



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006665

First-tier Tribunal No: PA/51026/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of March 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

GDP
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms S Iqbal, instructed by Birnberg Peirce Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard remotely at Field House on 7 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Parkes) dated 21.9.22, the appellant, a national of Sri Lanka who came to the UK in 2019 ostensibly as a seaman contractor and claimed asylum in 2020, has been granted permission to

appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Lloyd-Smith) promulgated 27.7.22, dismissing his appeal against the respondent's decision of 11.2.21 to refuse his claim for international protection.

2. In summary, the grounds first argue that the First-tier Tribunal failed to consider the appellant's vulnerability when conducting the credibility assessment, in particular in failing to consider to what extent discrepancies could be attributed to his mental state. It is also submitted that the judge erred in analysis of the appellant's account of his departure from Sri Lanka and journey to the UK in relation to conclusions to be drawn from his possession of a passport. Finally, it is suggested that the judge made "numerous other errors in her credibility assessment," which render the First-tier Tribunal Judge's overall conclusions unsafe and cumulatively amount to an error of law.
3. In granting permission, Judge Parkes considered it arguable that the First-tier Tribunal only considered the appellant's vulnerability with regard to adjustments made at the hearing and not in the context of the credibility assessment. "It is not obvious that the judge had in mind the guidance in the Joint Presidential Guidance Note, number 2, of 2010 or AM (Afghanistan) [2017] EWCA Civ 1123."
4. At the outset of the hearing before me, Mr Avery conceded that there was an error of law in the First-tier Tribunal's failure to factor in the appellant's mental health issues into the credibility assessment. In those circumstances, Ms Iqbal agreed that it was unnecessary for the Upper Tribunal to consider the other grounds of appeal.
5. Although indicating that the appeal would be allowed, I formally reserved my decision and reasons to be given in writing, which I now do.
6. At [10] of the decision, the judge noted that the appellant was a vulnerable witness because of his mental health, "and therefore appropriate allowances were made in relation to the questioning and availability of breaks if required." This was repeated at [27], where the judge noted that doctor's report found the appellant to be fit to attend the hearing and give evidence.
7. From [19] of the decision, the judge identified "numerous inconsistencies that have affected my assessment of the credibility of the appellant's account." I need not rehearse them here as they are set out under [20] of the decision. As the grounds assert, there was no indication that the judge considered what if any impact the appellant's vulnerability may have had on his evidence, in interview, speaking to the medical expert, or at the appeal hearing, "and to what extent purported discrepancies in his evidence could be attributed to his poor mental state". The judge did accept Dr Dhumad's diagnoses of recurrent depressive episode and PTSD. The grounds assert that in the appellant's skeleton argument and in submissions made on his behalf at the appeal hearing the Tribunal was invited to consider his vulnerability when assessing his substantive evidence.
8. As the grounds submit at [7], there should at least have been some reference to or consideration of whether and to what extent the appellant's vulnerability and mental illness impacted on her view of (the) inconsistencies". At [13.6], the expert report found "evidence of some cognitive impairment, he has poor concentration and memory difficulties, and he has difficulties recalling past events chronologically; this is common in anxiety and depression".
9. At [21], the judge found the appellant to have been very vague about his passport issued in 2017 and at [22] considered that as he was in possession of a valid passport there seemed no apparent reason why he had to engage the services of an agent to leave the country, "given the fact that he could have

bought a ticket and left the country himself, or just got an agent to assist with his passage through the airport if his account of fearing being on a stop list was truthful." At [23] the judge noted the appellant's explanation that he obtained a passport to enable him to work in Dubai and that he arrived in the UK from Dubai, suggesting that he is an economic migrant who having failed to establish himself in Dubai "sought sanctuary in the UK in an attempt to find a more stable life."

10. Unarguably, it was necessary for vulnerability to be considered when assessing credibility. The Joint Presidential Guidance explains that the consequences of vulnerability differ according to the degree to which an individual is affected. "It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole".
11. Despite an otherwise clear and careful decision, I am satisfied that the apparent failure to take into account the appellant's mental health and vulnerabilities when making the adverse credibility findings undermines those findings and in turn the decision as a whole. It may be that the judge did factor that vulnerability into the credibility assessment but it cannot be determined from the decision that this was done. In the circumstances, the decision must be set aside to be remade afresh.
12. It follows, as Ms Iqbal accepted, that there was no practical purpose in the Upper Tribunal considering the numerous alleged other errors in the credibility assessment. The findings will all have to be remade afresh.
13. Both representatives agreed that as the decision must be remade, the appropriate course is to remit the appeal to the First-tier Tribunal with no findings preserved, pursuant to paragraph 7.2 of the Practice Direction.

Notice of Decision

The appellant's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The remaking of the decision is remitted to the First-tier Tribunal.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 March 2024