



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

Appeal Number: PA/01833/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 28th November 2019**

**Decision & Reasons Promulgated
On 12th December 2019**

Before

**HIS HONOUR JUDGE BIRD
(SITTING AS JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE JACKSON**

Between

**PF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy of Counsel, instructed by Ravi Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Abebrese, promulgated on 16 August 2019, in which the appellant's appeal against the Respondent's decision to refuse her protection and human rights claims dated 13 February 2019 was dismissed on all grounds. The appellant's protection claim was based on events in Sri Lanka and risk on return there for forced recruitment to the LTTE, in relation to previous detention by the army and various later

issues, the detail of which is not relevant for the purposes of this error of law hearing.

2. The First-tier Tribunal found as damaging the appellant's credibility the fact that there was a delay in claiming asylum and a delay in leaving Sri Lanka such that section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 applied. It was further found that the events and claims made by the appellant were not credible because of inconsistencies and a lack of detail in the claim. The First-tier Tribunal separately considered the medical report submitted by the appellant and attached little weight to this on the basis that the report itself was based on the appellant's account of events which had already been found not to be credible. The First-tier Tribunal went so far as saying that "*the appellant in my view has relied on the report for the sole purpose of bolstering and has indeed hidden behind the report so as not to provide evidence for the purposes of the hearing.*" (paragraph 24).
3. Although the First-tier Tribunal refers to the appellant's claimed vulnerability and reasons for not giving evidence based on the medical evidence, which included findings of PTSD and other mental health problems, there was no finding at all by the First-tier Tribunal as to whether the appellant is a vulnerable witness, nor whether the Joint Presidential Guidance Note to of 2010 and Practice Direction, First Tier and Upper Tribunal, "Child, Vulnerable Adult and Sensitive Witnesses" (the "Guidance") had been applied. The formal grounds of appeal do not raise this, but it is *Robinson* obvious point that the First-tier Tribunal has not followed the Guidance nor the approach set out by the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123, in relation to vulnerable witnesses.
4. The grounds of appeal submitted were on the basis that the First-tier Tribunal materially erred in law in the assessment of credibility, in particular in the assessment of the psychiatric report and the expert country report as well as a lack of consideration of the actual protection claim and of the claim under Article 3 of the European Convention on Human Rights on mental health grounds.
5. In our view these grounds are all tied up and linked to the failure to consider the Guidance and whether the appellant is in fact a vulnerable witness. What the First-tier Tribunal should have done is consider this point and specifically the medical evidence first, to determine whether that of itself is persuasive and weight should be attached to it, before a holistic assessment of credibility within that framework of the Guidance if the appellant is a vulnerable witness. The medical evidence is relevant to that preliminary assessment and should not have been discounted with little weight being attached to it following consideration of credibility in isolation. In accordance with the Guidance the First-tier Tribunal should also have had consideration to the objective evidence and whether the claim was consistent with that.

6. The failure of the First-tier Tribunal to consider first whether the appellant was a vulnerable witness in accordance with the Guidance, by reference to the psychiatric evidence in particular; and then, if so, to go on to consider the issue of credibility in accordance with the same; is a material error of law which fatally undermines the credibility assessment and outcome of the appeal. For these reasons, the decision of the First-tier Tribunal must be set aside. It is not possible to make any preserved findings of fact and given that the appellant has not had a fair hearing in accordance with the Guidance, it is appropriate to remit this appeal to the First-tier Tribunal for a de novo hearing.
7. In these circumstances, we do not need to go on to consider the further grounds of appeal in relation to Article 3 as the errors we have already identified are determinative

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

We set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal for a de novo hearing.

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 or any member of their 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 9th December 2019

Upper Tribunal Judge Jackson