



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10195/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision & Reasons**

**On 25<sup>th</sup> August 2017**

**Promulgated**

**On 7<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

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

Appellant

**And**

**MR A.A.**

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Mrs R Hussain, Solicitor

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

**DECISION AND REASONS**

1. These proceedings concern A.A. born 16<sup>th</sup> November 1997. He claims to be a national of Iran but his nationality is disputed.

2. For the sake of clarity throughout this decision I shall refer to A.A. as “the Appellant” and to the Secretary of State for the Home Department as “the Respondent” which reflects their respective positions before the First-tier Tribunal.

## **Background**

3. The Appellant’s claim is that he entered the United Kingdom illegally on 10<sup>th</sup> March 2016 and he claimed asylum the same day. His asylum application was subsequently refused by the Respondent.
4. The Appellant’s asylum claim centres on an assertion that he has a well-founded fear of persecution in Iran because of his imputed political opinion. The Respondent comprehensively disbelieved the Appellant’s account, first that he was a national of Iran, and secondly that he had come to the attention of the authorities in Iran. It was noted that the Appellant when giving his evidence spoke Kurdish Sorani.
5. Following the Respondent’s refusal of his claim, the Appellant appealed to the First-tier Tribunal (Judge Caswell). In a decision promulgated on 16<sup>th</sup> February 2017, the judge made findings upholding the Respondent’s case that the Appellant’s claim was incredible throughout. She made comprehensive findings saying that the Appellant’s account was internally inconsistent, had not been supported by any evidence and in short, he was not a witness of truth.

6. In [16] the judge said the following:

“It follows that the Appellant has not shown that he is an Iranian national, and I find he has fabricated a case for asylum. I find that he does not face any real risk in Iran of persecution, serious harm or death, torture or inhuman or degrading treatment at the hands of the authorities or anyone else on any grounds.”

7. Following paragraph 16 the judge set out a heading:

“Notice of Decision” under which there are the following sentences:

“The appeal is allowed on asylum grounds”

“The appeal is dismissed on humanitarian protection grounds”.

“The appeal is allowed on human rights grounds”.

The decision is then dated 9<sup>th</sup> February 2017. It was promulgated on 16<sup>th</sup> February 2017.

8. Application for permission to appeal that decision was submitted by the Respondent. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson. The relevant parts of the grant of permission states as follows:

“The grounds argue that the judge perversely allowed the Appellant’s appeal on asylum and human rights grounds, or alternatively provided inadequate reasoning in doing so having concluded that the Appellant has ‘... *not shown that he is an Iranian national, and I find he has fabricated a case for asylum ... he does not face any real risk in Iran ...*’

It is arguable that the judge inadvertently allowed the appeal on asylum and human rights grounds bearing in mind her findings and conclusions in the body of her decision. The grounds disclose an arguable error of law, as the judge’s decision presents as perverse in the light of her reasoning”.

9. Permission having been granted, the matter comes before me to decide whether the First-tier Tribunal Judge erred in law, to such an extent that it requires the decision to be set aside and re-made.

### **UT Hearing**

10. Mrs Pettersen appeared for the Respondent and Mrs Hussain appeared for the Appellant. Mrs Pettersen made brief submissions saying that because the judge’s decision is both unclear and perverse, in the light of the findings the judge has made, there is no alternative but to set the decision aside and return it to the First-tier Tribunal for a fresh hearing. Mrs Pettersen accepted that although the judge had, in her submission, rightly found that the Appellant’s claim on humanitarian protection should be dismissed, Mrs Pettersen was not seeking to argue that that part of the decision should stand. She accepted that it was only proper that the full decision be set aside and the matter returned to the First-tier Tribunal. Mrs Hussain, on behalf of the Appellant, accepted that this was the appropriate course. She did not seek to argue that the decision should stand. She acknowledged that the only appropriate course was for the matter to be returned to the First-tier Tribunal for a fresh hearing. She indicated that at the rehearing she would be attending to represent the Appellant.

### **Error of Law**

11. I find I am satisfied that the decision of Judge Caswell contains a material error of law as identified in the Respondent’s grounds seeking permission.
12. It is quite clear from reading the decision that either the judge’s decision is recorded in error or that the findings are perverse, given the final outcome. Whichever of those alternatives is the correct one however is not clear.
13. As matters have gone so far as to come before this Tribunal, I see no alternative but to set aside the decision in its entirety. The decision will have to be re-made. This is in accordance with the Tribunal’s reported decision of **Katsonga [2016] UKUT 228 (IAC)**. The matter will now be remitted to the First-tier Tribunal for a fresh decision to be made.

**Notice of Decision**

The appeal of the Secretary of State is allowed. The decision of the First-tier Tribunal is set aside. The matter is remitted to that Tribunal (not Judge Caswell) for a rehearing and for a fresh decision to be made.

**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 his 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  
September 2017

C E Roberts

Date

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Deputy Upper Tribunal Judge Roberts