



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/13819/2018**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC via Decision & Reasons Promulgated  
Skype On 23 October 2020 On 28 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MJA**

(Anonymity direction made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Karim instructed by Kalam Solicitors.

For the Respondent: Mr C Bates Senior Home Office Presenting Officer.

**ERROR OF LAW FINDING AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Ferguson ('the Judge') promulgated on the 11 June 2020 in which the Judge dismissed the appellants appeal on all grounds.
2. Permission to appeal has been granted by the Upper Tribunal on a renewed application.
3. In a Rule 24 reply dated 1 September 2020 the respondent's representative writes:

“2. Whilst it was open to the FTTJ to make a number of the findings set out in the decision and a number of the grounds appear to amount to disagreement on their own, it is accepted that inconsistencies/findings made and relied on by the FTTJ as identified in the grounds 2 and 7 (for example [29] and [57]) were matters not put to the appellant nor submitted on by the Respondent as recorded in the decision. This could equally be said in relation to the evidence referred to in ground 6. It is accepted that this amounted to procedural unfairness; and as identified by Upper Tribunal Judge Finch the multiple references to terms ‘established’ is suggestive of applying a higher standard of proof than that required and a failure to apply this standard holistically to the whole of the evidence as alluded to in the majority of the grounds. Whilst the FTTJ was asked to treat the appellant as a vulnerable witness and there is no apparent complaint on the treatment in the hearing, there does not appear to be any consideration of this issue and its application when addressing credibility overall. Given the nature of the material error is accepted, it is considered that the matter is required to be heard afresh in the First-tier Tribunal.”

4. In light of the errors being conceded in relation to both their existence and materiality I set the decision aside.
5. In light of the failure to set out how the appellants vulnerability was factored into the decision-making process; I find that none of the findings can be preserved.
6. This is a complex appeal in which extensive fact finding is required having applied the correct legal test and explaining how the appellants vulnerability has been factored into the assessment. Having considered the Presidential Guidance on remittal of appeals, I consider this matter suitable for remittal.
7. I remit the appeal to the First-tier Tribunal sitting at Taylor House to be heard *de novo* by a judge other than Judge Ferguson.

## **Decision**

8. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at Taylor House for it to be considered afresh by a judge other than Judge Ferguson.**

Anonymity.

9. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson  
October 2020

Dated the 23