



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

Appeal Number: RP/00031/2018

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons Promulgated

On 10th May 2019

On 14th May 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

SAJAD [H]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Radford, instructed by Turpin & Miller (Oxford) Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. For reasons set out in a decision by First-tier Tribunal judge E.E.M.Smith promulgated on 18th January 2019, she dismissed the appellant's appeal against a decision of the respondent refusing his protection and human rights claim. Permission to appeal the decision was given by Upper Tribunal Judge Gill on 8th April 2019 on the grounds that it was arguable the First-tier Tribunal judge failed to consider the appellant's humanitarian protection grounds and had failed to take into account material matters.

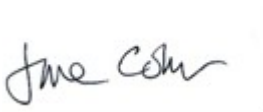
2. In his Rule 24 respondent the respondent sought to 'cross-appeal' on what he says was a failure by the First-tier Tribunal judge to engage with the detailed reasons in the respondent's decision, in particular that the appellant as no longer a refugee.
3. Both parties agreed, albeit for different reasons, that the First-tier Tribunal judge had failed to engage fully with the issues under appeal and the decision could not stand. The judge has erred in law in her findings of fact, failing to make findings of fact and failing to give reasons for findings of fact made.
4. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
5. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First-tier with directions or remake it for ourselves. Where the facts are disputed or unclear, as here, I conclude that the decision should be remitted to the First-tier Tribunal to determine the appeal.

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 be heard by the First-tier Tribunal judge, no findings preserved.

Date 10th May 2019



Upper Tribunal Judge Coker