



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03194/2020**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 17 March 2022**

**Decision & Reasons Promulgated
On the 13 April 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SKA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Vokes, instructed by Halliday Reeves Law Firm.

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

- 1.** The appellant, a citizen of Iraq, appeals with permission a decision of First-tier Tribunal Judge Groom promulgated on 19 April 2021, in which the Judge dismissed the appeal on all grounds.
- 2.** At [22] of the decision under challenge the Judge records Mr Vokes inviting the Tribunal to treat the appellant as a vulnerable witness as medical evidence had been provided with regard to her mental health. The Judge also records there being no objection to the appellant being treated as a vulnerable witness by the Presenting Officer. There is,

however, no specific finding by the Judge that the appellant was treated as a vulnerable witness.

3. If the Judge did not treat the appellant as a vulnerable witness no reason for doing is given or made out, which in itself is a material error on the facts of this appeal.
4. If the Judge did treat the appellant as a vulnerable witness it was necessary for the Judge to consider not only the conduct of the appeal but also how the evidence given was to be assessed in line with the guidance provided in the Joint Presidential Guidance Note - No 2 of 2010. There is no reference to this document in the decision.
5. The Judge states that he will treat the appellant's evidence with caution "for these reasons" at [26] but that statement is not expanded upon and there is no indication of what in the Judges mind those reasons are.
6. The Judge sets out findings of fact from [40] in which is found the appellant's evidence is "unreliable", "vague" and "inconsistent".
7. There is no mention in the determination of how paragraph 15 of the Joint Residential Guidance has been applied, which reads:
 15. The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind. (my emphasis).
8. The vulnerability relates to the appellant's mental health which can have a direct impact upon a person's ability to recall facts or even communicate those facts in a coherent manner. The Judge makes no attempt to record the effect of the identified vulnerability in a manner which the Judges assess the evidence other then, it appears, the Judge setting out the self-direction of the need to approach the evidence with caution. That is too vague.
9. I find as a result of the failure of the Judge to properly apply the Joint Presidential Guidance to this matter, there is an error of law material to the decision to dismiss the appeal on the basis of procedural unfairness.
10. I set the decision aside and remit the appeal to the First-tier Tribunal sitting at Birmingham/Nottingham to be heard afresh by a judge of that Tribunal other than Judge Groom. There shall be no preserved findings.

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/Nottingham to be heard afresh by a judge other than Judge Groom.**

Anonymity.

12. 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

Dated 17 March 2022