



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006629
On appeal from: PA/50321/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 December 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

M S A (TÜRKIYE)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant: In person.

For the respondent: Mr Edward Terrell, a Senior Home Office Presenting Officer

Heard at Field House on 4 December 2023

DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him international protection pursuant to the Refugee Convention, humanitarian protection or leave to remain on human rights grounds. He is a Turkish citizen and it is accepted that he is of Kurdish ethnicity.
2. **Anonymity order.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. The appellant will be referred to in these proceedings by the initials M S A. 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.

Procedural matters

3. **Vulnerable appellant.** The appellant is a vulnerable person due to his mental health problems. He is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. No adjustments had been asked for in advance by his representatives, Sentinel Solicitors (Sentinel).
4. **Representation.** The appellant was represented by Sentinel until Friday 1 December 2023, when they notified the Upper Tribunal of termination of their retainer, indicating that the appellant intended to attend the hearing in person. The preparation of the appeal, and the filing of the bundle, were all complete by then.
5. **Mode of hearing.** The hearing today took place as a blended hearing, with all parties appearing face to face, but remote interpretation. There were no difficulties with the video link connection.
6. **Interpretation.** As the appellant was unrepresented, the Tribunal used its best endeavours to procure a Kurdish interpreter for the appellant, despite the short notice (today's hearing was on Monday 4 December 2023, the next working day after Sentinel terminated their retainer). The interpreter who appeared was only available by video link.

Upper Tribunal hearing

7. At the beginning of the hearing, the appellant and interpreter checked that they could understand each other, which they could, although the interpreter spoke Syrian Kurdish and the appellant spoke the Turkish Kurdish dialect.
8. The appellant did not object to the remote interpreter: he confirmed that he did not feel disadvantaged by having the interpreter made available remotely, though there had been some difficulty due to the interpreter's Syrian dialect of the Kurdish language. The appellant confirmed to us that he had been able to understand enough of what was going on.
9. Following a discussion at the hearing, in which the appellant was assisted by the Kurdish-speaking interpreter, it was common ground that there were a number of material errors in the First-tier Tribunal decision, including but not limited to the failure to provide an all-face to face hearing in the First-tier Tribunal, as identified in the grant of permission to appeal. Both parties agree that this is a case where the decision of the First-tier Tribunal must be set aside and remade.
10. We are satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
11. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above.
12. If in consequence an oral hearing is required, but the outcome is the same, the Upper Tribunal will consider making an order for wasted costs.

Decision

Case No: UI-2022-006629
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13. Subject to the notice period in [11] above, we have decided to set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved.
14. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Judith A J C Gleeson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 4 December 2023

Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, 13 November 2014

9 *Transfer of proceedings*

9.1 Where:-

- (a) the Tribunal (“the original Tribunal”) has started to hear an appeal but has not completed the hearing or given its determination; and
- (b) the Chamber President decides that it is not practicable for the original Tribunal to complete the hearing or give its determination without undue delay, the Chamber President may direct the appeal to be heard by a differently constituted Tribunal (“the new Tribunal”).

9.2 Where an appeal has been transferred under paragraph 9.1:-

- (a) any documents sent to or given by the original Tribunal shall be deemed to have been sent to or given by the new Tribunal;
and
- (b) the new Tribunal will deal with the appeal as if it had been commenced before it.

9.3 Without prejudice to paragraph 9.1, the Chamber President may transfer proceedings in the circumstances described in Practice Direction 3 (procedure on appeal); and paragraph 9.2(a) shall apply in the case of such a transfer as it applies in the case of a transfer under paragraph 9.1.

Practice Directions: Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as amended by the Senior President of Tribunals on 13 November 2014

3.4 If the Upper Tribunal nevertheless decides that it cannot proceed as described in paragraph 3.1(c) because findings of fact are needed which it is not in a position to make, the Upper Tribunal will make arrangements for the adjournment of the hearing, so that the proceedings may be completed before the same constitution of the Tribunal; or, if that is not reasonably practicable, for their transfer to a different constitution, in either case so as to enable evidence to be adduced for that purpose.

3.5 Where proceedings are transferred in the circumstances described in paragraph 3.4, any documents sent to or given by the Tribunal from which the proceedings are transferred shall be deemed to have been sent to or given by the Tribunal to which those proceedings are transferred.

3.6 Where such proceedings are transferred, the Upper Tribunal shall prepare written reasons for finding that the First-tier Tribunal made an error of law, such that its decision fell to be set aside, and those written reasons shall be sent to the parties before the next hearing.