



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

**Appeal Number: PA/05250/2019**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 23<sup>rd</sup> March 2022**

**Decision & Reasons Promulgated  
On the 13<sup>th</sup> April 2022**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON  
DEPUTY UPPER TRIBUNAL JUDGE SKINNER**

**Between**

**[K S]  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**DECISION AND DIRECTIONS**

**Representation**

For the Appellant Ms V Easty, instructed by Duncan Lewis & Co Solicitors  
For the Respondent Mr D Clarke, Senior Home Office Presenting Officer

1. The circumstances of this appeal are set out in the decision and directions of Upper Tribunal Judge Rimington issued on 23<sup>rd</sup> November 2021. The appellant is an Afghan national who attended the previous First-tier Tribunal appeal hearing without his legal representative being present. He was previously described by his representative as a vulnerable witness. The First-tier Tribunal judge declined jurisdiction because he concluded the appellant was out of time to appeal the Secretary of State's decision of 19<sup>th</sup> April 2019 ("the Secretary of State's decision") and there had been no application for an extension. That was disputed by Ms Easty in the hearing before Upper Tribunal Judge Rimington on

23<sup>rd</sup> November 2022 and following the hearing, on 23<sup>rd</sup> November 2021, an extension of time to appeal the Secretary of State's decision was granted.

2. At the hearing before us today, Mr Clarke conceded that there was an error of law in the First-tier Tribunal decision. The First-tier Tribunal judge failed to consider properly the issue of an extension of time to appeal the Secretary of State's decision. We agree. As a result the substance of the appeal was not considered. The Judge erred materially for the reasons identified.
3. At the hearing we were invited by the parties to make an order under rule 39 (1) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) ("the UT Procedure Rules") remitting the matter to the First-tier Tribunal for a de novo hearing. That provision reads:

**39.**—(1) The Upper Tribunal may, at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.

4. We agree that it is appropriate to make such an order in view of the history of this appeal and the agreement of the parties. The First-tier Tribunal decision is set aside owing to a material error of law. The appeal now lies against the Secretary of State's decision dated 19<sup>th</sup> April 2019.
5. During the course of the hearing, Ms Easty advised that the appellant has very recently been given a positive conclusive grounds decision.
6. Mr Clarke agreed to re-serve the Home Office Bundle forthwith. Despite enquiry, he was not aware of any OASys report on file.
7. We drew Ms Easty's attention to the final paragraph of the First-tier Tribunal decision [32] which remarked upon the possible requirement for explanations as to the conduct of this appeal by one Samuel Watkins, the appellant's legal representative. We take this matter no further forward but were assured by Ms Easty that the matter would be raised with Duncan Lewis solicitors.

**8. We therefore make the following directions:**

- (i) We set aside the First-tier Tribunal decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and the matter, by consent, is remitted to the First-tier Tribunal under rule 39 of the UT Procedure Rules for a hearing de novo.
- (ii) The amended grounds of appeal to the First-tier Tribunal dated 19<sup>th</sup> December 2019, as agreed by Ms Easty, are limited to human rights grounds (Article 2, 3 and 8).
- (iii) The Secretary of State should serve her appeal bundle on the appellant's solicitors by 30<sup>th</sup> March 2022 together with any existing OASys report.
- (iv) The appellant should file and serve the pre-sentence report by 30<sup>th</sup> March 2022.

- (v) The appellant should file and serve any further evidence, including any medical report, at least 14 days prior to the substantive hearing in the First-tier Tribunal.
- (vi) Skeleton arguments should be filed at least 7 days prior to the substantive hearing in the First-tier Tribunal
- (vii) A Pasto interpreter should attend the First-tier Tribunal hearing.

Signed Helen Rimington

Date 23<sup>rd</sup> March 2022

Upper Tribunal Judge Rimington