



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

Appeal Number: PA/09590/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
Oral decision given following hearing**

**On 27 January 2020**

**Decision & Reasons  
Promulgated  
On 9 April 2020**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**MK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K McCarthy, Counsel

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a young man who was born in December 2002. He is a child of mixed parentage; his mother is Iranian and his father is an Afghan national. He claims to have left Iran in 2015 arriving eventually in this country in December 2017. When he left the vehicle he had been hidden

in in which he had come to this country he indicated an intention to claim asylum which he has subsequently done.

2. The appellant's asylum claim was refused by the respondent on 24 July 2018 but as is normal in the case of minors he was granted discretionary leave to remain until June 2020 as an unaccompanied minor.
3. The appellant appealed against the decision refusing him asylum and his appeal was heard before First-tier Tribunal Judge R Sullivan, sitting at Taylor House on 18 October 2019. In a decision and reasons promulgated on 8 November 2019 Judge Sullivan dismissed the appellant's appeal.
4. It was accepted throughout the hearing that the appellant had been born in December 2002 as he had claimed, and accordingly as at the date of the hearing he was 16 years old. It is accepted before this Tribunal by Ms Jones, acting for and on behalf of the respondent, that the issue before the judge at the hearing in the First-tier Tribunal was whether or not at the date of hearing the appellant was entitled to asylum. Regrettably, it is clear from paragraphs 24 and 25 of Judge Sullivan's decision that she considered what the position would be with regard to a person in the appellant's position (that is, with an Afghan father and an Iranian mother) when or if he applied for Iranian citizenship on becoming 18, in other words what his position would be in the future, not what it was at the date of hearing.
5. There are a number of other issues arising out of Judge Sullivan's decision, including the treatment of expert evidence regarding the nationality of the appellant and the Iranian acceptance of his nationality which turned on the registration of the marriage and concerning which expert evidence had been called, but regardless of these issues Ms Jones accepts that the judge's failure effectively to consider the appellant's position as at the date of hearing was so fundamental that this appeal must be reheard.
6. I agree. Whatever the position might be when the appellant is 18 (which will not be for some months) he was entitled to have his claim considered at the date of the hearing which it was not.
7. It follows that there will have to be a rehearing and as his claim was not considered as it ought to have been having regard to the date of hearing, that hearing will have to be a fresh hearing with no findings of fact retained. In those circumstances it is agreed on behalf of both parties that the appropriate course is to remit this case for rehearing by the First-tier Tribunal by any judge other than Judge R Sullivan.
8. I accordingly make the following decision:

### **Decision**

**I set aside the decision of First-tier Tribunal Judge Sullivan as containing a material error of law and direct that the appeal be**

**reheard in the First-tier Tribunal Judge, sitting at Taylor House, by any judge other than Judge R Sullivan.**

**The hearing will be a fresh hearing, with no findings of fact retained.**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig", is centered on the page. The signature is written in a cursive, slightly slanted style.

Upper Tribunal Judge Craig  
2020

Date: 18 March