



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

Appeal Numbers: PA/10544/2018  
PA/10547/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham CJC  
On 2 May 2019**

**Decision & Reasons Promulgated  
On 10 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**ZM  
ZM  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms. E. Griffiths, Counsel instructed by Paragon Law  
For the Respondent: Ms. H. Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge M. Robertson, promulgated on 1 February 2019, in which she dismissed the Appellants' appeals against the Respondent's decision to refuse to grant asylum.
2. I make an anonymity direction, continuing that made in the First-tier Tribunal.

3. Permission to appeal was granted as follows:-

“It is arguable whilst accepting that the appellants were identified as vulnerable witnesses (paragraph 20) the judge has gone on to consider whether the medical assessment which led to this identification was reliable – see paragraphs 28 -33. Her assessment of the appellants’ written evidence is then formulated on discrepancy in the accounts given – paragraph 35. It is arguable that whilst finding that the appellants were to be treated as vulnerable, on the basis of the medical evidence, the judge has gone on to find the latter unreliable – see paragraph 36. The judge’s findings have led to a procedural irregularity which is an arguable error of law.”

4. The Appellants attended the hearing.

5. At the outset of the hearing Ms. Aboni accepted that the decision involved the making of material errors of law in relation to the Judge’s treatment of the Appellants as vulnerable witnesses, and the treatment of the medical evidence.

6. Given the acceptance by the Respondent that there were material errors of law in the decision, I set the decision aside, and remitted the appeal to the First-tier Tribunal to be reheard.

**Error of Law**

7. As stated at the hearing, given the acceptance by Ms. Aboni that the Judge had made material errors of law, I do not intend to go through all of the grounds of appeal. I will address grounds 1 and 2.

8. I find that the Judge materially erred in her application of the Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance (the “Presidential Guidance”). At [20] the Judge states that the Appellants “were identified as vulnerable witnesses”. She identified them as such prior to the commencement of the hearing. She later states in [20], following discussion with the representatives, that “the guidelines applied to questioning of the witnesses.” I find that the Presidential Guidance is not so limited. It applies to the entirety of the proceedings, including consideration of the evidence. I find that the Judge at the outset has adopted too narrow an interpretation of the Presidential Guidance.

9. The Judge considers the medical evidence at [30], having set out at [29] the case of HE (DRC - credibility and psychiatric reports) [2004] UKIAT 00321. She states at [30] that she is unable to give the medical report significant weight and sets out seven reasons for this. At [36] the Judge states:

“I find that A1’s account is vague and lacking credibility, and it is difficult to say that it is vague because of his mental health condition. The medical report is sufficiently lacking in transparency to undermine

the reliability of the diagnosis. I find, to the lower standard of proof, that A1's account is vague because it did not take place."

10. The Judge stated at [20] that the first Appellant was a vulnerable witness. However it appears from her statement at [36] that she has not treated him as vulnerable. I find that her findings as to whether or not the first Appellant was a vulnerable witness are inconsistent. I find that this is a material error of law.
11. I further find that she has erred at [30] in her analysis of the medical evidence. She has stated that the qualifications of the expert are not in doubt [30]. At [30(I)] she states that there was little in the report to establish what was observed by the expert from which her conclusions were drawn. However as set out at 7(a) of the grounds of appeal, the expert had set out in her report how the first Appellant had presented, indicating that her findings were based also on what she observed.
12. At 30(II) the Judge sets out how the expert considered whether the first Appellant could have been feigning his psychological symptoms. She then states "it is not clear how it is possible to assess whether someone is feigning symptoms from body language and presentation". The expert is qualified to assess this, not the Judge. It was not open to the Judge to reject the findings of the expert based on her own understanding of how such a finding could or could not be arrived at. That is a matter within the expert's knowledge.
13. At [43] the Judge states:

"There is nothing to suggest that with the assistance of his family he would not be able to manage life in Afghanistan, particularly because on the facts as found, any difficulties with mental health are likely to be caused by separation from his family, rather than the account given to Dr L on which the diagnosis of PTSD was made, and he will be returning to his family".
14. The Judge has made a finding that "any" difficulties that the first Appellant has with mental health are likely to be caused by separation from his family. This finding was not open to the Judge. She has no medical expertise to attribute the first Appellant's mental health to any particular cause. I find that the Judge has given less weight to the medical evidence for reasons which were not open to her. I find that this is a material error of law.
15. I find that the decision involves the making of material errors of law in relation to the application of the Presidential Guidance, and the treatment of the medical evidence. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the

First-tier Tribunal. The Appellants have not had a fair hearing given the Judge's failure properly to apply the Presidential Guidance, and her errors affect the credibility findings. Given this, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

### **Notice of Decision**

16. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside.
17. The appeal is remitted to the First-tier Tribunal to be reheard.
18. The appeal is not to be listed before Judge Robertson.

### **Directions**

1. Given the submissions made by Ms. Griffiths relating to the case of AS (Afghanistan), currently in the Court of Appeal, the case is to be listed for an oral CMR not before 1 July 2019.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 8 May 2019

**Deputy Upper Tribunal Judge Chamberlain**