



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-000457

First-tier Tribunal No: PA/50821/2023
IA/00514/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 29 January 2025**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**LX
(ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Ms Stein, instructed by Chung Solicitors
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

Heard in Edinburgh on 29 January 2025

DECISION AND REASONS

As the underlying claim to this appeal concerns a claim for international protection, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

INTRODUCTION

1. The appellant is a national of China. She made a claim for asylum on 24 January 2019 that was refused by the respondent on 19 January 2023. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Fox ("the judge") for reasons set out in a decision dated 26 December 2023.
2. The appellant was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge Galloway on 7 February 2024. Judge Galloway said:
 3. Having considered the grounds of appeal and the judgment in full, I do consider there to be an arguable material error of law. I note that at Paragraphs 46 and 47 of the judgment, the judge considers S117 and takes into account the Appellant's lack of command of the English language. It does appear that this has been considered by the judge in respect of the asylum appeal and it is not a relevant consideration therein. I therefore consider there to be an arguable material error of law and grant permission on ground 1 accordingly.
 4. I note the assessment of the evidence of Dr Tran from paragraphs 38-44 of the judgment. I do consider that the judge arguably took into account irrelevant considerations when determining the weight to be afforded to the expert evidence. In particular, it is not for the expert to take into account inconsistencies in the Appellant's account and it is proper for an expert to opine on a proposed factual basis. The question of the Appellant's credibility is for the judge. Further, an expert can use other sources (and indeed, often should do so) to support her expert opinion. From Paragraph 38 of the judgment, it appears that the judge has arguably placed too much weight on these irrelevant considerations. I therefore grant permission on ground 2.
 5. I consider that the factors set out leading me to grant permission on grounds 1 and 2, equally apply to ground 3. Therefore, I also grant permission to appeal in respect of ground 3."

THE HEARING BEFORE ME

3. At the outset of the hearing, Ms Blackburn, quite properly in my judgement, submitted that having had the opportunity of considering the first ground of appeal in particular, it appears the judge erroneously had regard to s117 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") in addressing the appellant's claim for international protection. The judge expressly referred to section 117 at paragraph [46] of his decision and at paragraph [47] referred to factors identified in s117B of the 2002 Act and said:

"... I am satisfied that the public interest protocol on removal has been engaged.."
4. Ms Blackburn acknowledges that from the structure of the decision, it appears that the judge had regard to s117B of the 2002 in reaching his conclusions as to the credibility of the appellant and the substance of her claim for international protection. That was an entirely irrelevant consideration and the decision must therefore be set aside.

5. Both Ms Blackburn and Ms Stein agree that in light of the way in which the judge appears to have carried out his analysis of the appellant's claim, there are no findings that can be preserved. It is likely, they agree, that all the findings made are infected by the erroneous approach adopted to the analysis of the evidence before the Tribunal.
6. In my judgment, Ms Blackburn properly acknowledges the merit of the first ground of appeal and quite properly accepts that the decision must therefore be set aside without any findings preserved. I need not, in the circumstances, consider the remaining grounds of appeal.

DISPOSAL

7. Both Ms Blackburn and Ms Stein submit the appropriate course is for me to remit the appeal for hearing afresh before the First-tier Tribunal.
8. I am conscious of the Court of Appeal's decisions in *AEB v SSHD* [2022] EWCA Civ 1512, *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
9. In light of the nature of the error of law, and as none of the findings made by the judge can be preserved, in my judgment the appropriate course is for the appeal to be remitted to the FtT for hearing afresh with no findings preserved.

NOTICE OF DECISION

10. The decision of First-tier Tribunal Judge Fox dated 26 December 2023 is set aside.
11. The appeal is remitted to the FtT for hearing afresh with no findings preserved.
12. The parties will be notified of a hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 January 2025