



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05846/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 14th February 2018

Decision & Reasons Promulgated
On 22nd February 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

A N A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Miss R Petterson (Senior Home Office Presenting Officer) For the
Respondent: Ms C Warren (instructed by Parker Rhodes Hickmotts Solicitors)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State, with permission, in relation to a Decision and Reasons of Judge Duff following a hearing at North Shields on 20th November 2017. In a Decision and Reasons promulgated on 24th

November 2017 the appeal was allowed on asylum and Human Rights grounds (Article 3).

2. Permission to appeal having been granted by a First-tier Tribunal Judge, the matter came before me to decide whether the First-tier Tribunal had made an error of law in its Decision and Reasons and if so whether and to what extent the Decision and Reasons should be set aside.
3. For the sake of continuity and clarity I shall refer to ANA as the Appellant and to the Secretary of State as the Respondent in this judgment.
4. The Appellant, a Tanzanian national had claimed asylum on the basis of political opinion.
5. The Secretary of State asserts that the First-tier Tribunal erred by denying the Home Office Presenting Officer the opportunity to cross-examine the Appellant. That, she asserts, amounts to procedural unfairness. It is argued that, although a vulnerable witness, the medical evidence before the Judge did not say that the Appellant was unfit to give evidence.
6. That is the sole challenge.
7. I find that the grounds are not made out. A reading of the Decision and Reasons explains that the Judge had medical evidence dated 27th October 2017 confirming that the Appellant suffered from severe depression. The Judge observed that the Appellant before him appeared extremely flat and on the verge of tears when the Judge spoke to him through an interpreter. The Judge asked the Home Office Presenting Officer what questions she intended to ask. The Judge found that, although the proposed questions were entirely proper, they were likely to cause the Appellant severe distress and, given the state of his mental health, the answers were unlikely to be reliable or accurate. He thus decided against taking oral evidence and gave both representatives time to prepare their submissions.
8. The Judge's actions were entirely appropriate and in line with the Presidents' Guidance on dealing with vulnerable witnesses. It is for a Judge to assess vulnerability and proceed accordingly assisted, where possible, by medical evidence. Mental disorders can fluctuate and the fact that in the medical report the doctor did not mention an inability to give evidence that could have changed and the stress of a hearing would not have helped. I note also from the Record of Proceedings that there was no objection raised by the Home Office Presenting Officer on the day who no doubt observed the same difficulties as the Judge. There was also no statement from the Home Office Presenting Officer on the day.
9. I note that the Judge dealt with each of the Secretary of State's challenges in the Letter of Refusal with the aid of an expert report. The Judge assessed that report and gave reasons for accepting the parts he accepted. He also took note of the medical report from the Helen Bamber Foundation, in particular concerning scarring.

10. The First-tier Tribunal did not act unfairly towards the Secretary of State's representative and thus the Decision and Reasons contains no error of law material or otherwise and shall stand.

Notice of Decision

The Secretary of State's appeal to the Upper Tribunal is dismissed.

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 their family. Failure to comply with this direction could lead to contempt of court proceedings

Signed

Date 14th February 2018

Upper Tribunal Judge Martin