



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

Appeal Number: PA/01280/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 18th December 2017**

**Decision & Reasons Promulgated
On 21st December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**J A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Mair instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge E.M.M. Smith of the First-tier Tribunal (the FtT) promulgated on 14th March 2017.
2. The Appellant is a Nigerian citizen born [] 1976. She travelled to the UK in November 2012 having been granted a visit visa. On 6th July 2016 she applied for asylum on the basis that she feared her husband in Nigeria.

3. Her asylum and human rights application was refused on 29th December 2016. Her appeal was heard by the FtT on 8th March 2017 and dismissed. The Appellant was unrepresented before the FtT.
4. The FtT noted that the Appellant had mental health problems and that she produced medical evidence to show that she was admitted to a psychiatric hospital for five weeks in September 2016, having been diagnosed with an acute and transient psychotic disorder. The FtT found at paragraph 18 that the Appellant's mental health problems meant "I am satisfied that it makes it more difficult for this court in the absence of other evidence to support her case to assess what is real and what is not."
5. The FtT heard evidence from the Appellant but at paragraph 19 recorded that "it proved almost impossible to obtain an order of events". The FtT found at paragraph 22 that the Appellant had not established to the lower level of proof that her husband tried to poison her or stab her. It was recorded that there had been a steady rise in her mental health problems.
6. At paragraph 24 the FtT found that the Appellant had not provided a reliable account of her experiences. With reference to Article 8 the FtT gave brief reasons at paragraph 36 for finding that the Appellant could not satisfy either Appendix FM in relation to family life or paragraph 276ADE in relation to private life. The FtT found there was no arguable Article 8 point outside the Immigration Rules.
7. Following dismissal of her appeal the Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FtT was dealing with an unrepresented and mentally unwell Appellant, and should have had regard to the relevant guidelines when dealing with a vulnerable witness. It was submitted that the FtT should have considered whether an adjournment was appropriate to enable the Appellant to obtain representation, as legal aid may be available, and also obtain further/better evidence as to the Appellant's ill-health, and her ability to properly give evidence.
8. It was contended that the FtT had erred in failing to accept the Appellant's account of events, because she was unable to give details, and had found that this was likely to be due to her mental health difficulties but still found against her.
9. It was submitted that the FtT had erred by failing to consider Articles 3 and 8 in relation to the Appellant's mental health problems.
10. Permission to appeal was initially refused, but a renewed application was granted by Upper Tribunal Judge Grubb in the following terms;
 2. The judge accepted that the Appellant had serious mental health problems which was supported in the documentary evidence from the NHS. The Appellant was unrepresented and clearly had difficulties presenting her case. It is arguable that, in these circumstances, the judge should have considered adjourning the hearing for the Appellant

to seek legal representation if she wished. The judge does not appear to have been alive to that possibility. For these reasons, permission to appeal is granted.

11. Following the grant of permission the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, contending in summary that the FtT directed itself appropriately, and there was no request made for an adjournment. The author of the rule 24 response made the point that she had not seen the medical evidence which had been submitted by the Appellant to the FtT.
12. Directions were issued making provision for there to be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

Oral Submissions

13. At the commencement of the hearing Mr Diwnycz acknowledged that he had received the skeleton argument dated 18th December 2017 prepared on behalf of the Appellant, together with the medical evidence that was before the FtT, that being NHS letters dated 7th March 2017, and 7th February 2017. Mr Diwnycz conceded the FtT had materially erred in law for the reasons given in the grant of permission to appeal, and the FtT decision should be set aside.
14. I therefore did not need to hear from Ms Mair. Both representatives submitted that the FtT decision should be set aside, and the appeal remitted to the FtT to be heard afresh.

My Conclusions and Reasons

15. The concession made on behalf of the Respondent was appropriately made. I find the FtT materially erred in law for the following reasons.
16. The FtT did not have the benefit of the guidance given in relation to vulnerable witnesses and Appellants by the Court of Appeal in AM (Afghanistan) [2017] EWCA Civ 1123, which was published after the FtT decision. At paragraph 27 of AM it is confirmed
“... beyond argument that the Tribunal and the parties are required so far as is practicable to ensure that an Appellant is able to participate fully in the proceedings and that there is a flexibility and a wide range of specialist expertise which the Tribunal can utilise to deal with a case fairly and justly.”
17. At paragraph 30 there is confirmation that a failure to follow the Practice Direction in relation to Child, Vulnerable Adult and Sensitive Witnesses issued on 30th October 2008, and the Joint Presidential Guidance Note No. 2 of 2010 would most likely be a material error of law.

18. The FtT appreciated the Appellant had mental health problems and therefore was a vulnerable Appellant. I accept that there was no application for an adjournment, and also that the FtT attempted to assist the Appellant to enable her to give her evidence. There is however no reference by the FtT to either the Practice Direction or the Joint Presidential Guidance Note, and when dealing with a vulnerable Appellant paragraph 5(vi) of the Guidance Note indicates that the Tribunal must identify and record whether the Appellant is legally represented. The FtT did so but then did not follow the remainder of the guidance, which indicates that if an Appellant is not legally represented, the FtT must consider whether an adjournment of the substantive hearing would enable representation to be obtained.
19. As pointed out by the judge granting permission the FtT does not appear to have considered whether that would be appropriate.
20. I find that failure to consider the Practice Direction and the Joint Presidential Guidance Note in relation to a vulnerable Appellant, amounts to a material error of law. In addition, I am satisfied that the FtT erred in law failing to give adequate consideration to the Appellant's mental health problems with reference to Article 8. There was no indication that paragraph 276ADE(1)(vi) was considered.
21. For the reasons given above the decision of the FtT is unsafe and is set aside.
22. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and agree with the submissions made by both representatives that it is appropriate to remit this appeal back to the FtT to be heard afresh. There are no findings preserved. The reason for remittal is that substantial fact-finding needs to be undertaken, and this is more appropriately undertaken by the FtT rather than the Upper Tribunal.
23. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge E.M.M. Smith.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

I have made an anonymity direction because the Appellant has made a claim for international protection and because of the nature of her mental health

difficulties. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 19th December 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made. The issue of any fee award will need to be considered by the FtT.

Signed

Date: 19th December 2017

Deputy Upper Tribunal Judge M A Hall