



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10647/2018**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at** Manchester  
**On** 27 January 2020

**Decision & Reasons  
Promulgated  
On 4 February 2020**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**A M  
(ANONYMITY DIRECION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Greer (counsel) instructed by Ison Harrison solicitors

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

**DECISION AND REASONS**

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, because this is a protection claim.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Foudy promulgated on 17 September 2019, which dismissed the Appellant's appeal on all grounds.

### Background

3. The Appellant was born on 08/03/1985 and is a national of Azerbaijan. On 22/08/2018 the Secretary of State refused the Appellant's protection claim.

### The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Foudy ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 5 November 2019 First-tier Tribunal Judge Holmes granted permission to appeal stating inter alia

"As set out in ground 1, it is arguable that the Judge failed to consider the weight that could be given to the corroboration relied upon by the appellant. It is arguably unclear why the same individual cannot work as an investigative journalist and as a sports reporter/commentator at the same time in Azerbaijan - there are many examples of individuals holding such a role in the UK; ground 2, grounds 3 and 4 also disclose arguable errors in the approach taken to credibility in the course of this short decision. The appellant's case was that he suffered head injuries in the mistreatment he received; it is not clear why they do not amount to very harsh treatment, or, indeed, whether the Judge's view of the evidence that no credible claim to activism could be made by the individual who had not been badly mistreated. Ground 5 appears to add nothing to the others, the Judge rejected the entirety of the appellant's account as not credible, without distinction."

### The Hearing

5. As soon as this appeal called, Mr Tan told me that he could no longer oppose the appeal. He told me that the decision contains material errors of law because no consideration has been given to the documentary evidence relied on by the appellant. He told me that the Judge's findings of fact are inadequate.

6. Mr Greer asked me to set the decision aside. On joint motion I was asked to remit this case to the First-tier Tribunal because a further fact-finding exercise is necessary.

### Analysis

7. The Judges findings of fact are limited to [18] of the decision. There the Judge summarily deals with the evidence, but offers no proper analysis of the evidence and no explanation for giving some weight to certain matters and little weight to other matters. There is no discussion of the documentary evidence produced. The Judge gives some reasons for

rejecting certain aspects of the appellant's account, but those reasons are too brief and do not adequately explain the conclusions that the Judge reaches.

8. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

9. The decision is tainted by material errors of law. I set the decision aside. None of the findings of fact can stand. I cannot substitute my own decision because a further fact-finding exercise is necessary.

#### Remittal to First-Tier Tribunal

10. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

11. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

12. I remit the matter to the First-tier Tribunal sitting at Manchester to be heard before any First-tier Judge other than Judge Foudy.

#### **Decision**

**13. The error of**



**is tainted by a material**

**14. I set aside the judge's decision promulgated on 17 September 2019. The appeal is remitted to the First-tier Tribunal to be determined afresh.**

Signed  
January 2020

Date 31

Deputy Upper Tribunal Judge Doyle