



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06747/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 20th July 2018

Decision & Reasons Promulgated
On 21st August 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

BS
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by WTB solicitors

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DETERMINATION 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 appellant in this determination identified as BS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. BS arrived in the UK aged 17 and claimed international protection. His claim was refused for reasons set out in a letter dated 6th July 2017 and his appeal to the

First-tier Tribunal was dismissed by First-tier Tribunal Judge A J Parker in a decision promulgated on 13th April 2018.

2. It was accepted that the appellant, who was a minor, had been detained and raped by a man called [H].
3. The grounds upon which permission to appeal was granted submit the judge failed to consider relevant matters namely the appellant's age and oral evidence prior to making findings under s8; failed to give adequate reasons, failed to make adequate findings. These grounds were amplified in the application.
4. The First-tier Tribunal decision does not make clear structured findings supported by adequate reasons. Although the judge pays lip service to the appellant's age, he makes no reference to having considered the appellant's evidence as evidence from a young person who has plainly sustained considerable trauma including being raped and detained. The judge does not seem to know whether he is sitting alone or with some other unidentified person. Under the heading "findings", the judge makes comments rather than findings. The judge criticises the expert for failing to support the appellant's account "with conviction" yet that is not the role of an expert.
5. This decision cannot stand. The judge has failed to carry out his task with care and precision; he has failed to have adequate regard to the appellant's vulnerability, failed to make adequately reasoned findings and failed to have proper regard to the expert report.
6. I set aside the decision to be remade, the finding that he was raped and detained being preserved.
7. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. This is a case where further detailed factual finding will have to take place, after oral evidence and proper consideration of the expert report. I conclude that the decision should be remitted to the First-tier Tribunal to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I set aside the decision to be re-made in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Date 23rd July 2018



Upper Tribunal Judge Coker