



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

Appeal Number: IA/46479/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21st April 2016**

**Determination Promulgated
On 25th April 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

AHMED KADI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, instructed by Greater London Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT judge M A Khan, in a decision promulgated on 28th August 2015, dismissed Mr Kadi's appeal against a decision dated 12th September 2014 refusing to vary his leave to remain on Article 8 human rights grounds. Upper Tribunal Judge Grubb granted permission to appeal on the grounds that it was arguable that the judge had failed to take into account the report

of Dr Halari a consultant Clinical Psychologist in respect of the family circumstances including the appellant's elderly wife. Before the FtT judge it was accepted that Mr Kadi could not meet the requirements of the Immigration Rules but it was arguable that the report could have impacted on the decision whether there were compelling circumstances such as would justify a grant of leave outside the Immigration Rules.

2. In a Rule 24 response, confirmed and relied upon by Mr Tarlow, the respondent asserts that even if the judge had taken account of the report, which it is submitted he had in the overall consideration, it would have made no difference to the outcome given the credibility findings made. Whilst it is by no means certain that had that report been taken into account by the judge the appeal would have been allowed, the apparent total failure by the judge to have any regard whatsoever to the report displays a failure to take account of the evidence before him. There is no mention whatsoever of the report by Dr Halari; in Paragraph 18 of the decision the judge refers to the evidence he has taken into account and the report is not mentioned.
3. It cannot be said that had the judge taken account of the report, the credibility findings would have been the same. I am satisfied that the FtT judge erred in law in failing to take account of and consider relevant evidence in reaching his decision and I set aside the decision to be remade.
4. It may be that had the report been considered, there would not have been adverse credibility findings to the extent made. That in itself may not result in the appeal being allowed but it is appropriate in the scheme of the Tribunals Court and Enforcement Act 2007 which does not assign the function of primary fact finding to the Upper Tribunal, that this appeal is remitted to the FtT for a fresh hearing.

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 case to the First tier Tribunal for a fresh hearing, no findings preserved.

Date 21st April 2016



Upper Tribunal Judge Coker