



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11776/2017

THE IMMIGRATION ACTS

Heard at Manchester
On May 18, 2018

Decision & Reasons Promulgated
On May 24, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR DAVID [S]
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mair, Counsel, instructed by GMAI

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

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant is an Iranian national. He entered the United Kingdom on February 18, 2011 and claimed asylum the same date. His application was refused and he appealed that decision to the First-tier Tribunal. His appeal was refused both by the First-tier Tribunal and subsequently by the Upper Tribunal.

3. On May 19, 2016 the appellant lodged further submissions in support of his protection and human rights claim. The respondent refused those submissions on October 27, 2017.
4. The appellant appealed that decision on November 14, 2017 under Section 82 of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Holt on December 13, 2017 and in a decision promulgated on February 6, 2018 the Judge dismissed his claims.
5. Grounds of appeal were lodged on February 20, 2018 and Judge of the First-tier Tribunal Nightingale granted permission to appeal on March 14, 2018 identifying that the Judge had arguable erred in a number of ways including her approach to the appellant as a vulnerable witness in view of his medical diagnosis and the doctors' reports.
6. Mr Bates indicated that he had discussed the grounds of appeal with Ms Mair and he accepted that there was an error in law in the way the Judge had drawn conclusions about his vulnerability based on his demeanour, physical appearance and factually incorrect assertions about the way he conducted himself in court and by failing to take into account the guidelines in dealing with vulnerable witnesses as well as the medical evidence submitted.
7. Ms Mair accepted that there would be no further need to consider the other grounds of appeal for the simple reason that all credibility findings would have to be remade.
8. Whilst the Judge had noted the Joint Presidential Guidance Note relating to vulnerable witnesses and had the medical documents before her she made her own opinion about his demeanour and effectively discounted the medical evidence that was before her which could explain his demeanour without giving adequate reasons.
9. Both parties agreed that this amounted to an error in law and as I indicated at the hearing this was a matter which would have to be reheard de novo.
10. I pointed out to Ms Mair that her instructing solicitors should consider whether all church witnesses were necessary bearing in mind that the important church witness would be the Minister who no doubt could address all points raised at the resumed hearing.
11. I therefore find that there has been a material error in law and as this is a case which will involve fresh findings I remit this matter back to the First-tier Tribunal for a fresh hearing with no findings preserved.

DECISION

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

13. I remit the appeal back to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Holt or Judge of the First-tier Tribunal Lloyd (who previously heard the appellant's appeal in 2011).

Signed

Date 18/05/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

FEE AWARD

I make no fee award as no fee was paid.

Signed

Date 18/05/2018



Deputy Upper Tribunal Judge Alis