



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

Appeal Number: PA/09665/2017

THE IMMIGRATION ACTS

Heard at Glasgow

**On 13 December 2018
Decision given orally at hearing**

**Decision & Reasons
Promulgated
On 10 January 2019**

Before

**THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE H MACLEMAN**

Between

**HTTN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Farrell, Peter G Farrell, Solicitors

For the respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a decision in an appeal brought by the appellant against the decision of the First-tier Tribunal which, in a determination that followed a hearing on 1 December 2017, but which was not promulgated until 16 May 2018, dismissed the appellant's protection appeal.

2. The challenge to the decision was based upon the failure of the First-tier Tribunal Judge to produce the determination within three months of the hearing. That was said to infect the quality of his decision.
3. Although that was the primary ground of challenge, it was not the only one. We see at paragraph 68 of the determination that a challenge was made to a finding regarding the judge's assessment of the weight to be given to the views expressed in a national newspaper. More particularly, however, at paragraph 7 we see that there is challenge made to the way in which the judge dealt with the expert report that had been commissioned and filed on behalf of the appellant in connection with her appeal.
4. During the course of oral submissions, it has become apparent that there is unquestionably an error in the decision, such as the decision must be set aside. The error is that, contrary to what is stated in the index in the inventory of production before the First-tier Tribunal, the judge does not appear for some reason to have been provided with the official conclusive grounds consideration minute, which recorded in detail the account given by the appellant of her experiences, leading to her arrival in the United Kingdom and, having engaged with that account, explained why the competent authority reached the conclusion that the appellant was not the victim of trafficking.
5. The judge referred to material which on its face would seem to be that minute; for example, at paragraph 8 of the determination, he said that there was sufficient in the NRM report to justify the negative conclusive grounds conclusion. That suggests that he had read not just the result of the analysis and assessment but also the reasons for it.
6. A further reference is made to the decision of the competent authority at paragraph 32. There we see that the judge referred to the decision "at page G4" of the inventory of production as being negative. However, when we look at the bundle that was before the judge, page G4 does not correspond to anything amounting to a decision.
7. In conclusion, therefore, it does not appear that the judge had before him this important document. If and in so far as he thought that he had the totality of the material emanating from the competent authority, the judge was mistaken. That is not a criticism of the judge. It is, however, plain that there has been a procedural error in this case, leading to unfairness, which comprises an error of law. We know that from the case E & R v Secretary of State [2004] EWCA Civ 49. The judge's fact-finding task needed him to be aware of the reasons for the conclusive grounds decision, the minute was plainly of material relevance to the outcome of the protection claim.
8. In all the circumstances, therefore, albeit for reasons that are rather different from those that are contained in the written grounds of appeal, the Upper Tribunal sets aside the decision of the judge. Given the nature

and extent of the fact-finding that will be necessary, we must remit this case to be heard *de novo* by a Judge of the First-tier Tribunal, other than Judge Boyd.

Signed

Date

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber