



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

Appeal Number: PA/02523/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision and  
Promulgated**

**Reasons**

**On 16 October 2018**

**On 19 October 2018**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**HN  
[Anonymity direction made]**

**and**

**Secretary of State for the Home Department**

Appellant

Respondent

**Representation:**

For the appellant: Mr K Wood, instructed by Immigration Advice Service

For the respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Devlin promulgated 30.4.18, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 5.2.18, to refuse his claim for international protection.
2. First-tier Tribunal Judge Buchanan refused permission to appeal on 24.5.18 but when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Pitt granted permission.

*Error of Law*

3. For the reasons set out below I found that there was such error of law in the making of the decision of the First-tier Tribunal as to require it to be set aside and remade.
4. The grounds address two main issues: (1) the appellant's status as a former UNHCR mandate refugee and the Home Office policy with regard to the same; (2) the 'release document' which the appellant claims was given to him on release from detention and which he handed to the Home Office at his substantive asylum interview. This document was subsequently lost.
5. I find that the appellant was the victim of procedural unfairness in respect of both issues, the reasons for which the First-tier Tribunal Judge may not have been aware.
6. Between [112] and [152] Judge Devlin addressed the appellant's account. The UNHCR registration document is addressed from [130]. The judge proceeded to criticise the appellant, particularly at [134] for failing to provide evidence of provenance or from the UNHCR to confirm that he has been recognised as a refugee, or the grounds on which the decision was based and what investigation was conducted. The judge stated, "It seems to me that the appellant might reasonably have been expected to have produced such evidence. There is no reason for his failure to do so. These considerations affect the weight I am able to attribute to the said document.
7. In fact, the Home Office's published policy on UNHCR mandated refugees follows the decision of the Court of Appeal in MM (Iran) v SSHD [2010] and places an obligation on decision makers to engage with and investigate asylum applicants whose claims involve such status. Decision makers are required to confirm the details and circumstances of the status with the UNHCR Legal Protection Team in London. Further, such status is to be given considerable weight unless there are cogent reasons not to do so. It is questionable whether the decision of the Secretary of State properly engages with this issue. However, it was the duty of the Home Office to draw the policy to the attention of the tribunal but failed to do so. In the circumstances, it was unfair of the the First-tier Tribunal Judge to criticise the appellant for not providing better evidence as to his UNHCR status. For that reason alone, the decision is flawed and cannot stand.
8. The second point in relation to the 'release document' is also treated unfairly in the decision of the First-tier Tribunal, which barely mentions it. It was produced by the appellant to the respondent at his substantive asylum interview but it had been allegedly lost by the respondent and could not be produced at the First-tier Tribunal hearing. I can see from the judge's notes of the evidence and submissions that this issue was addressed by the appellant's representative, who suggested that as the respondent had lost the document the appellant should be given the benefit of the doubt by finding that it existed and contained the

information described by the appellant in his interview. The document and the submission was not adequately addressed in the decision of the tribunal. It is obvious that the loss of the document bears on the assessment of the credibility of the appellant's factual claim. The only reference to the document is at [142] where the judge makes an adverse credibility against the appellant in respect of the document.

9. As it happens, the document has now been found in the respondent's file, where it was all along, and it was produced at the hearing before me. Given the existence of the document the judge's adverse treatment of the appellant on this issue amounted to procedural unfairness.
10. For these reasons the decision of the First-tier Tribunal was made in substantial error of law and cannot stand. Very fairly, Mr Tan said he was unable to resist the appeal on grounds of procedural unfairness.

*Remittal*

11. I considered with the two representatives whether this was an appeal that could or should be retained in the Upper Tribunal for a continuation hearing. However, I am also concerned that the original decision of the Secretary of State in this matter ought to be looked at again in light of the points made above as to the UNHCR and release documents. The former requires some investigation work by the Home Office and the latter will require translation. The first will be a matter for the Secretary of State to consider and my observation is not material to the outcome this decision. However, to enable consideration to be given to the remaking of the decision of the Secretary of State it would be better if the matter were remitted to the First-tier Tribunal. Further, it would not be possible to proceed with the hearing immediately, given the need for the investigation into the UNHCR status by the respondent and the translation of the release document on behalf of the appellant.
12. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the findings on a crucial issue at the heart of an appeal are undermined, as they are in this case, effectively there has not been a valid determination of those issues.
13. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

*Decision*

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Consequential Directions**

15. The appeal is remitted to the First-tier Tribunal sitting at Manchester;  
16. The appeal is to be decided afresh with no findings of fact preserved;  
17. The ELH is 4 hours;  
18. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Devlin and Judge Buchanan;

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. However, given the circumstances of this case, I make an anonymity order.

**Direction Regarding Anonymity**

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.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**