



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

Appeal Number: PA/12728/2019

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On Monday, 2 August 2021**

**Decision & Reasons  
Promulgated**

**On 07 September 2021**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**AS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr G Lee, Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**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.

This is an appeal against the decision dated 12 January 2021 of First-tier Tribunal Judge O'Brien which refused the appellant's asylum and human rights claim.

The appellant is a national of Afghanistan born on 13 March 1993. The appellant came to the UK on 20 March 2009 and claimed asylum on 21 March 2009. He did not pursue that claim, absconding immediately after making it. The application was treated as withdrawn. At some point in 2012 the appellant was arrested and came to the attention of the immigration authorities. On 9 June 2012 a screening interview was conducted.

Matters did not progress very fast, however. On 15 November 2018 the appellant made further submissions which were not accepted by the respondent. On 16 October 2019 the appellant made further submissions and this led the respondent to progress the case. The appellant had an asylum interview on 8 February 2019. On 10 December 2019 the respondent refused the appellant's asylum and human rights claim.

The appellant appealed against the decision of the respondent and had a hearing before the First-tier Tribunal on 9 September 2020 and 18 November 2020. As before, in a decision dated 12 January 2021 First-tier Tribunal Judge O'Brien refused the appeal.

On 24 March 2021 the Upper Tribunal granted permission and thus the matter came before me for an error of law hearing.

The appellant brought two main heads of challenge to the decision of the First-tier Tribunal. Firstly, the appellant maintained that the assessment of credibility was in error. The judge had failed to properly take into account during the assessment of credibility the fact of the appellant's age of 13 or 14 years old at the time of the events that he described and his being only 16 years' old when he absconded in 2009. The judge made a material error of fact regarding the date on one of the appellant's documents from Afghanistan. The appellant's second ground maintained that the First-tier Tribunal took an incorrect approach to the psychiatric report prepared by Dr Galappathie dated 13 July 2020. The appellant maintained that the First-tier Tribunal Judge assessed credibility and reached an adverse conclusion on the claim before considering the expert report of Dr Galappathie and failed to deal with the clearly stated professional opinion that the appellant was not feigning or exaggerating his mental health symptoms.

Before me, Ms Everett conceded that all of the appellant's grounds had merit such that the decision had to be set aside and remade *de novo*. Where Ms Everett's concession was in line with my preliminary view of the case, I proceeded to find an error on a point of law and set aside the decision of the First-tier Tribunal.

Where there are no extant findings of fact on the material issues and nothing preserved, it is appropriate for the case to be remitted to the First-tier Tribunal

to be remade *de novo* in line with paragraph 7 of Part 3 of the Senior President's Practice Statement dated 25 September 2012.

**Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade *de novo* by the First-tier Tribunal.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 2 August 2021