



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

Appeal Number: PA/08582/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 30 May 2019**

**Decision & Reasons Promulgated
On 11 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**M A H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Alex Burrett, Counsel instructed by Wilsons Solicitors
For the Respondent: Miss Cunha, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Monson promulgated on 20 March 2019. I have been assisted in determining this appeal by the clarity of the grounds drafted on the appellant's behalf and by the pragmatic acceptance on behalf of the Home Secretary that there are a number of ways in which the decision of the First-tier Tribunal is unsatisfactory.
2. Both individually and cumulatively these matters amount to one or more errors of law. In the circumstances, I cannot be satisfied that the appeal received the anxious scrutiny as required in the First-tier Tribunal. The

proper course is to set aside the decision and remit the appeal to the First-tier Tribunal for it to be reheard *de novo* by a judge other than Judge Monson.

3. Because of the concessions wisely made this morning on the Secretary of State's behalf, I need say very little by way of reasons.
4. The principal flaw was the judge's approach to the expert evidence of Professor Katona. The issue concerned causative factors for the appellant's post-traumatic stress disorder. The judge gave the impression that the key issue was "essentially subjective" and beyond Professor Katona's direct knowledge. Any expert medical adviser draws heavily on the reliability of the patient as a historian and to that extent all medical reports have a self-serving content to them. But it is very clear from a full reading of this medical report that Professor Katona applied his mind and his considerable experience to more than a regurgitation of the appellant's own evidence. In my assessment the judge too readily dismissed the content of that expert report on the erroneous basis that it was entirely self-serving.
5. In addition to that the judge was critical of the report on the assumed basis that Professor Katona did not have regard to the appellant's general practitioner notes. Regrettably the judge did not put this concern to the appellant or to his representative. Had he done so it would have become apparent that the expert had indeed seen and considered the GP notes, albeit he neglected to record this fact in the text of the report. I have seen a detailed witness statement from Counsel who appeared in the First-tier Tribunal as well as a confirmatory letter from Professor Katona to verify this. It was therefore not appropriate for the judge to discount the expert evidence on this false premise.
6. There are other features of the decision which are the subject of criticism in the grounds of appeal but in the light of the respondent's concession, which I consider properly made, I do not need to deal with them. Having already concluded that this decision cannot be upheld, the less I say, the better.

Notice of Decision

- (1) An error of law having been found, the decision of the First-tier Tribunal is set aside.
- (2) The appeal is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Monson.
- (3) No findings of fact are preserved.
- (4) An anonymity direction is made in the following terms.

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 his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill*

Date

5 June 2019

Deputy Upper Tribunal Judge Hill QC