



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003855

First-tier Tribunal Nos: PA/54330/2022
IA/10396/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

NTP
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Chakmakjian, Counsel, instructed by Deus Nexus Solicitors Ltd

For the Respondent: Ms. A. Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 23 November 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Chohan (the "Judge"), dated 8 August 2023, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his protection

claim. The Appellant is a national of Vietnam who has been accepted by the NRM as being a victim of modern slavery. He fears that he will be re-exploited on return to Vietnam.

2. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan in a decision dated 27 October 2023 as follows:

"2. I have considered with care the reasons given by Judge of the First-tier Tribunal Karbani in refusing permission to appeal in this matter on 8 September 2023, and note that the appellant relies upon the same grounds of appeal. I further note Judge Karbani's observation in respect of ground 1 that the grounds do not identify how a failure in respect of considering vulnerability may amount to an error of law in respect of material findings.

3. However, if the First-tier Tribunal acceded to the appellant request to be treated as vulnerable in respect of participating in proceedings, and this is arguably unclear, it is arguable that the necessity to then give special consideration to all of the personal circumstances of the appellant in assessing his evidence is not expressly or implicitly addressed in the decision: *AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123; [2017] Imm. A.R. 1508*.

4. Ground 2 appears on an initial consideration to be parasitic on ground 1.

5. Consequently, both grounds are arguable."

3. In the afternoon on the day prior to the hearing the Respondent provided a Rule 24 Response in which she conceded the appeal. The Rule 24 states as follows:

"3. The respondent accepts that the First-tier Tribunal Judge materially erred in their decision by failing to record whether the appellant was treated as a vulnerable witness. The respondent accepts that this infected the entire decision, such that it needs to be set aside.

4. It is noted that the appellant's representatives made an application on the HMCTS CCD platform, on 27 April 2023, requesting the tribunal to treat him as a vulnerable witness. That application still shows as '*pending*' on the system.

5. On 06 July 2023, under the '*Applications*' table, those representing the appellant uploaded the appellant's review following directions and this was '*granted*.' Contained within the review was a renewed application for the tribunal to treat the appellant as a vulnerable witness.

6. The respondent accepts that the judge's failure to deal with this application and consider whether the appellant is to be treated as a vulnerable witness went against the Joint Presidential Guidance on vulnerable witnesses and **AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123; [2017] Imm. A.R. 1508**."

The Hearing

4. Ms. Ahmed apologised for the late service of the Rule 24 Response.
5. Having considered the Response, and given the concession which I considered to have been properly made, I stated that I would set the decision aside. Ms. Ahmed proposed that the appeal be remitted to the First-tier Tribunal to be heard de novo, given the nature of the error of law.

Error of Law

6. I find that Ground 1 is made out and that the decision involves the making of a material error of law. Ground 1 asserts that, despite the request that the Appellant be treated as a vulnerable witness, this request was not recorded, nor was any indication given that the Judge had acknowledged it except for in the consideration of Article 3. It was submitted that there was no evidence that the Judge had considered the Appellant's evidence "through the prism of his vulnerability".
7. I find that there is no reference in the decision to the Appellant's vulnerability, nor to the Joint Presidential Guidance on vulnerable witnesses, nor the caselaw of AM (Afghanistan). There is nothing to show that the Judge considered the Appellant's vulnerability when considering his evidence. As conceded, I find that the failure to do so amounts to a material error of law.
8. I further find, as stated at [4] of the Grounds, that there is no reference to the Appellant having been accepted as a victim of modern slavery.
9. I find that the error of law identified in Ground 1 infects all of the Judge's findings. This having been conceded, there is no need for me to consider Ground 2.
10. In deciding to remit this appeal to the First-tier Tribunal to be remade, I have taken into account the case of Begum [2023] UKUT 46 (IAC), as well as the Respondent's concession. At headnote (1) and (2) of Begum it states:

"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."
11. With reference to the exceptions in 7(2)(a) and 7(2)(b), there are no findings that can be preserved and so the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

12. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
13. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
14. The hearing is to be listed at Taylor House.

15. The appeal is not to be listed before Judge Chohan or Judge Moxon

Directions

1. **By 7 December 2023**, as agreed at the hearing, the Respondent is to provide to the Appellant a copy of the Respondent's bundle from the Appellant's first appeal in 2019, the appeal decided by Judge Moxon.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 November 2023