



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

Case No: UI-2023-004541

First-tier Tribunal Nos:  
PA/51609/2022  
IA/04327/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 24 October 2024**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

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

Appellant

**and**

**BH**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms Simbi, Senior Home Office Presenting Officer

For the Respondent: Litigant in Person (assisted by Tribunal's interpreter, Mr Ali)

**Heard at Birmingham Civil Justice Centre on 14 October 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. This is my oral decision which I delivered at the hearing today.

### **Introduction**

2. The Secretary of State brings this appeal, but for ease in following this decision, I shall continue to refer to the Secretary of State as the Respondent, and I shall refer to the original Appellant as the Claimant.
3. An anonymity direction applies so this case will be known as BH against the Secretary of State.

### **Permission to Appeal**

4. By way of a decision dated 22 November 2022 First-tier Tribunal Judge Andrew had allowed the Claimant's appeal based on humanitarian protection and Article 3 grounds.
5. The Secretary of State had sought permission to appeal against Judge Andrew's decision. First-tier Tribunal Judge Chinweze granted permission to appeal on 8 January 2023.
6. This matter has been listed for an error of law hearing today and this is my decision.

### **The Hearing Before Me**

7. I dealt earlier this morning with an application for an adjournment by the Claimant. I provided an extempore ruling setting out why I was refusing the application for an adjournment. I shall not go over those reasons in full but in summary, I had said:
  - (1) That it would not further the overriding objective to grant an adjournment;
  - (2) There was no end in sight in terms of the application for an adjournment because the Claimant was not at all clear as to when, if ever, he might be able to get solicitors to assist him. This case has been listed for some time with sufficient notice of the hearing date; and
  - (3) In any event that the matter could proceed fairly. I would be able to do so with the assistance of the Tribunal's interpreter noting the narrow issues to be dealt with today and there would be no oral evidence.

### **Secretary of State's Grounds of Appeal**

8. The Secretary of State's grounds of appeal contended in summary as follows: That Judge Andrew had materially erred in law in the following respects. Firstly, that there had been a material misdirection in law because the Judge had failed to adhere to the principles outlined in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka\** [2002] UKIAT 00702. Secondly, Judge Bristow's earlier decision of 9 January 2022 referring to the Claimant having lost contact with his family was the starting point for Judge Andrew. Thirdly, Judge Andrew materially erred in departing from Judge Bristow's findings without any clear evidential basis for doing so. Fourthly, Judge Andrew failed to provide any adequate reasons as to why there was a departure from Judge Bristow's decision in relation to the Claimant having lost contact with his family.
9. At the hearing before me today Ms Simbi on behalf of the Secretary of State said in summary that she relied on the grounds of appeal, and she amplified those grounds by reference to the Judge's decision.
10. I invited the Claimant to reply to Ms Simbi's submissions. He told me that he has been here in the UK for seventeen years and waiting for a decision. He said the discrepancies in the dates were not his mistake, they were the mistake of an interpreter. Judge Andrew had decided it was not possible for him to get an ID card from his own country. Judge Andrew had decided the case based on human rights and the law. The Claimant also said that he suffers with depression and anxiety. He told me that he has brought his medication with him to court today. He said that he has lived in this country for a long time. He has adapted to life in the UK, and he will have a lot of difficulties if he ever goes back to his home country. He has not been there for many years.
11. Ms Simbi in reply said that the length of time, in effect, did not assist the Claimant. She said the medical conditions did not engage Article 3 ECHR.

### **Analysis and Consideration**

12. I consider the matter as follows. Firstly, I consider paragraphs 14 to 16 of Judge Andrew's decision. The Judge had dismissed the appeal on asylum grounds. There has been no cross-appeal in respect of the dismissal of the appeal on asylum grounds. Therefore, the Claimant's case remains dismissed in respect of the asylum grounds in any event.
13. I go on to consider the Judge's decision to allow the appeal on humanitarian protection and Article 3 grounds. In my judgment the Secretary of State is correct that the Judge materially erred in law in going behind Judge Bristow's decision. In my judgment paragraphs 20 to 23 of Judge Andrew's decision provide an insufficient basis for not using Judge Bristow's decision as a starting point. This is identified in the Secretary of State's grounds of appeal. Namely,

- (1) The Judge did not correctly adhere to the principles set out in *Devaseelan*.
  - (2) Judge Bristow's decision of 9 January 2020 was the starting point in respect of the Claimant lacking credibility in relation to having lost contact with his family.
  - (3) The Claimant had provided inconsistent evidence about when he had lost contact with his family.
  - (4) There are inadequate reasons as to why there was a departure from Judge Bristow's decision.
14. I remind myself of the Court of Appeal's decision in *Volpi v Volpi* [2022] EWCA Civ 464 that I must have high regard to the expert First-tier Tribunal Judge's decision and that I should hesitate before interfering with an expert Tribunal's decision.
  15. In my judgment in this appeal though the errors of law of Judge Andrew are material and significant. In my judgment, Judge Andrew's decision too readily went beyond the 'starting point' findings of Judge Bristow and the inconsistent evidence about when the Claimant lost contact with his family shows manifest errors. There is no or no adequate reasoning as to why the previous findings were departed from. The fact that the Claimant states that the errors in the dates were those of the interpreter does not save the Judge's decision.
  16. In the circumstances I set aside the decision of the First-tier Tribunal which had allowed the appeal on humanitarian protection grounds and Article 3 ECHR.
  17. I apply *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC). I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and in considering paragraphs 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal re-make the decision. I also do so on the basis of fairness because the Claimant is without legal representation today.
  18. For the avoidance of doubt, the decision of Judge Andrew is set aside only whereby it had allowed the appeal on humanitarian protection and Article 3 grounds. Judge Andrew's decision remains in respect of the dismissal of the asylum claim. Paragraphs 14 to 16 of the Judge Andrew's findings are retained findings. That includes in respect of the Refugee Sur Place matters.

19. Therefore, at the hearing remitted to the First-tier Tribunal, the issues to be dealt with will be humanitarian protection and Article 3 ECHR. The First-tier Tribunal shall provide further directions.

### **Notice of Decision**

The decision of First-tier Tribunal Judge Andrew contains a material error of law.

That part of the Judge's decision which had allowed the Claimant's appeal on humanitarian protection and Article 3 grounds is set aside.

That part of the decision Judge's decision which had dismissed the Claimant's appeal on asylum grounds stands and therefore the asylum claim remains dismissed.

Paragraphs 14 to 16 of the Judge's decision are retained findings.

**Abid Mahmood**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**14 October 2024**