



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02378/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 20<sup>th</sup> March 2014

Determination Promulgated  
On 25<sup>th</sup> March 2014

Before

UPPER TRIBUNAL JUDGE COKER

Between

A V

(Anonymity Direction made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson, Elder Rahimi Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals a decision of the First-tier Tribunal which dismissed an appeal by him on asylum and human rights grounds against a decision to remove him from the UK pursuant to the rejection of his claim for asylum.
2. Permission to appeal was granted in a short decision on the basis that the grounds seeking permission to appeal which, in essence, challenge the viability of the credibility findings of the First-tier Tribunal judge were arguable.
3. Although the determination of the First-tier Tribunal judge is lengthy the judge has failed to take account of all the evidence before her in reaching her findings that the assertions by the appellant that he owned and ran a business and that a human rights lawyer had been involved in his case were not credible.
4. Although the judge refers to many of the elements of the evidence, she reaches findings on the credibility of evidence without taking account of all the

potentially corroborative evidence in reaching those findings; she refers to elements of evidence relating to the business having already made adverse findings.

5. Although the appellant's account of the shop and the lawyer's involvement may not be central to the core of his evidence, it is relevant in terms of the assessment of the overall credibility of his account. The tainted findings as regards these elements of the appellant's account impact adversely on the conclusions drawn.
6. Mr Walker did not strenuously oppose a finding that there were errors of law in the assessment of evidence such that the decision be set aside and remade.
7. I am satisfied that there are errors of law in the determination such that the decision should be set aside to be remade.
8. After some discussion it was agreed that none of the findings could be retained.
9. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
10. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions or for it to be remade by the Upper Tribunal. In the circumstances of this appeal the facts are disputed and none of the findings of the First-tier Tribunal can be retained, I conclude that the decision should be remitted to the First tier judge to determine the appeal.

### **Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I remit the appeal to be heard by the First-tier Tribunal - not First-tier Tribunal Judge C M Phillips or First-tier Tribunal Judge Wellesley Cole

### **Anonymity**

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 20<sup>th</sup> March 2014

Judge of the Upper Tribunal Coker