



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

Appeal Number: PA/04310/2018

**THE IMMIGRATION ACTS**

**Heard at Cardiff  
On 26 April 2019**

**Decision & Reasons Promulgated  
On 14 August 2019**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**PESHAWA [M]**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Alban, of Fountain Solicitors.

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. The appellant, who claims to be a national of Iran born in 2000, although the judge thought he was in his mid to late twenties, appealed to the First-tier Tribunal against the decision of the respondent refusing his protection claims. Judge Suffield-Thompson dismissed his appeal. He now appeals, with permission, to this Tribunal.
2. The grounds of appeal assert that the judge failed to take into account relevant evidence, and misunderstood or undervalued some of the evidence that she did consider. A Rule 24 response, filed on behalf of the respondent, takes no issue with the grounds of appeal, although indicating

that, in the circumstances, the Secretary of State does not accept that any findings of fact made in the appellant's favour could survive.

3. In these circumstances I wrote to the parties suggesting that that would be remitted to the First-tier Tribunal for a fresh hearing. That proposal was resisted by Ms Alban on behalf of the appellant, who proposed instead that the case be heard and determined in the Upper Tribunal in order to make findings solely on the risk on return:

“... preserving the finding of Judge Suffield-Thompson with regard to the Appellants nationality and the fact that he is a victim of torture by the Iranian authorities as these findings are not under challenge.”

4. It is difficult to see how that submission could properly be made. There can be no justification for supposing that the judge erred when making findings against the appellant but that her findings in favour of the appellant are sound. Further, it is difficult to see how the findings in question could be “under challenge”: they were not challenged by the appellant, it is true; but the respondent, who had succeeded before the First-tier Tribunal, had no need to challenge them at this stage.
5. Ms Alban went on to say that:

“It is submitted that the Appellants is venerable witness and that expecting the Appellant to give evidence under cross examination for the second time is likely to be injurious to the Appellants wellbeing.” [sic].
6. However, whether or not the appellant is a vulnerable witness and, if so, to what extent, is a matter of dispute. In particular, as we have already mentioned, the judge found that he was not telling the truth about his age. That, we note, is not a finding challenged in the appellant's grounds of appeal.
7. Be that as it may, it appears to us clear that the Secretary of State is right in not opposing the grounds based on the judge's process for reaching her determination. In these circumstances it would not be sensible or rational to attempt to preserve any of her findings.
8. The matter needs to be heard again anew, and given the extent of the factual findings that will need to be made, we have concluded that this appeal is suitable for remittal. We find that Judge Suffield-Thompson erred in law. We **set aside** her determination. We **direct** that this appeal be reheard in the First-tier Tribunal by a different judge.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 5 August 2019