IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003379
First-tier Tribunal No:
HU/53797/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of December 2024

Before

UPPER TRIBUNAL JUDGE RUDDICK
DEPUTY UPPER TRIBUNAL JUDGE CLARKE

Between

YN
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R. Rai, Instructed by Nandy & Co Solicitors
For the Respondent: Ms. S. Nwachuku, Senior Presenting Officer

Heard at Field House on 2 December 2024

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 his name or address, 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. The appellant appeals with permission against the decision of First-tier Tribunal Judge Beg dismissing his appeal against the respondent's decision to refuse his protection and human rights claim.

2. The appellant was granted anonymity before the First-tier Tribunal because he has made a claim for international protection. Having taken into account Guidance Note 2022 No.2: Anonymity Orders and Hearings in Private, we are satisfied that it is appropriate to continue that order because the UK's obligations towards applicants for international protection and the need to protect the confidentiality of the asylum process outweigh the public interest in open justice in this case.

Background

3. The appellant is accepted to be a citizen of Afghanistan. He arrived in the UK on 9 May 2019, travelling on a genuine Italian-issued "XXC Travel Document" valid through 16 December 2020. He was also in possession of a genuine and valid Italian permanent residence card. He claimed asylum shortly after arrival.

4. In the course of preparing for the error of law hearing in this appeal, we formed the view that it was necessary to clarify whether the appellant had consistently claimed to be at risk on return to Afghanistan, as well as to Italy, and, if so, what decision (if any) the respondent and the First-tier Tribunal had made on this issue. We therefore set out the history of the appellant's asylum claim in more detail than would normally be necessary.

The appellant's asylum claim

5. The appellant's screening interview was conducted on the day of his arrival. The interview record shows that in answer to the standard question of why he could not return to his "home country", he answered that he would be at risk in Afghanistan from both the government and the Taliban. He said that his problems in Afghanistan had started in 2008, when his brother had been killed while working for the Taliban. It does not appear from his screening interview record that he was asked about or raised his reasons for leaving Italy.

6. The appellant withdrew his asylum claim on 14 May 2016. He said in a later statement that this was because he was told by an Immigration Officer that he would be removed to Afghanistan, and he responded that he would rather return to Italy. Directions were set for his removal to Italy on 20 May 2019, but he was not removed and there is no evidence before the Tribunal of the reason for this. On 30 May 2019, he was released from detention.

7. On 20 January 2020, the appellant made a first set of further submissions, and on 24 March 2022, the respondent refused them without a right of appeal. The January 2020 submissions are not before the Tribunal, but the refusal decision that is the subject of this appeal contains a long excerpt from the 2022 refusal decision. From this excerpt it can be

established that the appellant claimed that he would be at risk on return to Italy from a criminal gang that had links to the Italian-Afghan community, and that this gang had arranged for his father to be kidnapped for ransom in Afghanistan. He also relied on a medico-legal report that recounted the appellant's claim that his brother had been killed while fighting for the Taliban and that he feared harm on return to Afghanistan for this reason. The author of the report expressed the opinion that return to Afghanistan would be harmful to the appellant's mental health.

8. In the March 2022 refusal decision, the respondent noted three times that the appellant's medical discussed his fear of return to Afghanistan. Each time she dismissed this as irrelevant, saying, "Whilst this [medical] report establishes that you may have faced issues in Afghanistan, it does not establish that you face any issues in Italy" and "you would be returned to Italy so would not face the same issues."

9. The excerpt from the March 2022 decision continues by finding that there is in general sufficient protection in Italy, and that the appellant would be able to relocate internally.

The appellant's fresh claim

10. On 28 October 2022, the appellant made a second set of further submissions, the refusal of which are the subject of this appeal. The letter of representations in support of the application began by setting out that the appellant's "'enforced removal' can only be to Afghanistan, given that he is a national of Afghanistan", citing SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 37. It then summarised the appellant's claim that his father had been kidnapped for ransom by the Taliban. The appellant also referred to the current country situation in Afghanistan, relying on the respondent's CPIN Afghanistan: Fear of the Taliban, Version 3.0, April 2022. The representations continued, "even if the Applicant is somehow returned to Italy, his life would still be in danger [….]".

11. The supporting documents included a witness statement from the appellant, setting out what he feared in both Afghanistan and Italy. He explained that the threat from the Taliban had first arisen in 2008. His brother had been fighting for the Taliban, but he had urged his brother and his companions in the Taliban to stop, saying that the Taliban "are wrong and bad people". When his brother and his companions were killed shortly afterwards in a government attack, he was accused of being a spy and a traitor. He had fled to Italy, where he said he had been granted "refugee status". He would have remained there, but he had been threatened and attacked by local gangs in Italy, who were connected to the Taliban. He fled to the UK, and shortly thereafter he learned that his father had been kidnapped for ransom by the Taliban in Afghanistan. He had received a phone call from Afghanistan in September 2022, demanding ransom for his father.

12. The appellant also submitted an expert medical report diagnosing him with a Mixed Anxiety and Depressive disorder, a letter from the Metropolitan Police advising him how to collect his telephone from their custody, NHS records, and letters from his GP, his counsellor, and friends in the UK.

The refusal decision

13. The respondent's refusal decision is dated 24 February 2023. It is necessary to summarise this, too, in some detail, in order to clarify what decisions the respondent has, and has not, made.

14. It begins with a section entitled "Reasons for decision". At [2-3], the respondent states that she is not satisfied that the appellant has "a well-founded fear of persecution for a Convention reason" or is at real risk of suffering serious harm and is "unable, or, owing to such fear, unwilling to avail yourself of the protection of Italy". There is no mention of Afghanistan in this opening summary.

15. This is followed by a list of documents considered and then by a section entitled "Basis of claim". The latter is a series of six bullet points setting out the appellant's claim. Four refer to fears related to Afghanistan, one refers to fear of a local criminal organisation in Italy, and one to the appellant's medical claim.

16. At [8-9], the respondent reiterates her reasons for refusing the appellant's January 2020 further submissions, as summarised above at [7-9] of this decision.

17. The following section is entitled "Consideration of your asylum claim". It begins with the simple statement that the appellant is not excluded from protection under Articles 1D, 1E or 1F of the Refugee Convention. It then turns to his nationality. We quote that section in full:

> "12. It is accepted that you are a national of Afghanistan, but you are also removable to Italy as you hold a refugee status there and you have an unlimited expiry residence card.
>
> "13. Your asylum and/or human rights claim is based upon an alleged fear of harm in Italy.
>
> "14. Whilst it is accepted that you are a national of Afghanistan, it is considered that you can be removed to Italy. It is not accepted that you have established a real risk of persecution or that there would be a breach of the ECHR if you were returned to Italy. As a result of this you will be returned to Italy."

18. The following section is entitled "Consideration of other Material Facts." The first subheading is "Risk in Afghanistan & Italy". At [15-19], the respondent rejects two medical letters because they were based on the

appellant's account. At [20-21], she notes that the appellant had produced the letter from the Metropolitan Police to corroborate his claim that they had taken possession of his phone in order to investigate his claim to have received a threatening phone call from Afghanistan. However, nothing in the letter stated why the police had taken the phone. This section concludes:

> "22. Therefore, based on the lack of evidence provided by yourself, as well as your claims being previously rejected, it is not accepted that you are at risk from the Taliban in Afghanistan and Italy, or that your father has been held to ransom in Afghanistan by the Taliban."

19. This is the last reference to Afghanistan in the refusal decision on appeal.

20. At [23], the section "Risk on return" states in its entirety:

> "As stated above, your claim has been refused. This means that t is not accepted that you will face a real risk of persecution or real risk of serious harm on return to Italy, because it is not accepted that you are at risk of persecution from the [sic] non-state actors in Italy, noted above."

A formal refusal of refugee status follows at [24-25].

21. Over the following 40 paragraphs, the respondent sets out why the appellant is not at risk of serious harm in Italy [26-27], why there are no very significant obstacles to his reintegration in Italy [38-39], that medical treatment is available in Italy [47, 53, 61, 65-70] and that the appellant would not be at real risk of suicide if returned to Italy [71, 74-76].

22. After formally refusing the further submissions on all grounds, the respondent sets out the customary advice about the right of appeal, immigration bail, etc. The section entitled "Removal from the UK" informs the appellant, "should you be removed, it will be to Pisa, Italy."

<u>The appeal to the First-tier Tribunal</u>

23. The appellant appealed to the First-tier Tribunal. In the appellant's skeleton argument (ASA), dated 7 August 2023, the appellant's counsel noted at [14] that in the refusal decision "It was not accepted that the appellant would be at risk in either Afghanistan or Italy." At [15], the first issue "in dispute between the parties" was identified as "Is the appellant entitled to refugee status in the UK?" Under the heading "Submissions", counsel wrote:

> "Although the appellant is a national of Afghanistan, the respondent does not propose to remove the appellant to Afghanistan, but rather to Italy, where the appellant has refugee status and was last resident."

24. The skeleton argument made no submissions about risk in Afghanistan, putting the "appellant's case" as "he cannot return to Italy because he fears close family members of the Taliban" who had sought to harm him in Italy. The appellant's appeal statement set out further details of the 2008

incident in Afghanistan that he claimed had led to him being accused by the Taliban of being a spy [4-11]. He then linked that accusation to the alleged attacks on him in Italy [13] and to his father's recent kidnapping, which he said was "not only for ransom but an act of revenge" [24]. He said he could not return to Italy because the police had refused him protection [14], but also because his immigration status there had "expired due to living here in the UK for more than six years." [33]

25. The appellant's appeal evidence addressed four issues:

(i) The appellant's immigration status in Italy and why it had been automatically revoked;

(ii) The appellant's mental health;

(iii) Threats to the appellant in Italy; and

(iv) The kidnapping of the appellant's father in Afghanistan.

26. On 4 October 2023, the respondent conducted a Respondent's Review. The respondent reiterated the schedule of issues as set out in the ASA. The first was "Whether the A is entitled to refugee status, in the UK." Her counter schedule made three points:

(i) "[T]he A can be removed to Italy and […] the A does not have a well-founded fear of persecution, for a convention reason";

(ii) The appellant would have access to sufficient protection and could internally relocate (the country is not specified); and

(iii) The appellant's account of being denied protection by the Italian police was noted, and would be tested on cross-examination.

27. The appellant's appeal was listed for full hearing before First-tier Tribunal Judge Cary on 19 January 2024. The record of proceedings from that hearing shows that the appellant's counsel applied for an adjournment in order to obtain "a definitive answer […] e.g. from an Italian lawyer" as to whether the appellant could still be returned to Italy. The respondent did not oppose the adjournment. Judge Cary observed,

> "If the Appellant cannot be returned to Italy then the Respondent will need to consider if he has a well founded fear of persecution in Afghanistan or there is some other reason why he cannot be returned there. […] I suggested that the next hearing might well proceed as a CMR is the evidence was that the Italian state would not accept the Appellant back."

28. On 1 March 2024, the appellant uploaded an expert report from an Italian lawyer practicing in the field of immigration and asylum law, Avv. Elze Obrikyte of Giambrone & Partners. A CMR was held on 12 April 2024. There is a Case Management Order dated 12 April 2024 on myHMCTS. This summarises the content of the appellant's expert report and then confirms details of what evidence would be presented at the full hearing. There is nothing to indicate that the respondent clarified her position on whether the appellant would be at risk in Afghanistan or, more generally, that there

was any discussion of what the legal consequences would be if the Tribunal did proceed to find that the appellant was not returnable to Italy.

The substantive hearing before the First-tier Tribunal

29. The appeal came before Judge Beg on 29 May 2024. At [9] of the challenged decision, she addresses "Preliminary issues", as follows:

> "Mr Georget submitted that the central issue in this appeal is whether the appellant can be returned to Italy. He said the respondent appears to have also considered the appellant's claim under the Refugee Convention, as well as a risk to his rights under Articles 2 and 3 ECHR. He said he did not rely upon Article 8. Mr Phillips submitted that the respondent appears to have considered the risk on return within the context of Articles 2 and 3."

30. The Judge heard evidence from the appellant. She does not rehearse all of that evidence in her decision, but she refers to what he said with regard to his Italian residence permit [15], an alleged attack on him in Italy in 2017 [23-24], the refusal of the Italian police to help him [25], why he had not relocated within Italy [26], his reasons for coming to the UK [27] and his father's recent kidnapping in Afghanistan [28-29].

31. The Judge acknowledges at [2-3] and [22] that the appellant claimed that he feared being targeted by the Taliban and others on return to Afghanistan because of the circumstances of his brother's death. However, she reminds herself at [39] that "The issue before me is whether the appellant would be returned to Italy, not Afghanistan." In accordance with this understanding, her findings are divided in two sections: "Italian residency" and "The risk on return to Italy".

32. At [15-21], the Judge considered the issue of the appellant's status in Italy. She began by setting out that the appellant had arrived in the UK using an Italian travel document issued on 18 December 2015, which had expired on 16 December 2020, and had been in possession of an Italian residence permit. She repeated what the appellant had consistently said, which was that he had been granted refugee status in Italy. She noted that the appellant said that his residency had been revoked.

33. The Judge then turned to the expert evidence and made the findings on returnability that are the focus of the appellant's grounds of appeal to the Upper Tribunal. She raised no criticisms of Avv. Obrikyte's report, instead simply summarising what was said in the report at [16-18]. The Judge set out her understanding of the report's conclusions as follows:

(i) "where a person who has been granted permanent residence is absent from the territory of the [European] union for a period of 12 consecutive months, his permanent residency is revoked. He can reacquire the permanent residency where he meets the requirements of article 9.1. of the Legislative decree 251/2007, which transposes article 25 [of the 2004 Qualification Directive] and in that case the period of legal residency is reduced from 5 to 3 years." [16];

(ii) A foreigner can apply for permanent residence if they meet the following requirements: five years' legal residence, possession of a valid residence permit, sufficient income and appropriate accommodation. [16-17];

(iii) "[S]ince the appellant no longer possesses any valid residency permit in Italy, he would need to obtain a new visa (not a re-entry visa) from the Italian consular authorities to return to Italy. He can then apply for a new residence permit should he meet the requirements. […] his only advantage" is that he would need only three years lawful residence, rather than five. [18]

(iv) "[I]f the appellant would like to return and reside in Italy, he should make another attempt for his subsidiary protection recognition the Crotone Territorial Commission which will consider his move to the United Kingdom before its final decision."[18]

34. Having summarised these points, the Judge acknowledged the submissions of the appellant's counsel, namely that the appellant could not return to Italy because he had been absent for more than 12 months and his passport had expired, and that "there is no guarantee that the appellant would obtain subsidiary protection status again."

35. The Judge then made the following findings:

(i) "[T]he expert makes it clear that the appellant can approach the Italian Consular Services in the United Kingdom to apply for a new visa with which to enter Italy."[20]

(ii) "Once he is in Italy, he can apply for another permanent residence permit."[20]

(iii) "The Italian authorities will have all the appellant's immigration records and evidence that he was granted refugee status and an Italian residency permit." [21]

(iv) "He may also be able to make an application for subsidiary protection recognition" [21].

36. The Judge also noted that the appellant had made no effort to contact the Italian Embassy in the UK to "clarify his position", and that there were "no documents from the Italian Embassy to confirm that the appellant would not be able to apply for a new visa with which to return to Italy."[21]

37. The Judge then turned to the consideration of the appellant's claim to be at risk of serious harm in Italy. She made a series of adverse credibility findings [24-30] before considering the medical evidence at [31-39]. At [41], she found that the appellant did not have a well-founded fear of persecution and would not be at risk of serious harm in Italy [41], and that state protection would be available in Italy [42]. She found that he had come to the UK to find work and to live with a cousin [44], but noted that he did not rely on Article 8. She dismissed the appeal.

The appellant's grounds

38. The appellant has been granted permission to appeal against the Judge's findings regarding his returnability to Italy. There are two main prongs to his argument, although they are not labelled formally as separate grounds:

(i) Having accepted the expert evidence that the appellant's permanent residence had been revoked and he would have to apply for a visa to return to Italy, it was not reasonably open to the Judge to find that he was returnable to Italy. As a matter of law, the ability to apply for a visa cannot be equated with returnability; and

(ii) The Judge misdirected herself in law by placing on the appellant the burden of proving that he could not be returned to Italy. Relying on TG (Interaction of Directives and Rules) [2016] UKUT 00374, the appellant argued that the burden of proving returnability was on the respondent.

39. In his decision granting permission to appeal, Upper Tribunal Judge O'Brien further noted that the Judge appeared to have overlooked the expert's opinion that if the applicant did apply for a visa to return to Italy, that application was unlikely to succeed.

40. The appellant does not challenge the Judge's rejection of his account of the threats made to him in Italy and of his father's recent kidnapping in Afghanistan, nor her finding that sufficiency of protection was generally available in Italy.

The hearing before the Upper Tribunal

41. At the outset of the hearing before us, we asked the parties to clarify their position on whether the appellant met the refugee definition set out at Article 1A(2) of the Refugee Convention. Perhaps unsurprisingly, given how little attention had been given to this issue throughout this appeal, neither counsel was prepared to offer much assistance. Mr Rai took the position that the respondent had made no decision about whether the appellant would be at risk on return to Afghanistan, and if his appeal were allowed, it would be for the respondent to proceed to make a decision on the issue. Ms Nwachuku confirmed that the respondent had never intended to return the appellant to Afghanistan, but had no further instructions.

42. We then heard submissions from counsel on the issue of returnability. We have taken those submissions into account, and we will address them where relevant below.

Discussion

43. In deciding whether the Judge's decision involved the making of a material error of law, we have reminded ourselves of the principles set out

in Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 [26] and Volpi & Anor v Volpi [2022] EWCA Civ 464 [2-4] and of the danger of "island-hopping", rather than looking at the evidence, and the reasoning, as a whole. See Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5 [114].

44. We have also reminded ourselves that following the UK's departure from the European Union and the Dublin Framework, the appellant's returnability to Italy is a matter of foreign law and, as such, must be determined on the basis of expert evidence. CS and Others (Proof of Foreign Law) India [2017] UKUT 00199 (IAC); Hussein and Another (Status of passports: foreign law) [202] UKUT 00250 (IAC).

45. Ms Nwachuku submitted that it was not open to the appellant to argue before the Upper Tribunal that he was not, as a matter of law, returnable to Italy, because he had not argued this before the First-tier Tribunal. The history of the appeal set out above makes it unarguably clear that the issue was vigorously pursued before the First-tier Tribunal. Ms Nwachuku also argued that in order to show that he was not returnable to Italy, the appellant would need to show not only that his travel document had expired and his permanent residence had been revoked, but also that his underlying protection status had been revoked. She urged us to assume that any "protection status" must be assumed to continue indefinitely unless it has been revoked. She was unable, however, to point to any evidence of this principle in Italian law; indeed, Avv. Obrikyte's report states he would need to reapply for his previous protection status. We reject this submission.

46. We find that the Judge made material errors of law in her consideration of whether the appellant was returnable to Italy.

47. First, she failed to make any finding on what had been identified as one of the two key issues before her, which was whether the appellant was returnable to Italy. She made only two clear findings: that the appellant could apply for a visa to return to Italy, and that "once he is in Italy" he could apply for "another permanent residence permit" [20]. Added to this was the more tentative finding that the appellant "may also be able to apply for subsidiary protection recognition before the Crotone Territorial Commission." [21]

48. In treating the appellant's ability to apply for a new visa as a sufficient finding on the key issue of returnability, the Judge has clearly erred. As a matter of law, the right to apply for a visa to a foreign country is simply not the same as being returnable there.

49. However, we are mindful of the principles that First-tier Tribunal judges should be taken to be aware of the relevant law and that we should not assume that the Judge misunderstood the law simply because she has not set out every step in her reasoning. We consider that it can be inferred that the Judge's findings went beyond the simple fact that the appellant

was eligible to apply for a new visa to Italy. It was in effect a finding about a likely series of events that would flow from that application: the application would be successful; he would be entitled to return to Italy on his new visa; once in Italy, he would be eligible to apply to reacquire his permanent residence; and that application would be successful. The reason these various applications would succeed is that the Italian authorities would have all of his immigration records, including that he had previously been granted "refugee status" and a residency permit.

50. This series of findings were not open to the Judge on the evidence before her. They rely on at least three clear mistakes of fact. These are:

(i) That the appellant had been granted refugee status in Italy [15 and 21]. The expert had clarified that the appellant had in fact been granted only subsidiary protection, and this is confirmed in the Italian document at page 63 of the Upper Tribunal bundle. This is significant, because Convention refugee status cannot be "revoked" and carries with it a range of rights under international law. See, e.g. SM (Article 33(2), Section 72, Essa post-EU exit) [2024] UKUT 00323. The same cannot be said for subsidiary protection[1].

(ii) That the appellant can "re-acquire permanent residency" if he meets the requirements of an Italian legislative decree that transposed article 25 of the Qualification Directive. In fact, nothing in Avv. Obrikyte's report identifies a right to reacquire permanent residence based in the Qualification Directive. She refers to the Qualification Directive only to explain the legal basis of the appellant's travel document[2].

(iii) That "[o]nce he is in Italy, [the appellant] can apply for another permanent residence permit". This error may flow from the prior error about the existence of a particular right to permanent residency grounded in the Qualification Directive. In fact, the expert report makes it clear that to be eligible to "reacquire" permanent residence, the appellant would have to meet all of the normal requirements, including at least three years' lawful residence, possession of a residence permit, and adequate income and accommodation. In other words, this is not an application he would be eligible to make "once he is in Italy" but, at best, three years after his return.

51. The Judge's inference of returnability from a right to apply for a visa also fails to take into account the expert's clearly expressed opinion about the basis on which he could apply for a visa. The expert's opinion is that in order to return to and reside in Italy, the appellant would need to "undergo regular immigration proceedings", and that this would involve making another application for subsidiary protection recognition to the relevant

[1] We leave aside the question of whether a State has any legal obligation to admit a person they have accepted to be a Convention refugee, which is by no means straightforward.
[2] Article 25 is, indeed, entitled "Travel Document", and at 25(2) it states, "Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel […]"

authorities. Such an application is not something that the appellant "may also" do, as the Judge found, but would be the legal basis for his return to Italy.

52. Here, as Judge O'Brien pointed out in the grant of permission, the Judge has overlooked the expert's opinion that there is a "high risk" that his application would be refused due to his conduct in leaving Italy for the UK.

53. For all these reasons, the Judge's inference that the appellant can return to Italy because he can apply for a visa was not one that was reasonably open to her on the evidence before her. As there has been no challenge to the appellant's expert evidence, we remake that finding. We find that he is not returnable to Italy.

54. Having found on the basis of the unchallenged expert evidence that the appellant is not returnable to Italy, we do not need to reach the issue of the burden of proof. The appellant relies on TG (Interaction of Directives and Rules) [30] for the principle that burden is on the respondent to show, to the balance of the probabilities, that the appellant is returnable to Italy. This argument has some force, because the Upper Tribunal in TG was expressly considering the requirements of Article 33 of the Refugee Convention and Para. 334(v) of the Immigration Rules, not only the requirements of the Procedures Directive (which is no longer in force). It does, however, run contrary to RR (refugee – safe third country) Syria [2010] UKUT 422 [3].

55. For these reasons, the Judge's decision involved the making of an error of law with regard to the appellant's returnability to Italy.

Materiality

56. We have carefully considered whether the error is material. Under Section 84 of the Nationality, Immigration and Asylum Act 2002, the only grounds of appeal available to the appellant are that his removal from the United Kingdom would breach the UK's obligations under the Refugee Convention or in relation to persons eligible for humanitarian protection, or would be unlawful under section 6 of the Human Rights Act 1988. The Judge's findings that the appellant would not be at real risk of persecution or serious harm in Italy are unchallenged. If the appellant had raised a protection and human rights claim only with regard to Italy, his appeal would therefore fall to be dismissed, regardless of whether he can be removed there. In this case, the Judge's error with regard to his removability would not be material.

57. However, the appellant is a citizen of Afghanistan and has at all times maintained that he would be at risk of persecution and serious harm on return to Afghanistan. Returnability to Italy is relevant to the grounds of appeal available to him because return to Italy is the alternative to removal to Afghanistan. In agreeing that returnability to Italy was one of the only two material issues in the appeal, the parties and the Judge have implicitly proceeded as if the risk on return to Afghanistan was

established. There is no other reason that returnability to Italy would be relevant to the grounds of appeal to the First-tier Tribunal. This has never been clearly articulated by the parties; indeed, their submissions at the hearing before us indicated that neither side had thought it through. As a judge in a specialist Tribunal, however, the Judge in this appeal must be presumed to understand the laws relevant to her jurisdiction.

58. For this reason, the Judge's error with regard to returnability to Italy was material to the decision she made, and the decision must be set aside.

Notice of Decision

59. As set out in detail above, the appellant has at all times claimed to be at risk on return to Afghanistan as well as to Italy, but the respondent's decision made no clear finding on whether his return to Afghanistan would be inconsistent with the UK's obligations under either the Refugee Convention or the ECHR, and both parties encouraged the Judge to treat these issues as irrelevant. As she found he was returnable to Italy, she was able to do so.

60. The consequence is that a clear finding on whether the appellant is at risk on return to Afghanistan remains to be made by the Tribunal.

61. There has been no challenge to the Judge's findings with regard to the risk to the appellant on return to Italy or the recent kidnapping of his father in Afghanistan. Those findings are preserved.

62. The appeal is remitted to the First-tier Tribunal to be dealt with afresh on the issue of removal to Afghanistan, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Beg. Any case management directions necessary to ensure that the parties' evidence and submissions with regard to removal to Afghanistan are fully set out prior to any further hearing will, of course, be a matter for the First-tier Tribunal.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 December 2024