



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

Appeal Number: IA242942015

THE IMMIGRATION ACTS

Heard at Field House

On 16 June 2017

**Decision and
Promulgated**

On 27 July 2017

Reasons

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**MR FATHY MOHAMMED HASSAN AL BADAWI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The appellant appeared in person

For the Respondent: Mr D Clarke, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal, purporting to dismiss his appeal against the respondent's decision to refuse him refugee protection, humanitarian protection or leave to remain in the United Kingdom on human rights grounds, on the basis that there is no risk to the appellant in Egypt, his country of origin.

2. The applicant had not made an international protection claim. This appeal was a human rights appeal only. The First-tier Tribunal's decision as to risk at [29] is expressed as consideration of the risk to him on return to Kabul, Afghanistan and not to Egypt. That signals a failure to apply anxious scrutiny to the appeal.
3. For the respondent, Mr Clarke argued that the error was not material, as there was no protection or humanitarian protection claim before the First-tier Tribunal, but that is not curative of the anxious scrutiny point. Furthermore, if the Judge considered that she was seised of a protection claim, she was under a duty to deal properly with it and apply anxious scrutiny to the basis of that claim, and in particular, the country to which the applicant would be returned.
4. The decision of the First-tier Tribunal lacks anxious scrutiny and cannot stand: the appeal is therefore allowed and will be remitted to the First-tier Tribunal.
5. The appellant appeared in person today but he tells me that he has new solicitors. I observe, for the record, that it would be advisable on receipt of this decision for his new solicitors to seek to clarify the claim which the appellant wishes to make, and whether it is properly reflected in the grounds of appeal to the First-tier Tribunal. If a protection claim is to be advanced, the applicant will need to make any such application in person; if that has already been done, further submissions will need to be made under paragraph 353 of the Immigration Rules HC395 (as amended).

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.

The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed, to be heard afresh, with no findings of fact or credibility preserved

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Date: 26 July 2017