



Upper Tribunal

Immigration and Asylum Chamber

Appeal Number: PA/03858/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 April 2018

Decision & Reasons Promulgated  
On 20 June 2018

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

M S K  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr K Smyth, Solicitor Advocate, Kesar & Co solicitors  
For the Respondent: Ms Z Ahmed, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Background and conclusions**

1. This appeal comes before me following the grant of permission to the appellant by First-tier Tribunal Judge Hollingworth on 22 September 2017 in respect of the determination of First-tier Tribunal Judge Brewer who dismissed the appeal by way of a determination dated 12 June 2017.
2. The appellant is an Afghan national and it is accepted that he was born on 19 January 2004 and was aged 13 at the date of his hearing. He has been granted

discretionary leave but challenges the decision of the respondent dated 7 April 2017 to refuse his claim for protection.

3. Several serious criticisms are made against the judge; mostly these pertain to his conduct at the hearing and towards the appellant.
4. When the matter first came before the Upper Tribunal, it was considered appropriate to refer the complaints to Judge Brewer and to invite him for his comments. This was done but the judge has failed to respond. The matter was therefore relisted and now comes before me.
5. The appellant was present at the hearing. I notified the parties of the steps that had been taken to obtain the judge's comments and the absence of a response. Ms Ahmed wished to read out the Presenting Officer's note on file to the court before matters proceeded further and I permitted her to do so. The record stated that the judge's questioning of the appellant was excessive and inappropriate. Given those observations, she indicated that she could not resist the appellant's application for a remittal. Mr Smyth confirmed he was content with that position.
6. I am grateful to both sides for their assistance. Fortunately, such a scenario is rare but that does not excuse the judge's conduct nor is it any consolation to the appellant who was, apparently, reduced to tears by the aggressive questioning. In such circumstances, and where the judge in question has not taken the opportunity to put forward his side, I have no option but to set aside the determination in its entirety and to remit the appeal to the First-tier Tribunal for a fresh hearing before another judge of that Tribunal. No findings are preserved. Given the appellant's young age and vulnerability, it is hoped that the delay in scheduling a hearing will be minimal.

### **Decision**

7. The First-tier Tribunal Judge made errors of law such that his decision must be set aside and re-made by another judge of that Tribunal at a date to be arranged.

### **Directions**

8. No later than five working days prior to the resumed hearing, the appellant shall file and serve a skeleton argument and full statement unless this has already been done.
9. Any other documentary evidence relied on and which has not already been submitted must also be filed within the same time frame.

10. A hearing time of 2 hours shall be allocated as agreed by the parties and a Pushtu interpreter shall be arranged.

**Anonymity**

11. I continue the anonymity order made by the First-tier Tribunal.

**Signed:**

A handwritten signature in black ink, appearing to read 'R-Kekić', followed by a period.

**Dr R Kekić  
Judge of the Upper Tribunal  
23 April 2018**