



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20819/2019**

THE IMMIGRATION ACTS

**CMR at Bradford (via Skype)
On 10 March 2021**

**Decision & Reasons Promulgated
On 17 March 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TAHIRU ABDULAI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Draycott instructed by Legal Rights Partnership.

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** Following a hearing before the First-tier Tribunal at Birmingham on 16 March 2020 the appellant's appeal was dismissed in a decision dated 24 April 2020.
- 2.** Permission to appeal was granted to the appellant by a judge of the Upper Tribunal on 16 September 2020. The operative part of the grant being in the following terms:

The appellant is appealing against the decision by First-tier Tribunal Judge Thakar to dismiss his appeal against the decision of the respondent to refuse to grant him leave to remain on human rights grounds.

First Tier Tribunal judge Thakar failed to treat the appellant as a vulnerable witness or apply the Joint Presidential Guidance Note No.2, despite being provided with the report by Dr Heke and this being raised by the appellant's counsel at the start of the hearing. Neither did she consider the judgement in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17.

First-tier Tribunal Judge Thakar failed to refer to any relevant legislation or case law in her decision. She also made adverse credibility findings before establishing the necessary legal framework and did not carry out a holistic assessment of the facts of the appellant's case.

In addition, First-tier Tribunal Judge Thakar failed to raise a number of issues with the appellant which she found to have an adverse effect on his credibility when these points were not contained in the respondent's reasons for refusing the appellant leave and were not put to him by the Home Office Presenting Officer. This amounted to a procedural error of law.

3. A Rule 24 reply was received from the respondent's representatives dated 14 October 2020, which states that [3] "on the face of the determination there is nothing to indicate that the judge was specifically invited to treat the appellant as a vulnerable witness".
4. Directions were given by the Upper Tribunal, including the provision of the record of proceedings which clearly showed that the Judge was specifically invited to treat the appellant as a vulnerable witness.
5. The Judge made adverse credibility findings against the appellant with no indication of how the appellant's vulnerability as a person suffering from a mental health condition had been factored into the credibility assessment.
6. Mr Draycott stated that a concession had been made by the Presenting Officer in relation to the appellant's health issues to which there is no specific reference in the decision.
7. The starting point is to consider whether the Judges assessment is safe. The appellant is clearly a vulnerable witness and both the guidance referred to in the grant and provided by the Court of Appeal has stressed the importance of such an issue being taken into account by a fact-finding judge. There is no indication on the face of the determination as to how the Judge took such an important aspect of the appellant's presentation into account and how it was factored into the decision-making process.
8. As stated at the CMR, I accept that the determination is infected by an error of law on this basis material to the decision to dismiss the appeal. I find the appellant has not had a fair assessment of the evidence in the appeal. I find that none of the findings of the Judge can stand as it is not clear they would have been as made by the Judge had the proper approach to the assessment of the evidence been undertaken.
9. The Rule 24 reply accepted, in any event, that the Judge had not clearly delineated the considerations undertaken on the appellant's medical claim under Article 3 or Article 8 ECHR, which was an important element of the case before the Judge.

10. Mr Draycott raised at the CMR whether the concession made by the Presenting Officer before the Judge in relation to the appellant's mental health still stood, but Mr Diwnycz was in some difficulty as there was nothing to indicate that a formal concession had been made on the documents available to him. Further enquiries are to be undertaken to ascertain whether this is an issue. It is also a matter the appellant's representative can canvas with the respondent's representatives outside these proceedings in any event.

Decision

11. **The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Birmingham to be heard afresh by a judge other than Judge Thakar. There shall be no preserved findings.**

Anonymity.

12. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 10 March 2021