



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/03995/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 10 April 2018**

**Decisions & Reasons Promulgated
On 16 April 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer
For the Respondent: Ms M Butler, Counsel, instructed by Duncan Lewis
Solicitors

DECISION

1. In a decision promulgated on 23 February 2018 the Upper Tribunal identified material legal errors in the decision of Judge of the First-tier Tribunal Cockrill, promulgated on 21 February 2017, allowing the appeal of AK against the appellant's refusal to grant him leave to remain, dated 28 March 2014, which was maintained in a supplementary decision dated 30 January 2015 and a further supplementary decision dated 18 December 2015.
2. The principal issue before the First-tier Tribunal was whether the appellant was entitled to exclude the respondent from the protection of the 1951 Refugee Convention on the basis of his alleged involvement in a militia organisation that committed war crimes during the Rwandan genocide. The judge found that the respondent was not excluded from the Refugee Convention but dismissed his appeal on asylum grounds. The judge however allowed the appeal on human rights grounds both under the immigration rules and outside the immigration rules with

respect to article 8. The judge's conclusion that the respondent was not complicit in Crimes Against Humanity or other war crimes was clearly a material element in his article 8 assessment.

3. The Upper Tribunal found that the judge failed to consider the potential relevance of the lies made by the respondent when accepting the respondent's account of his limited involvement with the militia organisation and failed to adequately consider the 'negative pull' of those lies. The Upper Tribunal additionally found that the judge failed to assess other material aspects of the respondent's account or issues raised by the appellant in her decisions, and that the judge failed to engage with or adequately analyse the background evidence relied on by the appellant.
4. After the Upper Tribunal promulgated its decision a Case Management Review (CMR) was listed for 10 April 2018. At the CMR the respondent's represented submitted that the matter should be remitted back to the First-tier Tribunal in light of the nature of the legal errors identified, which infected the whole of the judge's factual findings. Ms Butler indicated that there was a significant body of further evidence that would need to be considered, including witnesses to the respondent's activities between 1990 and 1992, and a further expert country report. Mr Nath, representing the appellant, submitted that the Upper Tribunal was best placed to deal with the remade decision given the complexity of the issues involved.
5. Having considered the submissions I consider it appropriate, pursuant to s.12 (2) (b) (i) of the Tribunals, Courts and Enforcement Act 2007, and having regard to the Part 3 of the Practice Direction for the Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal, to remit the case to the First-tier Tribunal to be reconsidered at a de novo hearing. The judge's error of law undermined his assessment of the respondent's credibility and the basis upon which the judge made his factual findings. There is a need for a full rehearing at which significant further evidence will be adduced by the respondent, including evidence from new witnesses. The First-tier Tribunal has the expertise to fully engage with the issues raised in this appeal.
6. The case is therefore remitted to the First-tier Tribunal for a fresh hearing, before a judge other than judge of the First-tier Tribunal Cockrill.



UPPER TRIBUNAL JUDGE BLUM
10 April 2018