



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

Appeal Number: PA/04547/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 January 2020**

**Decision & Reasons Promulgated  
On 04 February 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'HH'  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.*

**Representation:**

For the appellant: Mr S Harding, Counsel, instructed by J McCarthy Solicitors  
For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## **Introduction**

1. These are a written record of oral reasons for my decision given at the hearing.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Verghis (the 'FtT'), promulgated on 24 October 2019, by which she dismissed his appeal against the respondent's refusal of his most recent protection and human rights claims in a decision of 16 April 2019.
3. In essence, the appellant's claims involved the following issues: whether he had fled Afghanistan because of adverse treatment by the Taliban; whether he would be at general risk if he were removed to Kabul; and whether his rights under article 3 would risk being breached because of his mental health issues. The core points taken against the appellant by the respondent related to the findings of a previous First-tier Tribunal determination in 2004 that the appellant had not established that he had been living in Afghanistan in the 8 to 10 years prior to leaving in 2003, as he claimed, but had in fact been living in Pakistan; the option of internal relocation to Kabul, as per the authority of AS (Safety of Kabul) Afghanistan CG [2018] UKUT 00118 (IAC), as well as other country evidence, including a Country Policy and Information Note ('CPIN') dated April 2018. The respondent accepted that the appellant suffered from moderate anxiety, depression and PTSD, but that treatment was available for these conditions in Afghanistan.

## **The FtT's decision**

4. The FtT was not impressed by various aspects of the evidence, finding there to be inconsistencies in the appellant's original account of travelling to and from Pakistan and his family living there, as opposed to his current evidence that they had always lived in Afghanistan. She reminded herself of the impact of being a vulnerable witness, but did not accept such an inconsistency, going to the core of the appellant's claim, as explicable on that basis. The FtT further rejected the witness evidence of a number of the appellant's supporters, who had testified as to his presence in Afghanistan. She was critical of the weight she could attach to their evidence, given, at least for one witness, the brevity of his evidence; she attached limited weight to written threats to the appellant from the Taliban, given the ease with which false documents could be obtained and lack of explanation for how these documents had been obtained. She did not accept the risk to the appellant in relocating to Kabul in light of the case of AS (Afghanistan); and the medical prognosis from those treating the appellant was good.
5. Having considered the evidence as a whole, the FtT found dismissed the appellant's claims on protection and human rights grounds.

## **The grounds of appeal and grant of permission**

6. The appellant lodged grounds of appeal which are essentially that the FtT had erred in relying on AS, in the light of the criticisms of that decision by the Court of Appeal; had erred in attaching limited weight to witnesses who had testified on behalf of the appellant merely because of the brevity of their evidence or because it potentially conflicted with the appellant's evidence; and had not assessed the documentary evidence in the round when assessing the appellant's credibility.
7. First-tier Tribunal Judge O'Brien granted permission on 5 December 2019. He regarded it as arguable that the FtT had erred in her assessment of witnesses' credibility on the basis of their brevity; and in following AS (Afghanistan). The grant of permission was not limited in its scope.

### **The hearing before me**

8. Mr Lindsay expressly conceded that the FtT had erred in law in relying on AS (Afghanistan) in relation to the viability of internal relocation to Kabul; and had further erred in her assessment of the risks to the appellant where he had lived (with the home location remaining in dispute), accepting that witness evidence could not be dismissed merely because of its brevity. On that basis, both representatives agreed that the errors of law were material, such that the FtT's decision is unsafe and cannot stand.

### **Decision on error of law**

9. In light of Mr Lindsay's concession, there are material errors here and I must set the FtT's decision aside.

### **Disposal**

10. With reference to paragraph 7.2 of the Practice Direction and the necessary breadth of the fact-finding, both representatives agreed that this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing.
11. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed and there is no preservation of any findings of fact.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal for a complete rehearing.**

### **Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Verghis.**

The anonymity directions continue to apply.

Signed J. Keith

Date: 30 January 2020

Upper Tribunal Judge Keith