



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/09090/2017

THE IMMIGRATION ACTS

Heard at Liverpool CJC

Decision Promulgated

On 5 July 2018

On 10 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MOHAMMAD BAHMANI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Wood of IAS

For the Respondent:

Mrs Obomi Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant.

Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 6 September 1996 and is a national of Iran.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hudson promulgated on 23 October 2017 which dismissed the Appellant's appeal against the decision of the Respondent dated 25 August 2017 to dismiss his protection claim.

The Judge's Decision

5. Grounds of appeal were lodged failed to follow the guidance given in MA(Ethiopia) 2003 UKIAT 00103
6. On 3 January 2018 First -tier Tribunal Judge Baker gave permission to appeal
7. Mrs Obomi conceded that the guidance in MA was not followed and the Judge should have transferred the case to another Judge and therefore the decision should be set aside and the case remitted.

Finding on Material Error

8. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
9. The failure of the First-tier Tribunal to follow the guidance in MA that where the Tribunal said that, save where evidence taken is purely formal and not in dispute between the parties, an Adjudicator who has had to adjourn a hearing because of problems with an interpreter after he has started to take evidence should not continue to hear the case even with another interpreter save with the express consent of both parties and then only if he, the Adjudicator, is satisfied that it would be proper to do so. when difficulties arose with the interpreter constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.
10. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th 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 and it was accepted by the Respondent that the case should be remitted as I have found there was an error of law because the Appellant did not have a fair hearing due to issues with the interpreter. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

Decision

12. I set the decision aside and remit the matter back to the First-tier Tribunal sitting at Manchester to be heard a date to be fixed, before me.

13. I made the following directions for the resumed hearing.

- List for 2 hours
- Farsi interpreter nor Masoud Bahramian

Signed

Date 7.7.2018

Deputy Upper Tribunal Judge Birrell