



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12076/2017

THE IMMIGRATION ACTS

Heard at Field House
On 29 June 2018

Decision & Reasons Promulgated
On 29 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

K I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Georget (Counsel)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan. He claimed asylum in the United Kingdom and his application was refused by the Respondent in a decision dated 6 November 2017. The Appellant appealed against that decision to the First-tier Tribunal under Section 82(2) of the Nationality, Immigration and Asylum Act 2002. His appeal was dismissed on all grounds by First-tier Tribunal Judge Hussain in a decision promulgated on 3 January 2018. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Kopieczek on the following grounds:

“The main reason that I grant permission is in relation to what First-tier Tribunal Judge Hussain said at [34] as quoted at [9] of the grounds. The appellant will have to deal with the materiality of any findings of an error of law in that respect in the context of the several reasons given by the FtJ for finding the appellant’s account incredible in its most significant respects.

I am doubtful about the arguable merit of some of the other aspects of the grounds but I do not limit the grounds that may be argued, given the interconnection of the grounds.”

2. At the hearing, Mr Walker conceded that there was a material error of law in the reasoning of the Judge at paragraph 34 of the decision when the Judge’s comments in relation to the Appellant’s photographs of his injuries allegedly caused by torture were taken together with his comments regarding the concoction of his account. Whilst the Judge directed himself that he had no expertise in assessing injuries from photographs, he described the injuries on the Appellant’s body as ‘artwork’ and further stated that ‘the muddle and inconsistency in in the appellant’s evidence is in line with what this Tribunal sees in a great many cases where a story has been concocted to support an asylum claim.’
3. Notwithstanding the direction to the contrary, the First-tier Tribunal Judge made an assessment of the photographs of the Appellant’s injuries as ‘artwork’ which was outside his expertise. Although there were numerous, well-reasoned adverse credibility findings in the decision, I agree with Mr Walker’s concession and find that the reasoning in paragraph 34 for rejecting the Appellant’s account cannot be isolated from the other findings and that the error was therefore material.
4. The Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
"(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
(b) 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.
5. Given the nature of the error of law identified in the preceding paragraphs it is appropriate to remit the case the First-tier Tribunal for a full fact-finding determination to be carried out.

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

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

Notice of Decision

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal for a de novo hearing before a Judge other than Judge Hussain.

Signed

Date 9 July 2018

A handwritten signature in black ink, appearing to be 'L J Murray', written in a cursive style.

Deputy Upper Tribunal Judge L J Murray