



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/10185/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 1<sup>st</sup> March 2016**

**Decision & Reasons  
Promulgated**

**On 4<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**I W**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr K Smyth, Solicitor at Kesar and Co Solicitors

For the Respondent: Ms A Fijiwala, Senior Presenting Officer

**DECISION AND REASONS**

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Coker dated 23<sup>rd</sup> November 2015. That grant of permission itself was an enhancement of the permission granted by the First-tier Tribunal itself in respect of other grounds of appeal. Therefore the Appellant had been granted permission to appeal on all grounds. The appeal relates to a decision by First-tier Tribunal Judge O'Garro promulgated on 7 October 2015. The Judge dismissed the appeal on all grounds including on protection grounds.
2. The Appellant's claim is in respect of a risk on return from the Taliban or from a local businessman there called H. The grounds of appeal can be summarised as follows:

- (1) The conclusions on credibility were unsupported by earlier findings. That is because in the earlier part of her decision the Judge had accepted that the Appellant's brother was killed in a suicide attack was a credible fact whereas the Judge later said that the Appellant's claim was an entire fabrication;
  - (2) The incorrect standard of proof was applied. When assessing the Appellant's age the civil standard was applied instead of the lower standard of proof applicable in asylum claims;
  - (3) There was an incorrect statement in respect of the burden of proof. The Judge should have asked herself whether there was a reasonable degree of likelihood that the Appellant will not be able to reunite with his family in Afghanistan;
  - (4) There was an inadequate consideration of entitlement to humanitarian protection. The Judge did not make adequate findings and had devoted only a single sentence of her judgment to this.
3. At the hearing before me the parties had indicated that they had reached a joint position. Although not within the Tribunal's file I was told that there was a subsequent Rule 24 Reply from the Respondent dated 22 December 2015. In that Reply the Respondent had said that the Appellant's application for permission to appeal was not being opposed.
  4. Ms Fijiwala confirmed that her submission was that the appeal be allowed. She submitted further that the matter be remitted to the First-tier Tribunal for a rehearing.
  5. Mr Smyth said that he agreed that the matter ought to be remitted to the First-tier Tribunal for rehearing.
  6. Accordingly it is clear that the Judge's decision involved the making of a material error of law. That decision is set aside and there shall be a rehearing at the First-tier Tribunal. None of the findings made by the Judge shall remain.

### **Notice of Decision**

The decision of the First tier Tribunal Judge involved the making of a material error of law and is set aside.

There shall be a rehearing at the First-tier Tribunal

An anonymity direction is made.

Signed

Date: 1<sup>st</sup> March 2016

Deputy Upper Tribunal Judge Mahmood