



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00176/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 4 August 2017

Promulgated

On 29 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

SS

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I. Palmer, Counsel instructed by Barnes Harrild & Dyer

For the Respondent: Mr P. Singh, Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan born on 19 July 2003 whose protection claim was refused. His ensuing appeal to the First-tier Tribunal

("FtT") was heard by Judge Hanes. In a decision promulgated on 27 February 2017 the appeal was dismissed. The appellant is now appealing against that decision.

2. It was common ground before me that the decision of the FtT contained a material error of law and that the appeal should be remitted to the FtT. As the parties are in agreement (for reasons with which I agree) I will give only brief reasons.
3. In summary, the appellant's claim is that he was born and lived his whole life in Iran before leaving with his mother and three siblings for Europe. He claims to have become separated from his family on route to the UK and to have arrived in the UK alone in May 2016. He claims that he faces a risk of persecution in Afghanistan because of his (deceased) father's prior military service. He also claims to not know the whereabouts of his family in Afghanistan and that if returned he would be alone and unsupported.
4. One of the findings of the FtT was that the appellant would be cared for by his family in Afghanistan. At paragraph 22 the judge stated:

"I am in no doubt that he would be cared for by his family if required to return to Afghanistan".
5. The FtT reached this conclusion after finding that the appellant had not been truthful about his separation from his family (paragraph 19) and was not credible in claiming to not know from where his family originated in Afghanistan before moving to Iran (paragraph 21). The FtT also found that the appellant's family would have spent substantial money to arrange for him to come to the UK with an agent (paragraph 19).
6. Mr Singh, on behalf of the Secretary of State, agreed with Mr Palmer that the judge's finding that the appellant has family in Afghanistan who would be able to support him lacked any evidential basis. He conceded that the decision contained a material error of law as the judge had made inferences without explaining them properly. Noting that it was accepted by the Secretary of State that the appellant had been raised by his mother and with his siblings in Iran, Mr Singh accepted that it could not be inferred from the finding that the appellant's family paid for an agent and arranged for him to travel to the UK, or that the appellant had not been truthful about how he became separated from his family when travelling to the UK, that there would be family support available to him in Afghanistan.
7. I agree with Mr Singh. For the reasons he gave, as summarised in paragraph 6 above, I find that the decision of the FtT contains a material error of law such that it will need to be set aside.
8. Both parties submitted that the appeal should be remitted to the FtT. Given the extent of further fact finding necessary to remake the decision, I agree and accordingly the appeal will be remitted to the FtT to be heard afresh before a different judge.

Decision

9. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside in its entirety and the appeal heard afresh.
10. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First-tier Tribunal Judge Hanes.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 25 August 2017