



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

Appeal Number: PA/11633/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2021**

**Decision & Reasons Promulgated
On 28 April 2022**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

N S (NEPAL)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharaz Ahmed, Counsel appearing by direct access
For the Respondent: Mr Stephen Walker, a Senior Home Office Presenting Officer

**DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of N S who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 15

November 2019 to refuse his claim for refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant's nationality is disputed: the respondent has treated him as Nepalese but he asserts that he is Tibetan (and thus, currently, a citizen of the People's Republic of China).

2. Permission to appeal was granted by First-tier Judge Scott-Baker on the following basis:

“5. The judge notes at [29.1] that the appellant initially claimed that he was Nepalese, and subsequently varied his account to say that he was Tibetan. One of the key components was the appellant's evidence given at the screening interview that his main language and dialect was Tibetan. At [29.3] the judge finds that the appellant had made no mention of being Tibetan at the screening interview which is arguable factually incorrect and at [30] and [31] makes adverse findings on evidence whilst acknowledging that the matters had not been put to he appellant.

6. Arguably the judge has erred in law in his approach to credibility, *Y [v Secretary of State for the Home Department [2006] EWCA Civ 1223]* at [25] applied and arguably has made inadequate findings of fact.”

3. It is common ground today that the First-tier Tribunal did materially err in law in relying on the matters set out at [30] to support a negative credibility finding, although they had not been put to the appellant. Both representatives agree with the Tribunal that this is a case where the decision of the First-tier Tribunal must be set aside and remade. Further oral evidence is needed and so such remaking will need to be in the First-tier Tribunal.
4. I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
5. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above.
6. If in consequence an oral hearing is required, but the outcome is the same, the Upper Tribunal will consider making an order for wasted costs.

Decision

7. I set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved. The appeal will now proceed to the stage in which the First-tier Tribunal will remake the decision to allow or dismiss the appeal afresh.

Signed: [Judith AJC Gleeson](#)
2021

Date: 26 November

Upper Tribunal Judge Gleeson