## THE IMMIGRATION ACTS

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| **Decided without a hearing** | **Decision & Reasons Promulgated** |
| **On 13 May 2020** | **On 19 May 2020** |

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**E K**
**(ANONYMITY DIRECTION MADE)**

<u>Appellant</u>

**and**

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

<u>Respondent</u>

**I make an anonymity direction under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in the light of the matters raised in this appeal. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure in breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by the Upper Tribunal or an appropriate Court.**

## DECISION AND REASONS

1.  The appellant claims to be a citizen of Turkey and to be an Alevi Kurd.

2.  The appellant arrived in the United Kingdom on 27 December 2018 and claimed asylum the next day. He claimed he had been detained and ill-

treated by the Turkish authorities and to be at risk from them on return to Turkey.

3.  On 24 April 2019, the Secretary of State rejected his claims for asylum, humanitarian protection and on human rights grounds.  Whilst the Secretary of State accepted the appellant was from Turkey, she otherwise rejected his claim including that he was an Alevi Kurd.

4.  The appellant appealed to the First-tier Tribunal.  Judge CJ Cowx found the appellant's account implausible and dismissed his appeal on all grounds.

5.  The appellant sought, and was granted, permission to appeal by the First-tier Tribunal (Judge Keane) on 3 February 2020.

6.  On 6 April 2020, the Upper Tribunal issued directions (dated 23 March 2020) in the light of the Covid-9 pandemic, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a hearing and inviting submissions on that issue and also the error of law of issue.

7.  On 16 April 2020, the Secretary of State responded accepting that the First-tier Tribunal's decision was inadequately reasoned and inviting the Upper Tribunal to set aside the decision and remit the appeal to the First-tier Tribunal for a *de novo* re-hearing.

8.  On 23 April 2020, the appellant's representative responded to the submissions, not surprisingly having seen the respondent's response, agreeing there was a material error of law and that the First-tier's decision should be set aside and remitted for a *de novo* re-hearing all issues. However, the representative invited the UT to preserve one finding said to be made by the judge at para 7.7, namely that the appellant is Kurdish. The respondent does not accept that can be preserved.

9.  Neither party objected to the UT deciding the error of law without a hearing and accordingly, exercising my discretion, I do so applying rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).

10.  It is conceded that the First-tier Tribunal's decision to dismiss the appeal involved the making of a material error of law.  I agree with that concession for the reasons set out in the Grounds and the respondent's submissions.

11.  It is also accepted, and I agree, that the decision should be set aside and the appeal remitted to the FtT in order to remake the decision.  I do not accept, however, that any findings of the judge should be preserved.  On remittal, a new judge will have to make a credibility finding on all aspects of the appellant's claim, including his ethnicity.  It would be wrong to preserve a single finding which, as with all future findings, must necessarily be bound up in that assessment.  But, in any event, it is far from clear that the judge made a finding in the appellant's favour at para

7.7 where he simply said "he may well be Kurdish as he claims" and that he was prepared to "give him the benefit of the doubt on this point".  The proper course is, in my view, that the First-tier Tribunal on remittal should make its decision on the appeal *de novo* without any preserved findings.

## **Decision**

12. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law.  I set it aside.

13. The appeal is remitted to the First-tier Tribunal (Glasgow Hearing Centre) to be heard *de novo* (without any preserved facts) by a Judge other than Judge Cowx.

Signed

Andrew Grubb

Judge of the Upper Tribunal

13 May 2020

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal.  Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

 3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days  (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6.  The date when the decision is "sent' is that appearing on the covering letter or covering email**