



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04079/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18 May 2018

Decision & Reason Promulgated  
On 24 May 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

SO  
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Mr A Eaton, instructed by Tower Hamlets Law Centre

For the respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Sullivan promulgated 9.11.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 11.4.16, to refuse his protection claim made on 8.7.15.
2. First-tier Tribunal Judge Boyes refused permission on 21.1.18. However, when the application was renewed to the Upper Tribunal, Deputy Upper Tribunal Judge Chamberlain granted permission on 21.3.18.

3. Thus the matter came before me on 18.5.18 as an appeal in the Upper Tribunal.

*Error of Law*

4. For the reasons summarised below, I found such material error of law in the making of the decision of the First-tier Tribunal as to require the decision to be set aside and remade by remitting it to the First-tier Tribunal.
5. In granting permission to appeal, Judge Chamberlain found it arguable that in its assessment the First-tier Tribunal failed to have regard to the guidance relating to vulnerable witnesses, and failed to give reasons for rejecting the opinion of Dr Stevens that the appellant suffered from PTSD and the effect this had on the quality of his evidence. It was further arguable that the judge failed to properly assess the report of Dr Guistozzi.
6. I find limited merit in the first ground. It is the case that the judge failed to indicate that the Presidential Guidance on Vulnerable Witnesses had been applied and did not specifically record that the appellant was a vulnerable witness, but I am satisfied that this error was not material. It is clear that the judge fully took on board that the appellant was potentially a vulnerable witness and a good part of the decision is given over to explaining how that was addressed and what arrangements were made to take into account his vulnerability. More significantly, however, the judge failed to indicate that consideration had been given to the extent to which the vulnerability of the appellant was taken into account as a relevant factor in the assessment of discrepancies or lack of clarity in his evidence. Had the judge followed the Presidential Guidance, it is unlikely that this error would have occurred.
7. I also accept the submissions of Mr Eaton that the judge's treatment of Dr Stevens was inadequate. Part of the responsibility for that lies with the way in which the expert report was drafted. At some parts, such as [41] of the report, the expert opinion was that the appellant does have mild cognitive problems and/or a mild learning disability. However, at [49] Dr Stevens stated that he/she was not able to diagnose the appellant for certain with a learning disability, but confirmed mild PTSD. Later, the doctor referred to "probable mild learning disability."
8. At [24] of the First-tier Tribunal decision, the judge took into account the report but for the reasons give later in the same paragraph, at [25] the judge concluded that whilst the appellant suffered from moderate anxiety, moderate depression, was moderately traumatised, and mildly disturbed, the existence or nature or severity of a learning disability was not accepted. More significantly, the judge concluded that there was nothing within the report to explain the deficiencies noticed in the appellant's interview account.
9. Considering the evidence alongside the decision, I find that the judge has erred by failing to take properly into account the evidence that the appellant is vulnerable and that this may have affected his ability to provide a reliably consistent account of events.

10. I also find that the dismissal of Dr Guistozzi's evidence was not justified and its consideration inadequate. The judge failed to take into account key aspects of that evidence which lent support to the plausibility of the appellant's claim, including the forced conscription by the Taliban of young men with medical training such as the appellant's brother. The experts evidence was that this was a common practice.
11. More significantly, I find that at [37] to [38] the tribunal appears to have fallen into the error of having made conclusive findings on the credibility of the appellant's claim and then using those findings to dismiss the expert evidence. The judge should have taken all of the evidence into account, including that of Dr Guistozzi before making the factual findings. At [37] the judge stated, "However, it is a key consideration that Dr Guistozzi's assessment of the Taliban's attitude to the Appellant now is predicated on the basis that his father and brother were killed by them and I have rejected that account." If the judge had taken all the evidence properly into account before making the findings of fact that should have been clear from the decision. The way in which the decision is drafted leaves the reader under the impression that the cart was placed before the horse and the expert evidence dismissed because it was inconsistent with the findings.
12. In all the circumstances, in an otherwise careful and reasoned decision, I cannot be satisfied that the First-tier Tribunal Judge gave adequate consideration to the expert opinion and assessed the deficiencies in the appellant's account in the light of actual or potential vulnerability that might have affected the quality of his evidence. Further, the decision fails to make clear that all the expert evidence has been taken into account before reaching the findings of fact. The error is sufficiently material to require the decision to be set aside and remade.

#### *Remittal*

13. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the assessment of the evidence on a crucial issue at the heart of an appeal is inadequate, as it is in this case, effectively there has not been a valid determination of the issues.
14. In all the circumstances, I relist this appeal for a fresh hearing in the First-tier Tribunal on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

*Decision*

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the directions below.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Consequential Directions**

1. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross;
2. The appeal is to be decided afresh with no findings of fact preserved;
3. The ELH is 4 hours;
4. An interpreter in Pushto/Pashto will be required;
5. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Sullivan;
6. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;
7. The First-tier Tribunal will give such further or alternative directions as are deemed appropriate.

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I continue the anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

A handwritten signature in black ink, appearing to read "James W. Pickup". The signature is written in a cursive style with a large initial "J" and "W".

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**