Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000202
[RP/00020/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 July 2022	**On 21 September 2022**

Before

THE HONOURABLE MR JUSTICE MORRIS
UPPER TRIBUNAL JUDGE SHERIDAN

Between

KIRUSHANTHAN SATHANANTHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr Patrick Lewis, Counsel instructed by York Solicitors
For the Respondent: Mr David Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of Judge of the First-tier Tribunal Chana ("the judge") promulgated on 9 September 2021 dismissing his appeal against the respondent's decision of 24 February 2020 ("the SSHD decision") to revoke his refugee status by reference to paragraph 339AC(ii) of the Immigration Rules.

Introduction

2. The appellant is a citizen of Sri Lanka who was granted refugee status on 20 March 2014.

3. On 30 November 2018 the appellant was convicted of sexually assaulting a young female employee at a shop he ran and owned with his wife. He was found guilty of two offences and not guilty of one offence.

4. He was found guilty of:

5. sexual assault on a female – no penetration, between 30 November 2017 and 18 May 2018 (Count 2); and

6. sexual assault on a female – no penetration, on 18 May 2018 (Count 3).

7. He was found not guilty of sexual assault on a female – no penetration, on a date between 31 October 2017 and 1 December 2017 (Count 1).

8. The appellant was sentenced, by HH Judge Williams, to 30 months imprisonment and required to sign the sex offenders register indefinitely.

9. On 24 February 2020 the respondent decided to revoke the appellant's refugee status on the basis that paragraph 339AC(ii) of the Immigration Rules applied to him and that the presumption under Section 72(2) and (6) of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act") had not been rebutted.

10. Paragraph 339AC(ii) of the Immigration Rules and Section 72(2) and (6) of the 2002 Act have been amended since the SSHD decision. At the time of the SSHD decision they provided:

> Paragraph 339AC(ii)
>
> Refugee status can be revoked where:
>
> "having been convicted by a final judgment of a particularly serious crime, the person constitutes a danger to the community of the United Kingdom."
>
> Section 72(2) and (6)
>
> "72(2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—
>
> (a) convicted in the United Kingdom of an offence, and
>
> (b) sentenced to a period of imprisonment of at least two years"
>
> …
>
> "72(6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person."

11. The wording in paragraph 339AC(ii) and Section 72(2) corresponds to Article 33(2) of the Refugee Convention, which sets out an exception to the prohibition against expulsion or return of a refugee, in the following terms:

> "The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."

12. The appellant appealed to the First-tier Tribunal against the respondent's decision to revoke his refugee status. His appeal was dismissed. He now appeals against this decision.

Decision of the First-tier Tribunal

13. In the First-tier Tribunal proceedings, the central issue before the judge was whether the appellant was able to rebut the presumption of being a danger to the community of the UK. The evidence relevant to this included the following.

A. The sentencing remarks of HHJ Williams.

14. HHJ Williams stated that the appellant developed a sexual interest in the complainant, leading him to touch her in an inappropriate way during the period covered by Count 2. He described the appellant as abusing a position of trust. With respect to Count 3, he stated:

> "You abused your dominant position as her employer in order to pray on her as and when you wished to. Ultimately, this led to the incident on 18 May last year reflected in Count 3, when you took hold of the Complainant and pulled her into a space which you knew was not covered by CCTV."

15. HHJ Williams also stated that:

> "You took advantage of her silence in relation to the earlier incident to sexually assault her in a more serious way because you expected to get away with it". (emphasis added)

16. He described the Count 3 assault as entailing the appellant forcing his hand under the complainant's clothing. He stated that it was only brought to an end because someone came downstairs.

17. HHJ Williams stated that the appellant's conduct towards the complainant caused her anxiety over the course of her employment. He stated:

> "She had to develop counter-measures to minimise the risk of being touched by you in those areas [confined and private places at work]. She changed the way she dressed to wear baggy clothing and there could be no doubt that spending time with you out of public view at that shop during the course of her employment were times of anxiety for her."

18. HHJ Williams described the appellant as not showing any real remorse and attempting to "lie [his] way out of it at trial".

B. The Offender Manager Statement by Mr Khan, completed on 23 April 2021

19. Mr Khan, a probation officer, stated that the appellant did not undertake any courses for individuals who have committed sexual offences whilst in custody but since his release has engaged very well, has been compliant with all aspects of supervision, and has been motivated to address risk factors.

20. Mr Khan distinguished between the risk of the appellant reoffending (a low risk) and the risk of the appellant posing serious harm (a medium risk). Mr Khan stated as follows:

> "Static risk assessment tools to predict offending indicate that [the appellant] is a Low Risk of violent and generic reoffending, and a Low Risk of sexual reoffending (both indecent and contact).
>
> Taking into account his offending and risk factors, [the appellant] is assessed as posing a Medium Risk of serious harm to the known adults, the public (specifically young adult women) and children. Putting this into context, there are identifiable indicators of risk of serious harm. The offender has the potential to cause serious harm but is unlikely to do so unless there is a change in circumstances, for example, if he were in a place of employment whereby he was in a position of authority as he may seek to abuse this to fulfil his own needs and desires, relapse back into excessive alcohol consumption, relationship issues, and deterioration in his mental health."

21. Mr Khan also addressed whether, and the extent to which, the appellant was remorseful. He stated:

> "[H]e expresses some level of remorse around the impact on the victim and the victim's family. He has made every effort to avoid the area in which the offence took place and has been compliant with all restrictions imposed upon him. Of note, when released, [the appellant] failed to take responsibility for his behaviour, however there is a notable difference in his attitudes and thinking since then."

C. Report by forensic psychologist Ms E John, dated 7 July 2021

22. Ms John is an experienced forensic psychologist. Following a five hour video conference call with the appellant (with an interpreter), and consideration of several documents including HHJ Williams' sentencing remarks and Mr Khan's Offender Manager Statement, she undertook a structured risk assessment of the appellant which included the Risk for Sexual Violence Protocol ("RSVP"); the Level of Service/Case Management Inventory ("LS-CMI") and an Assessment of Protective Factors ("SAPROF"). She also assessed the appellant's mental health.

23. With respect to the appellant's mental health, she stated that the appellant suffers from severe depression and severe anxiety (paragraph 9.1.1 of the report).

24. In paragraph 9.2.1 of her report, Ms John expressed the view that the appellant's offending seemed out of character and that his strong expression of remorse "appears genuine".

25. In section 9.3 of the report, Ms John stated that, based on her structured risk assessments, the risk of the appellant sexually reoffending was low.

26. In section 9.4 she stated that the risk posed by the appellant to the public is also low. She acknowledged that Mr Khan reached a different view, but stated that his opinion represented an over-estimate of the risk.

The judge's assessment of the evidence

27. The judge expressed a preference for Mr Khan's report over that of Ms John. After stating in paragraph 51 that Mr Khan assessed the appellant's risk of reoffending as "medium", the judge, in paragraph 54, criticised Ms John's report for failing to give a credible reason as to why she "*saw it fit to reduce the appellant's risk from medium to low*." In paragraph 53 the judge noted that Ms John made her assessment after a five hour video conference call whereas Mr Khan's assessment was made after having "ongoing supervision" of the appellant.

28. In paragraph 64, the judge noted that Mr Khan stated that the appellant was unlikely to cause serious harm unless there was a change in his circumstances, such as relationship issues or a deterioration in his mental health. The judge stated:

> "I find that the appellant's claimed mental health problems which emerged after so many years due to a stressful situation, brought on by his own criminality, [sic] he could therefore continue to be a danger to the community of the United Kingdom when he faces stressful situations in the future"

29. The judge stated that the analysis in Ms John's report indicated that there are multiple "trigger factors" that could increase the risk of the appellant reoffending. In paragraph 67 the judge stated that the trigger factors identified by Ms John:

> "demonstrate the validity of the probation officers report which put[s] the appellant's risk of reoffending at medium"

30. The judge found that the appellant has an "archaic correlation" as to how women dress and their availability for sexual contact. In paragraph 70 the judge described this as "serious and dangerous".

31. In paragraph 71 the judge made several findings, including that:

32. "the appellant has still not expressed remorse for his crime";

33. "the appellant told Emma John that he accepts the two counts he was convicted of but states that they did not happen and disputes that he behaved sexually towards the victim at any other time"; and

34. "the appellant has obviously not told the whole truth to Emma John because Judge Williams held that the appellant was found guilty of approaching the victim on previous occasions".

35. In paragraphs 73-74 the judge found that the appellant has showed “very little remorse” to victim’s family.

36. The judge concluded in paragraph 76 that “the appellant has not rebutted the presumption of dangerousness and of criminality”.

G**rounds of appeal**

37. The appellant advanced four grounds of appeal. We summarise them - in a reformulated way - as follows:

38. Ground 1: the judge misunderstood what HHJ Williams’ sentencing remarks say about the nature and extent of the appellant’s offending and sexual behaviour towards the complainant.

39. Ground 2: the judge’s finding that the appellant had not expressed remorse is inconsistent with the evidence.

40. Ground 3: the judge gave inadequate reasons for preferring Mr Khan’s Offender Manager Statement to the expert evidence of Ms John.

41. Ground 4: The judge was wrong to assess for herself the appellant’s mental health and its possible impact on reoffending.

42. We heard helpful submissions from both Mr Lewis (who provided a very detailed skeleton argument) and Mr Clarke. We have not set these out, but they are incorporated into the analysis below.

Ground 1: misunderstanding HHJ Williams’ sentencing remarks

43. In paragraph 71 of the decision, the judge stated:

> “The appellant disputes that he had demonstrated any other sexual behaviour towards the victim other than the behaviour described in the convictions he received and that he felt sexually aroused but that his attention had not been to have sex with her, just to touch her in a sexual way. **The appellant has obviously not told the whole truth to Emma John because Judge Williams held that the appellant was found guilty of approaching the victim on previous occasions**.” [Emphasis added].

44. Mr Lewis argued that paragraph 71 is factually incorrect because it is clear from HHJ Williams’ sentencing remarks that the appellant was convicted of committing sexual offences on two occasions and was not found guilty of a wider course of conduct; or of “approaching the victim on previous occasions”.

45. We agree with Mr Lewis. The appellant was charged with three counts of sexual assault against the complainant. Counts 1 and 2 each appear to have been a specimen charge covering a period of time, respectively, between October and November 2017, and between November 2017 and 18 May 2018. Count 3 related to a specific assault on 18 May 2018. He was found not guilty on Count 1, and guilty on Counts 2 and 3. A conviction on a specimen charge usually requires the jury to be sure that

the offence has been committed at least once during the period, and so the conviction on Count 2 is a conviction of an assault on one occasion only. HHJ Williams' sentencing remarks refer to only two sexual assaults; one for each of Count 2 and 3. Thus, although Count 2 covers a period of time, the sentencing remarks indicate that there was a single incident within that period. Accordingly, Mr Lewis is correct that the judge was mistaken when, in paragraph 71, she stated that HHJ Williams held that the appellant was found guilty of approaching the complainant on previous occasions i.e. on occasions other than the two occasions in respect of which he had been convicted.

46. Mr Clarke did not dispute that paragraph 71 contains the factual inaccuracy identified by Mr Lewis, but argued that the real issue is whether the appellant engaged in sexual behaviour towards the complainant on other occasions. Mr Clarke submitted that HHJ Williams' sentencing remarks show that there was an ongoing course of sexually inappropriate behaviour by the appellant, even if he was only convicted for two specific assaults. He referred to the passage in the sentencing remarks set out at paragraph 15 above.

47. This passage from the sentencing remarks could be interpreted as indicating that there was an ongoing period of sexually inappropriate conduct rather than two incidents. However, a careful reading of the sentencing remarks points to there having been just two incidents. The remarks do not refer to any sexual conduct or approaches by the appellant towards the complainant prior to the period before Counts 2 and 3 (i.e. the period covered by Count 1, of which the appellant was acquitted). The pattern of offending and sexually inappropriate conduct described by HHJ Williams consists of (i) the appellant developed a sexual interest in the appellant which led to the Count 2 offence; (ii) over the course of several months he felt emboldened by the belief that he had "got away with it" (during which time the complainant developed counter-measures and suffered from anxiety); and (iii) the appellant then committed the more serious second assault (the Count 3 offence).

48. The judge erred, therefore, by failing to appreciate that the sentencing remarks are not evidence which supports a finding that the appellant either engaged in sexual behaviour towards, or was found guilty of approaching, the complainant on occasions other than the two incidents in respect of which he was convicted.

49. This error is material for two reasons. First, the misunderstanding of what the sentencing remarks say about the nature and extent of the appellant's offending might have affected the judge's overall assessment of the risk that the appellant poses to the community.

50. Second, the judge's misunderstanding of the sentencing remarks undermines, at least in part, her rationale for rejecting Ms John's report. What the appellant told Ms John about his offending is set out in paragraphs 5.7.1 and 6.1.3 of her report:

> 5.7.1 "[The appellant] disputes that he had demonstrated any other sexual behaviour towards [the victim] other than the behaviours described in the convictions he received…"
>
> 6.1.3"There are differing accounts of [the appellant's] offending between what he said happened, and what [the complainant] has reported in her victim statement. [The appellant] states that he accepts the two counts he was convicted of and states that they did happen, however, disputes that he behaved sexually towards [the complainant] at any other time. A third Count covering further sexual behaviours as described by [the complainant] in her statement was brought to trial, but [the appellant] was found 'not guilty' of any further sexual offending towards [the complainant]. As such, the item relating to chronicity has been assessed as not present on this basis."

51. It is clear from paragraphs 5.7.1 and 6.1.3 that, although the appellant did not deny to Ms John the two incidents in respect of which he was convicted, he did deny that he engaged in any other sexual behaviour towards the complainant. Moreover, it is apparent from paragraph 6.1.3 that, for the purposes of her structured assessment of the appellant's risk, Ms John proceeded on the basis that the appellant did not behave sexually towards the complainant at any time other than the two incidents for which he was convicted. It is for this reason that in the risk assessment she stated that "chronicity of sexual violence" was not present, either in the past or recently (see the Table 1 in paragraph 6.1.2). It follows from this that if the appellant was found guilty of sexual offending on more than two occasions - or if he engaged in sexual behaviour (even if not amounting to an offence) towards the complainant on more than two occasions - that would potentially undermine Ms John's risk assessment. However, what the appellant told Ms John about his offending, and Ms John's understanding of the appellant's offending as set out in paragraphs 5.7.1 and 6.1.3 of her report, is in fact consistent with HHJ Williams' sentencing remarks. Had the judge appreciated this – and not mistakenly believed that what the appellant told Ms John about his offending was inconsistent with the sentencing remarks - she might have given greater weight to Ms John's opinion about the risk posed by the appellant.

52. The judge also appears to have misunderstood (or at least, to have misstated) the evidence concerning whether the appellant admitted to Ms John that he had committed two sexual offences. In paragraph 71 of the decision (as set out above in paragraph 29(b)) the judge stated that the appellant told Ms John that the counts he was convicted of "did not happen". This is plainly incorrect as Ms John records in her report (see paragraph 41 above) that the appellant did not dispute he offended as described in counts 2 and 3.

Ground 2: expression of remorse

53. In paragraph 71 the judge stated:

> "The appellant has still not expressed remorse for his crime"

54. Mr Lewis argued that this is inconsistent with the evidence.

55. It is plain that the appellant has *expressed* remorse. He did so in his interview with Ms John (in paragraph 5.7.4 of her report she states that the appellant "expresses remorse about his behaviour"); and he has done so with Mr Khan (see paragraph 19 above).

56. Mr Clarke argued that the point being made by the judge was not that the appellant had failed to express remorse, but rather that his expression of remorse was not genuine. He argued that this is apparent from reading paragraph 71 together with paragraphs 72-74. In these paragraphs, the judge found that the appellant had minimised his offending, saw himself as the victim, and, despite being given the opportunity to do so:

> "did not mention the effect of his crime on his victim and the victim's family or express remorse for his crime of sexual violence, at the hearing" (paragraph 74).

57. It may be the case that the judge has merely expressed herself poorly and that she intended, in paragraph 71, to make a finding that the appellant has not expressed *genuine* remorse, rather than to find that he has not *expressed* remorse. However, it could equally be the case that the judge intended to say what she in fact said, which is that the appellant has not *expressed* remorse for his crime. If paragraph 71 was unclear or ambiguous we would have been more receptive to Mr Clarke's argument. But the wording used by the judge is clear and leaves no room for doubt. She stated categorically that the appellant has not expressed remorse. As this is inconsistent with the evidence, we find that the judge erred as claimed in the second ground of appeal.

Ground 3: reasons for preferring Mr Khan's Offender Manager Statement over the expert evidence of Ms John

58. In paragraph 51 the judge stated that Mr Khan:

> "assesses the appellant's risk of **reoffending** as **medium**". [Emphasis added]

59. In paragraph 54 the judge stated:

> "I find that there is no credible reason for why and how Emma John saw it fit to reduce the appellant's risk from 'medium' to 'low' within three months after a five-hour videoconference. I therefore accept the assessment of the probation officer and find the risk of **reoffending** is '**medium'**". [Emphasis added]

60. In paragraph 67 the judge stated that the "trigger factors" recognised by Ms John

> "also demonstrates the validity of the probation officers report which put the appellant's risk of reoffending at "**medium**". [Emphasis added]

61. It is apparent from paragraphs 51, 54 and 67 of the decision that (a) the judge understood Mr Khan to be assessing there to be a "medium" risk of

the appellant reoffending; and (b) the judge placed significant weight on this assessment.

62. However, Mr Khan did not assess the risk of *reoffending* as medium. He assessed the risk of *reoffending* as low but also stated that the appellant poses a medium risk of *serious harm*.

63. Mr Clarke acknowledged that the judge mis-stated Mr Khan's evidence, but argued that this is immaterial because the relevant issue for the judge to address was the risk posed by the appellant to the public and the judge was entitled, for the reasons she gave, to agree with – and to attach weight to – Mr Khan's opinion that the appellant poses a medium risk to the public. He submitted that it was apparent, from reading the decision as a whole, that when the judge referred to Mr Khan's opinion that the appellant poses a medium risk she had in mind the risk of serious harm to the public.

64. Although Mr Khan, in the Offender Manager Statement, does not clearly explain why he drew a distinction between risk of reoffending and risk of serious harm to the public, the distinction between the two types of risk was plainly significant to his assessment of the appellant as otherwise it would not have been made. However, the judge has not considered - or even acknowledged - the distinction. Accordingly, even if Mr Clarke is correct that the judge intended, in paragraphs 51, 54 and 67 of the decision, to refer to Mr Khan's assessment of the risk of *serious harm* to the public rather than to his assessment of the risk of reoffending, the decision is flawed because of a failure to address the distinction, drawn by Mr Khan, between these two types of risk. This is particularly the case given that Ms John addressed the distinction in her report: agreeing with Mr Khan about the risk of reoffending (paragraph 9.3 of her report) but not agreeing with him about the risk of serious harm to the public (paragraph 9.4 of her report).

65. The appellant succeeds on ground 3, therefore, because the judge's reasoning for preferring Mr Khan's assessment to that of Ms John is undermined by (a) failing to consider, or to even acknowledge, that Mr Khan distinguished between the risk of reoffending and the risk causing serious harm to the public; and (b) stating that Mr Khan considered the risk of reoffending to be medium when in fact he described it as low. The error is material because, in its absence, the judge may have attached greater weight to – and even preferred - Ms John's assessment of the risk posed by the appellant.

66. A further argument advanced by Mr Lewis is that the judge was not justified in preferring Mr Khan's assessment to Ms John's report because the latter was based on a five hour assessment by video whereas the former was the result of "ongoing supervision". He submitted that Ms John explained why she was able to form a clinical judgment based on a single video assessment and Mr Khan's report provides no information about the extent and nature of his interaction with the appellant.

67. We accept this argument. The judge appears to have assumed that Mr Khan has had "ongoing supervision" of the appellant. However, this is far from clear. Mr Khan does not in his report state how often he has met with the appellant and the report was completed less than a month after the appellant's release (the report was completed on 23 April 2021 and the appellant was released from detention on 30 March 2021). There does not therefore seem to be an adequate evidential foundation for preferring Mr Khan's assessment on the basis that he has spent significantly more time with the appellant than Ms John. Nor has the judge engaged with the fact that Ms John addressed the limitations inherent in a video assessment but explained why, in this particular case, she was satisfied that there was not a negative impact.

68. Finally, a further submission made by Mr Lewis is that the judge failed to explain why more weight was not given to Ms John's report, given that Ms John is an experienced and highly qualified expert who prepared a detailed and thorough report with a clear methodology that complied with the relevant Practice Direction. Mr Lewis supported this argument by citing several authorities highlighting the weight that should ordinarily be attached to a high quality report by a qualified and experienced expert.

69. The judge did not question Ms John's experience or qualifications, or find that she failed to comply with Practice Directions. Nor is there anything in the decision which indicates that the judge was unaware of the weight that should ordinarily be attached to a high quality report. Although the judge's reasoning is not entirely clear, it seems to us that she rejected Ms John's report because of perceived shortcomings in the method of assessment (a single video conference) and the substantive consideration of the risk posed by the appellant, not because of a mis-understanding of the law concerning weight to give to expert reports. We note, in this regard, what the Supreme Court has said about not inferring an error from the absence of every step in a tribunal's reasoning being set out (see paragraph 72 *of HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22). We are therefore not persuaded by this argument. However, in the light of our conclusions in paragraphs 56 and 58 above, the appellant succeeds, in any event, in respect of ground 3.

Ground 4: assessment of the appellant's mental health and its possible impact on reoffending

70. In paragraph 64 the judge stated:

> "I find that the appellant's mental health problems which emerged after so many years due to a stressful situation, brought on by his own criminality, [sic] he could therefore continue to be a danger to the community of the United Kingdom when he faces stressful situations in the future"

71. Mr Lewis argued that the judge, in this (poorly worded) sentence, has mis-stated the psychiatric evidence, which establishes that the appellant has suffered from mental health problems for many years due to his experiences in Sri Lanka.

72. Mr Clarke's response was that that in paragraph 64 (as well as in the following several paragraphs of the decision) the judge was evaluating the appellant's mental health as a potential "trigger" for further offending, not describing the history of his mental illness. He maintained that it is clear from elsewhere in the decision that the judge understood that the appellant has a long-term mental health problem. He also argued that it was not wrong for the judge to note that the appellant's current stressful situation arising from uncertainty about his immigration status is a direct consequence of his offending.

73. In paragraph 9.1.1 of her report, Ms John commented on the appellant's current mental health. She stated:

> "He considers the situation regarding his possible deportation the key factor maintaining these feelings [of severe depression and severe anxiety], along with feelings of shame he has surrounding his offending. He is very fearful about what may happen to him should he return to Sri Lanka…"

74. According to Ms John's report, the appellant has identified two reasons why his severe depression and anxiety continues: (a) his fear of deportation; and (b) his shame around his offending. Neither of these would exist had he not offended. It was therefore plainly open to the judge to find that the current state of the appellant's mental health "was brought on by his own criminality".

75. Moreover, we agree with Mr Clarke that the main point being made in paragraph 64 is not about the cause of the appellant's mental health problems, but rather that his mental health is a potential "trigger factor" for becoming a danger to the community. Such a finding was open to the judge given that Mr Khan identified "deterioration in his mental health" as one of several "identifiable indicators of risk of serious harm". The judge has not erred as claimed in ground 4.

Conclusion

76. At the hearing we reserved our decision but invited the parties to address us as to whether or not, in the event we found there to be a material error of law, any findings of fact should be preserved and the matter should be remitted to the First-tier Tribunal. Both Mr Lewis and Mr Clarke expressed the view that, if a material error were found, the decision should be remitted to the First-tier Tribunal without any findings preserved. We agree.

77. The judge's assessment of key evidence (the sentencing remarks of HHJ Williams, the statement of Mr Khan and report of Ms John) is undermined by the errors identified in grounds 1, 2 and 3. This evidence will therefore need to be considered afresh. In these circumstances, and having regard to paragraph 7.2(b) of the Senior President of the Tribunal's Practice Statement for the Immigration and Asylum Chamber and the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008,

we consider remittal to the First-tier Tribunal, with no findings preserved, to be appropriate.

Notice of Decision

78. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside with no findings preserved.

79. The appeal shall be remade in the First-tier Tribunal by a judge other than Judge of the First-tier Tribunal Chana.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan Dated: 2 August 2022