Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13399/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 April 2019	**On 8 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

JMK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hodson instructed by Elder Rahimi solicitors
For the Respondent: Mr Kandola Senior Home Office Presenting Officer

Order Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (S I 2008 front/269) I make an anonymity order. Unless and until a Tribunal or a Court directs otherwise, the Appellant is granted anonymity and no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as JMK. The order applies both to the Appellant and to the Respondent. Failure to comply with the order could lead to contempt of court proceedings.

DECISION AND REASONS

1. In a decision promulgated on 14 January 2019 First-tier Tribunal Judge Stedman dismissed the appellant's appeal against a decision by the respondent refusing her claim for international protection.

2. Permission to appeal was sought on 3 grounds which I summarise:

   i. The First-tier Tribunal judge had erred in law in failing to deal with the appellant's explanation about the conduct of the interview and the discrepancies that arose evening her assessment of the appellant's credibility about her historical account of detention and ill-treatment and has unquestioningly adopted the respondent's conclusions.

   ii. The First-tier Tribunal judge had erred in law and her approach to the assessment of the appellant's credibility failing to take into account the medical evidence of the appellant suffering from post-traumatic stress disorder until after she had decided that the appellant lacked credibility, so that she had not considered the impact vulnerability may have had on her interview.

   iii. The First-tier Tribunal judge failed to take prior account of the letter the appellant provided from UDPS in the overall assessment of the appellant's credibility.

3. I find no merit in the contention of ground 1 that the judge had failed to take account of the appellant's own explanations. At paragraph 6 the judge identifies the discrepancies relied upon by the respondent relating to the asylum interview records. At paragraph 12 the judge indicates clearly that she has read the witness statement when she identifies that between paragraph 10 to 26 of the witness statement the appellant dealt with the challenges raised in the reasons for refusal letter. The judge would have had those explanations in mind when she turns at paragraph 25 to provide her reasons for rejecting the appellant explanations when she states that she" *accepts that it is perfectly reasonable for an appellant, in an interview situation (particularly one where the appellant complained that the interviewing officer was being harsh – which I accept was the case) to forget dates or forget certain details. Such matters would not necessarily detract from the centrepiece of an account."* Accordingly, there is ample reference to the explanations offered. Further and contrary to the particularisation of the ground, the judge has not just adopted the conclusions of the respondent because at paragraph 26 the judge sets out that she has reached her own conclusion that the inconsistencies as to whether she was detained just a day or 2, or whether in fact she was held in detention from February until May when she left the country, have been inadequately explained. The reference to the reasons for refusal merely indicates agreement.

4. I find force in ground 2. At paragraph 8 the judge refers to the appellant's claimed history of sexual violence and her diagnosis of PTSD and of her

being under the care of the community health team. Further at 12 when outlining the documentary evidence, the judge again reminds herself that the appellant is a vulnerable witness and "*had diagnosed medical conditions*". Nonetheless, making her findings on credibility at 25 onwards, the judge does not give any reasoning in respect of the impact on credibility of the appellant suffering PTSD. As the ground points out the judge does not deal with the medical evidence in the consideration and findings section until after finding the appellant's account of historic detention incredible. The inference is that she rejects the explanation that PTSD arises from rape in detention because she has found the appellant appellant's account incredible, rather than showing that in reaching a holistic assessment of credibility she has taken into account that the appellant suffers from post-traumatic stress disorder and any impact that that might have on her apparently inconsistent evidence to the respondent. I am satisfied that that is an erroneous approach.

5. Whilst the grounds do not expressly identify incoherence and inconsistencies by cross-reference to the detail of the discrepancies identified in the decision that her vulnerability could have impacted upon in determining the credibility of her account, and nor does the medical evidence because it did not deal with the issue of the relationship of the diagnosis to the discrepancies identified, I cannot say with certainty that the medical evidence could not have made any difference to the assessment of credibility had it been approached through the lens of that diagnosis. The error is material.

6. Ground 3 takes issue with the judge's assessment of the documentary evidence from UDPS. There were 2 letters the submissions about which the judge has set out in detail between paragraphs 13 and 16, and the reasoning shows good familiarity with the documents and their contents. Contrary to the grounds the judge was clearly aware of the point made behalf of the appellant in these grounds that the author of the letter contacted a named person in charge of the appellant's home area who confirmed her membership and that she was in charge of propaganda and mobilisation, and that she had been arrested and detained on 3 occasions. The judge was entitled to find that the letter was not determinative and assess it as part of the evidence in the round vis a vis credibility. The difficulty is that the error above infects the holistic assessment of the evidence so that the findings cannot stand. The remake of the decision will require the judge take account of the vulnerability of the appellant in the context of this evidence too.

7. It follows from my findings that the decision of the judge contains a material error of law going to the root of the assessment of credibility so that none of the findings can stand. I set aside the decision of the First-tier Tribunal to be remade.

8. When a decision of the First-tier Tribunal is set aside, section 12 (2) of the TCE a 2007 requires me remake it myself or to remit the case to the First-tier with directions. In this case all the findings of the First-tier Tribunal judge have been set aside because of an incorrect approach to the

evidence. The factual matrix of this appeal is disputed; I conclude that the decision should be remitted to the First-tier Tribunal to determine the appeal de novo.

Conclusions:

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

10. I set the decision aside and remit the appeal to the First-tier Tribunal, no findings preserved.

11. Anonymity: The First-tier Tribunal made an order pursuant to rule 45 (4) (I) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

12. No fee is paid or payable and therefore there can be no fee award.

Signed Date 29 April 2019
Deputy Upper Tribunal Judge Davidge