



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

Appeal Number: PA/08868/2019

THE IMMIGRATION ACTS

**Determined Without a Hearing at Field
House
On 14 October 2020**

**Decision & Reasons
Promulgated
On 11 November 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**JS
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and so entitled to anonymity.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the Appellant against the decision of the Secretary of State that he is not entitled to leave on asylum or humanitarian protection or human rights grounds.
3. A similar appeal has been determined previously unsuccessfully and the appellant made a further application relying on further evidence.
4. Having read all of the papers I see no need to give extensive reasons for my decision.

5. The appeal was identified as one that was suitable for determination without a hearing and the parties were asked to make representations. As far as I am aware, the Secretary of State has not responded.
6. The appellant has made further submissions and has also asked for an oral hearing, pointing out the desirability of interchange between the parties. That point is a perfectly proper point which is noted. I am very aware of the assistance that can come from interchange between the parties and indeed between the parties and the judge but the Rules do not mandate an oral hearing although such a hearing before determination is certainly customary.
7. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 is quite plain that the Tribunal decides whether or not to hold a hearing but must have regard to any view expressed by a party. Only the appellant has expressed any views and I do not find them persuasive in this case. The standard directions provided when determination without a hearing is contemplated is intended to go some way to dealing with the absence of interplay between the parties by providing for the service of a reply after the Rule 24 notice has been served. However, as the Secretary of State has not served a Rule 24 notice this, and indeed the idea of interplay between the parties, becomes a little academic.
8. Having read the papers I have to say that the First-tier Tribunal has just not come to terms with the case. The appellant has produced new evidence. It appears to be evidence that could have been served on an earlier occasion but he has given an explanation why that was not the case and has given expert evidence to add weight to his assertion that it is genuine documentation intending to show that he is in trouble in Afghanistan.
9. I do not wish to give the impression that I regard this as weighty or compelling evidence. That is not my present function. I am here to decide if there is an error of law and I am quite satisfied that the evidence has just not been considered except in the most superficial way and that is not sufficient. I cannot say that the evidence could not make a difference and this is therefore a material error.
10. Indeed, although I do not propose to give any further explanation, I find the grounds generally are made out and I find that the appeal has to be heard again in the First-tier Tribunal. The point is that the appellant has gone to the trouble of preparing further evidence which he says supports his case. He has a right of appeal to the First-tier Tribunal which has just not engaged with his case.

Notice of Decision

11. The First-tier Tribunal erred in law. I allow the appeal against its decision. I set aside the decision of the First-tier Tribunal for error of law and I direct that the appeal be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins

Judge of the Upper Tribunal

Dated 9 November 2020