



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

Appeal Number: PA/09262/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 9th April 2019**

**Decision & Reasons Promulgated
On 10 April 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**BS
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs C Johnrose, instructed by Broudie Jackson and Canter
Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as BS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. For reasons set out in a decision dated 12 July 2018, the respondent refused BS' claim for protection and his human rights claim. His appeal against the refusal of both claims came before the First-tier Tribunal on 7th September 2018 and by a decision promulgated on 19 October 2018, First-tier Tribunal Juss dismissed his appeal.
2. The appellant sought and was granted permission, by First-tier Tribunal Judge Saffer, to appeal on the grounds that it was arguable the judge had failed to have regard to or make findings on the relevance of or weight to be attached to an article which is allegedly independent corroboration of his account of his detention by the Iranian authorities. Judge Saffer also granted permission to pursue a ground of appeal that alleged that Judge Juss had not taken full notes but stated that this would have to be supported by a full witness statement from the appellant's representative.
3. Although the appellant's solicitors submitted what appear to be notes taken by his representative at the hearing before the First-tier Tribunal (Ms Johnrose) there was no witness statement from her. I also note that she appeared before me and, clearly, she cannot be both a representative and a witness. In the event, this matter was not pursued, it being clear that there was a clear error of law by the First-tier Tribunal judge and therefore the decision had to be set aside to be remade.
4. The article in question, referred to in the grant of permission was, it was acknowledged by Mr Tan, a piece of evidence that was of some significance to the appellant's claim. Mr Tan submitted that although it could be argued that consideration of that article would not have resulted in a different outcome for the appellant, it was a piece of evidence that ought to have been considered and a finding made as to its weight and relevance.
5. Although a judge is not required to set out each and every piece of evidence that is before him/her and is not required to explain in relation to each piece of evidence why s/he has reached the conclusion s/he has in relation to weight and relevance, this particular piece of evidence could have had some material effect on the outcome of the appeal. I am satisfied that in this case, the failure by the First-tier Tribunal judge to address the evidence and its materiality is an error of law such that the decision is set aside to be re-made.
6. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. In this appeal, all the findings are set aside, and the facts are disputed or unclear. I conclude that the decision should be remitted to the First-tier Tribunal to be re-determined.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

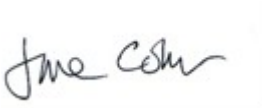
I set aside the decision and remit the appeal to the First-tier Tribunal to be re-heard, no findings preserved.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make an order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 9th April 2019

A handwritten signature in black ink, appearing to read 'Jane Coker', is enclosed within a thin black rectangular border.

Upper Tribunal Judge Coker