



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/01942/2016**

**Appeal Numbers:**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On December 22, 2017**

**Decision & Reasons  
Promulgated  
On January 03, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR HM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Khan, Counsel, instructed by Broudie Jackson and Canter

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I extend the anonymity direction in this matter.
2. The appellant is a citizen of Iran. He entered the United Kingdom on October 8, 2015 and claimed asylum. The respondent refused his application on February 11, 2016 under paragraph 336 HC 395.
3. The appellant appealed that decision on February 25, 2016 and the appeal came before Judge of the First-tier Tribunal McCall (hereinafter called the

Judge) on April 5, 2017. In a decision promulgated on April 21, 2017 the Judge dismissed the appeal on all grounds.

4. The appellant appealed that decision on May 4, 2017 arguing procedural unfairness and unsustainable findings. Permission to appeal was given by Judge of the First-tier Tribunal Hodgkinson on May 16, 2017.
5. The case first came before me on November 3, 2017 and due to the nature of the challenge it was agreed that it was inappropriate for original counsel, Mr Tettey, to argue the case as there was no agreed record of proceedings. The Presenting Officer, Mr Bates, disputed what was being said with regard to procedural unfairness. I therefore gave directions and this led to the case being relisted before me on the above date.
6. At the resumed hearing today I gave permission to Ms Khan to advance an additional ground of appeal namely that the Judge had applied the wrong standard of proof when assessing the evidence. A Rule 15(2A) application had been served on the Tribunal and respondent.
7. At the hearing Mr McVeety confirmed that the FTT Presenting Officer (Mr Holt) could not assist with whether the Judge had stated before hearing submissions that he would not be adjourning the case. A letter to this effect had been served.
8. Mr Tettey, who attended as a witness (but was not required to give any evidence), provided a statement that which made the point the Judge may have had a fixed mind or given the appearance of having a fixed mind over the issue of an adjournment.
9. Having considered the Judge's decision and the additional ground of appeal Mr McVeety accepted that the Judge had materially erred in paragraphs [35], [44] and [52] when making findings on the standard or proof required. The Judge applied "the balance of probabilities" test when of course the lower standard of proof should have been applied. It is on this basis only I find there is an error in law.

### **NOTICE OF DECISION**

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I remit the appeal back to the First-tier Tribunal for a fresh hearing on this issue.

Signed

Date 22/12/2017



Deputy Upper Tribunal Judge Alis  
**TO THE RESPONDENT**

**FEE AWARD**

No fee award was made.

Signed

Date 22/11/2017

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis