



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07771/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7th November 2018

Decision & Reasons Promulgated
On 19th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

M D A H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim (Counsel) instructed by MQ Hassan Solicitors
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

Anonymity Direction

1. Pursuant Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order preserving that already in force. 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. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Background

2. The Respondent refused the Appellant's application for international protection of 13th July 2016. Judge Farmer dismissed the appeal following a hearing. That decision was promulgated on 23rd February 2017. The Upper Tribunal set that decision aside

in a decision promulgated on 10th August 2017 and directed the matter be heard afresh. The matter came before Judge Haria on 5th April 2018. The appeal was dismissed.

3. Permission to appeal was granted by Judge Page on 31st August 2018. He stated

“An arguable error of law has been identified in the judge’s decision at paragraph 45 where it is said that the judge has adopted the findings of fact made by First-tier Tribunal Judge Farmer apart from the finding of fact as to which hospital the Appellant was taken to. The ground of appeal argues that the judge should not have read or had regards to the determination of Judge Farmer as that had been set aside in its entirety and a fresh hearing ordered by the Upper Tribunal. Obviously if that is correct it could follow that there had been an error of law to vitiate the entire decision. The application for permission to appeal goes on to argue further grounds but I am not satisfied that they amount to more than disagreement with the conclusions that have been reached on the evidence. I grant permission to appeal on the above ground only but the judge should not have read or had regard to the determination of Judge Farmer because it had been set aside.”

The Respondent’s position

4. The Respondent filed a Rule 24 notice (20th October 2018) in which it is said that at [4] the Judge records the Appellant’s legal representative invited him to adopt the findings that had been agreed apart from the error referred to, and the Home Office agreed to that approach. Accordingly, as the Judge had consent of the parties, there was no material error of law. Mr Lindsay submitted that he was assisted by the decision in **NR (Jamaica) v Secretary of State for the Home Department [2009] EWCA 856** and in particular [10] which quotes from **Carcabuk v Secretary of State for the Home Department (unreported) 18 May 2000**, where Mr Justice Collins stated that

“it is in our judgment important to identify the precise nature of any so called concession. If it is a fact...the adjudicator should not go behind it. Accordingly, if facts are agreed, the adjudicator should accept whatever is agreed.”

5. Mr Lindsay submitted that this case therefore had nothing to do with **Devaseelan (Second Appeals, ECHR Extra-Territorial Effect) [2002] UKIAT 00702**.

Appellant’s submissions

6. Mr Karim sought to rely upon the grounds previously submitted that permission had not been granted upon. He did not wish to add to the grounds that had been submitted and drafted by him. He accepted the Grounds 2 and 3 were incorporated within Ground 1 which was the basis on which permission to appeal had been granted.
7. His Ground 4 of the application for permission to appeal challenged the assessment of the medical evidence and reports, and suggested that inadequate explanation had been given as to what weight was to be attached to those reports. Ground 5 in summary suggested that the Judge erred in relation to the requirement for the

Appellant to modify his behaviour. Ground 6 asserts that the Judge had not properly considered reintegration in light of his religious beliefs.

Respondent's submission on the additional grounds

8. Mr Lindsay submitted that those grounds did not disclose any arguable material error of law as the Judge gave a holistic view regarding the assessment of credibility, and that adequate reasons had been given for the findings made.

Discussion

9. In the decision, the Judge recorded the concession made by the Appellant through Counsel at the hearing. This is specifically recorded at [4] where the Judge stated;

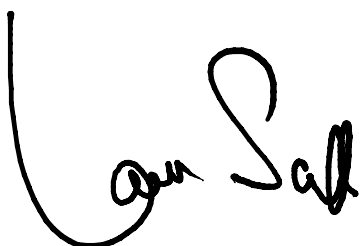
“The appellant’s representative stated that apart from the one mistake of fact which resulted in an unbalanced credibility assessment all other findings of First-tier Tribunal Judge Farmer in her decision were accepted and the principles set out in **Devaseelan (Second Appeals, ECHR Extra-Territorial Effect) [2002] UKIAT 00702** applies. The Home Office Presenting Officer agreed with the Appellant’s representative in this regard. The representatives agreed that I should adopt the findings of fact of First-tier Tribunal Farmer except the finding as to which hospital the appellant was taken to after the attack in June 2009 and make my own credibility assessment.”

10. I do not accept that the Judge materially erred. What the Judge was doing was recording the Appellant’s case of what the agreed facts were. The Judge was not relying on findings set aside, but on findings that were agreed that were recorded in a document. Accordingly, the Judge did not misapply **Devaseelan**.
11. In relation to the other grounds upon which permission to appeal was sought, I do not accept that any of them amount to any more than a disagreement with the findings made by the Judge and do not grant permission to reopen those grounds. The Judge made findings of fact available regarding the Appellant’s faith. Likewise, the Judge made findings of fact available regarding the documentary evidence produced and attached the weight that he/she felt was appropriate to that evidence. The grounds do not establish even arguably that the Judge erred in the assessment of that evidence. It follows that Ground 6 has no substance.

Notice of Decision

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

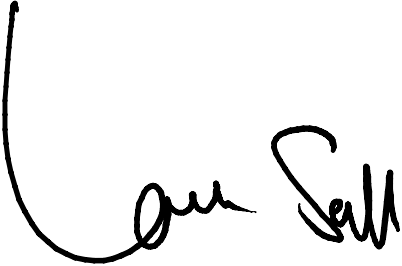
I do not set aside the decision.



Deputy Upper Tribunal Judge Saffer
13 November 2018

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to read "Louise Saffer". The signature is written in a cursive style with a large initial "L" and "S".

Deputy Upper Tribunal Judge Saffer
13 November 2018