



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06661/2018

THE IMMIGRATION ACTS

**Heard at Manchester
On 17th April 2019**

**Decision & Reasons Promulgated
On 26 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

**YT
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J Greer, Counsel instructed by Citizens Advice Bureau (Bolton)

For the Respondent: Mr. A McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. Although an anonymity direction was not made by the First-tier Tribunal (“FtT”), and no application is made before me, as this a protection claim, it is appropriate that a direction is made. 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. This direction

applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Hillis promulgated on 23rd January 2019. The underlying decision that was the subject of the appeal before FtT was the decision of the respondent dated 10th May 2018 to refuse the appellant’s claim for international protection.
3. The appellant is a national of Cameroon. On 1st September 2017, the appellant was granted a business visa permitting him to enter the UK. He claims to have arrived in the UK on 8th October 2017, and on 24th November 2017 he claimed asylum. He claims to be at risk of being persecuted or ill-treated on removal to Cameroon as a homosexual man, who has come to the adverse attention of the authorities as a homosexual man.
4. The FtT Judge refers at paragraph [6] of the decision to the evidence that was before him. There was before the FtT, an appellant’s bundle running to some 197 pages, that included a report from Dr John McNulty dated 29th November 2018. At paragraphs [28] to [42], the FtT Judge sets out the evidence given by the appellant at the hearing of the appeal. The Judge’s findings and conclusions are set out at paragraphs [43] to [60] of the decision. The FtT Judge found that the appellant is not credible and reliable in his account to be a gay man who has no interest whatsoever in women. Furthermore, the FtT Judge concluded that the appellant has not come to the adverse attention of the Cameroon authorities as a gay man.
5. The FtT Judge addressed the report of Dr McNulty at paragraph [52] of the decision. The Judge stated that he accepts the contents of Dr McNulty’s report that some marks of violence to the appellant’s body, are consistent with torture and others are typical of the torture described by the appellant. The Judge concluded that the report does not show, even to the lower standard, that the appellant was tortured due to being

suspected to be a gay man. The Judge concluded, at [53], that “... *it is highly likely that the appellant was tortured due to his criminal activity which he initially sought to conceal in his account in Cameroon, and not as a suspected gay man.*”.

6. Permission to appeal was granted by FtT Judge Haria on 12th February 2019. The matter comes before me to consider whether the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.
7. Before me, Mr McVeety confirmed that having had the opportunity of considering the decision of the FtT Judge, it is accepted by the respondent that the FtT Judge erred in his approach to the medical evidence.
8. Having carefully considered the decision of the FtT Judge, I am satisfied that the FtT Judge fell into a legal error in the appraisal of the evidence. I note in particular, the FtT Judge addressed the appellant’s claim and reached his findings as to the credibility of the appellant’s account concluding that his account was not credible, before he went on to examine the report of Dr McNulty. That report noted that some marks of violence to the appellant’s body, are consistent with his account of torture. The medical report was therefore capable of lending some support to the appellant’s claim, and the claim should have been considered in that light. Adopting the correct approach, it may nevertheless have been open to the FtT Judge to find that the appellant is not a credible witness and to dismiss his appeal, but I cannot be satisfied that the Judge would have reached at the same conclusion, adopting the proper approach. I cannot therefore conclude that the error is immaterial.
9. Mr McVeety concedes, rightly in my judgment, that in the circumstances, the decision of the FtT cannot stand. He concedes that the decision of the FtT contains a material error of law and should be set aside.

10. I must then consider whether to remit the case to the First-tier Tribunal, or to re-make the decision myself. As the Judge failed to adequately address the core of the appellant's claim, the matter will need to be heard afresh with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
11. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

12. The appeal is allowed and the appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.
13. I make an anonymity direction.

Signed _____ Date 19th May 2019

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have allowed the appeal and remitted the matter to the FtT for hearing afresh. In any event, no fee is payable and there can be no fee award.

Signed _____ dated 19th May 2019

Deputy Upper Tribunal Judge Mandalia

