal to called on for hearing at short notice.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, 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  
Deputy Upper Tribunal Judge J M Holmes

Date 1 March 2019

