

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/02133/2017**

**PA/02136/2017**

**PA/02144/2017**

**PA/02145/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Civil Justice Centre, Manchester** | **Determination Promulgated** |
| **On 8th June 2018** | **On 12th June 2018** |
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**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**N S**

**SB**

**BSS**

**BHS**

(ANONYMITY ORDER MADE)

Appellants

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Wilcox, Nag Law Solicitors

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as NS, SB, BSS, BHS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings**

1. The appellants sought and were granted permission to appeal on grounds, inter alia, of perceived bias, by First-tier Tribunal Judge Herwald who had dismissed the appellants’ appeal against the decision by the respondent to refuse their international protection claim.
2. Counsel who represented the appellants at the hearing before the First-tier Tribunal filed a witness statement setting out her recollection of the hearing. She freely admitted that she had not kept a contemporaneous note and the witness statement was prepared 20 days after the hearing. The presenting officer’s record did not refer to the instances in Ms Harris’ witness statement and the First-tier Tribunal judge did not accept that he had adopted the sarcastic or aggressive tome referred to by counsel.
3. Although Ms Aboni referred to the lack of reference in the presenting officers note to the matters referred to by Ms Harris and stated that there was no bias evident in the decision as promulgated, she nevertheless accepted that if there were a perception of bias, it would be appropriate to set aside the decision and remit the matter to the First-tier Tribunal for full re-hearing.
4. I make no finding on whether First-tier Tribunal Judge did make the comments or adopt the tone Ms Harris states he did. It is not appropriate for an Upper Tribunal hearing, scheduled to determine an error of law, to turn into a trial within a trial on what did or did not happen in the First-tier Tribunal.
5. It is sufficient in this case for me to conclude that, given the witness statement is by counsel who will be very aware of her professional responsibilities, there was sufficient concern, albeit unintended, to give the appearance of bias. In so far as Ms Harris objects to the appellants affirming, there is no merit in that objection. Some First-tier Tribunal judge require an oath, some offer the option to appellants and witnesses and others do not.
6. I set aside the decision to be remade by the First-tier Tribunal because of the perception of bias, no findings preserved.
7. I have not considered the other grounds of appeal relied upon; the appellants will have a full re-hearing.



Date 8th June 2018

Upper Tribunal Judge Coker