



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

Appeal Number: PA/11762/2018

THE IMMIGRATION ACTS

**Heard at Field House
On May 13, 2019**

**Decision & Reasons
Promulgated
On May 17, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR S A P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Maqsood, Counsel, Direct Access instruction
For the Respondent: Mr Tarlow, Home Office Presenting Officer
Interpreter: Ms Syed

DECISION AND REASONS

The appellant, a Pakistani national, entered the United Kingdom as a Tier 4 (General) Student on February 21, 2011 with leave to remain until June 14, 2012. His leave expired and on March 27, 2018 he applied for asylum. His

application was subsequently refused by the respondent on September 25, 2018 under paragraphs 336 and 339F HC 395.

The appellant appealed that decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 8, 2018. His appeal came before Judge of the First-tier Tribunal Sangha, who in a decision promulgated on January 22, 2019 dismissed the appellant's appeal.

Permission to appeal was granted by Upper Tribunal Judge Finch on April 9, 2019 on the sole ground that the Judge had failed to demonstrate that he had considered the appellant's witness statement when considering all the other evidence.

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.

SUBMISSIONS

Mr Maqsood adopted the grounds of appeal and submitted that the First-tier Judge only engaged with the witness statements in one place, namely at paragraph 11 of the decision. He submitted that the Judge had failed to consider any of the explanations set out in the witness statement itself and went on to identify a number of areas in the witness statement, in particular paragraphs 7, 8, 9 and 13, where the Judge had failed to attach any weight, either positively or negatively, in her consideration. In summary, Mr Maqsood submitted the Judge's failure to consider the explanations amounted to an error in law.

Mr Tarlow submitted that the challenge was a mere disagreement or, alternatively, any failure to specifically set out the appellant's witness statement merely went to materiality of the decision and that the Judge had provided adequate reasons for rejecting the appellant's claim. He relied on the decision letter, which dealt in detail with the appellant's claim from page 4 onwards.

In response, Mr Maqsood submitted that the credibility findings themselves were flawed because they had failed to consider the witness statement of the appellant and the Judge had failed to afford anxious scrutiny to the evidence.

DECISION ON ERROR IN LAW

This was a narrow issue that came before the Tribunal. The sole issue was whether the failure by the Judge to set out the evidence in the appellant's witness statement either amounted to an error in law itself or, alternatively,

even if there was an error did the evidence go to the materiality of the decision.

There is no evidence within the decision that the Judge engaged with any aspect of the witness statement and on the face of it therefore there is an error. I therefore reject Mr Tarlow's first submission and proceeded to consider the materiality of such an error.

Mr Tarlow argued that the Judge had given ample reasons for rejecting the appellant's claim. The Judge did not engage with the contents of the witness statement and in deciding credibility I find that the Judge must consider all relevant evidence. When making credibility findings it seems that any failure to engage with an important part of the evidence, which in this case is the witness statement, must be material to the credibility findings. It is difficult to argue that the credibility findings may have been different in circumstances where the witness statement itself was not considered.

The outcome ultimately reached by the Judge may well have been the same, but it is difficult for me to make that finding when there was no evidence that the Judge had actually looked at the witness statement itself.

I therefore find that despite the care taken by the Judge in making her numerous findings, the decision lacks one important aspect, namely a consideration of the witness statement, and this undermines the decision and amounts to an error in law.

Both representatives agreed that if there was an error of law, the case would have to be remitted back to the First-tier Tribunal. I therefore direct that this case be remitted back under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

Decision

There was an error of law and I set aside the decision and remit the matter back to the First-tier Tribunal.

Signed

Date

16 May 2019



Deputy Upper Tribunal Judge Alis