



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

Appeal Number: PA/01720/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16<sup>th</sup> August 2017**

**Decision & Reasons Promulgated  
On 05<sup>th</sup> October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR A H  
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Wilcox (Counsel), Thompson & Co Solicitors

For the Respondent: Ms N Willock-Briscoe, Home Office Presenting Officer

**DECISION ON ERROR OF LAW AND REMAKING**

1. The appellant is a citizen of Afghanistan. In a decision promulgated on 23<sup>rd</sup> May 2017, First-tier Tribunal Judge McIntosh (“the judge”) allowed his appeal against the respondent’s decision to refuse his protection claim. At the end of her decision, she allowed the appeal on asylum grounds and immediately went on to also allow it on humanitarian protection grounds.
2. The respondent applied for permission to appeal on the basis that the judge made insufficient findings, or provided no adequate reasons for allowing the appeal on asylum grounds. There was no mention in the

grounds of the decision to allow the appeal on humanitarian protection grounds. On 20<sup>th</sup> June 2017, a First-tier Tribunal Judge granted permission to appeal, expressly limited to the decision to allow the appeal on asylum grounds. At the end of the grant of permission there is the following:

“For the avoidance of doubt, permission to appeal against the decision to allow the appeal on humanitarian protection grounds is refused”.

### **Submissions on Error of Law**

3. In response to a question from me, Ms Willock-Briscoe confirmed that the respondent had not sought to challenge the judge’s decision to allow the appeal on humanitarian protection grounds. So far as the asylum grounds were concerned, the decision showed that the judge, while accepting the appellant’s account and finding that his subjective fear of persecution was real, failed to find that his fear was well-founded. The material paragraphs were 41 to 45. There was nothing in them amounting to a relevant finding in this context. The judge also failed to identify an agent of persecution, expressly finding that the appellant would not be targeted on return to Afghanistan and that there was no real risk that the Taliban would seek to locate him.
4. Mr Wilcox said that although there might be some scope for argument on the extent and impact of the findings made by the judge, this would be academic as the decision to allow the appeal on humanitarian protection grounds was not challenged.

### **Conclusion on Error of Law**

5. As Ms Willock-Briscoe submitted, the material findings made by the judge appear at paragraphs 41 to 45 of her decision. She found the appellant to be a credible witness and accepted that he had a subjective fear that he would be pursued by the Taliban on return to Afghanistan. However, she made no findings at all that this fear was well-founded. On the contrary, her findings clearly show her assessment that the appellant would not be targeted or pursued on return. No agent of persecution was identified, other than the Taliban.
6. The decision reveals a further error. It is trite law that if a person succeeds in showing that he or she is a refugee, he or she has no need of humanitarian protection. It is only if a person fails to show a real risk of persecution within the meaning of the Refugee Convention that he or she may need humanitarian protection. As a matter of law, it is not possible for an appeal to succeed on both asylum grounds and humanitarian protection grounds. This is clearly shown by paragraph 339C of the Immigration Rules, which provides that a person will be granted humanitarian protection if the Secretary of State is satisfied that he is in the United Kingdom, does not qualify as a refugee (subparagraph (ii)) and

substantial grounds have been shown for believing that the person concerned, on return, would face a real risk of suffering serious harm.

7. The error of law is material as it concerns the fundamental bases on which international protection is founded. The decision must be set aside and remade.

### **Remaking the Decision**

8. Remaking the decision is a straightforward task. All that is required, in the light of the application for permission to appeal, the precise terms of the grant and the absence of any challenge to the humanitarian protection decision, is to dismiss the appeal on asylum grounds, for the reasons set out above and allow it on humanitarian protection grounds.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside and remade as follows: the appeal is dismissed on asylum grounds; the appeal is allowed on humanitarian protection grounds.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell      4 October 2017

### **ANONYMITY**

In view of the outcome, the appellant's particular circumstances, I continue the anonymity order made by the First-tier Tribunal Judge.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell      4 October      2017

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or is payable and so there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

4 October 2017