



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001764
UI-2022-001772
First-tier Tribunal No:
PA/04797/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

SFH
(ANONYMITY ORDER MADE)

Appellant/Respondent

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Appellant

Representation:

For SFH: Mr T Hodson, Counsel, instructed by Elder Rahimi
Solicitors

For the Respondent: Mr S Whitwell, Senior Presenting Officer

Heard at Field House on 22 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This decision is made pursuant to rule 40(3)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008: where the parties have consented, the Upper Tribunal need not give written reasons for its decision.
2. Mr SFH is an Afghan citizen who is also a “foreign criminal”. His appeal against the Secretary of State’s refusal of his protection and human rights claims was heard on 22 July 2021. On 15 August 2021, the Taliban took complete control of Afghanistan. The First-tier Tribunal Judge wrote her decision the following day and it was promulgated on 18 August 2021. Although she referred very briefly to this momentous change in the circumstances pertaining to Afghanistan, she did not reconvene the hearing, or even ask the parties for further written submissions. She proceeded to dismiss Mr SFH’s appeal on asylum and Article 3 grounds, but allow it on humanitarian protection grounds.
3. Both parties appealed against the judge’s decision and both were granted permission.
4. Having discussed the matter immediately prior to the hearing, Mr Whitwell and Mr Hodson were in agreement that the judge had erred in law for the reasons set out in their respective grounds of appeal. In its simplest form, the fundamental error was that of procedural unfairness. In light of the circumstances at the time the decision was written (and promulgated), the judge should have given the parties an opportunity to address the country situation. Her failure to do so was not only procedurally unfair, but led to her deciding the appeal without legally adequate reasons for the outcomes reached.
5. The parties were agreed that the appeal should be remitted to the first Tier Tribunal for a complete re-hearing.
6. We agree with the parties’ position as to the error of law issue and disposal. The judge remain seized of the appeal until her decision was promulgated: see, for example RK (Algeria) [2007] EWCA Civ 868 and NA (Libya) [2017] EWCA Civ 143. It is clear that she could and should have either reconvened hearing at least sought representations from the parties. As Mr SFH was effectively deprived of a fair opportunity to put forward his case, it is appropriate to remit the appeal to the First-tier Tribunal, with no preserved findings of fact.

Anonymity

7. We make an anonymity direction because this appeal continues to involve protection-related issues.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

1. This appeal is remitted to the First-tier Tribunal (Hatton Cross hearing centre) to be heard by a judge other than First-tier Tribunal Judge Iqbal;
2. There shall be no preserved findings of fact.

H Norton-Taylor

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

Dated: 22 March 2023