



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

Appeal Number: PA/12931/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 14 March 2019**

**Decision & Reasons Promulgated
On 26 March 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**G E
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shea, Iris Law Firm (Gateshead)

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge A J Blake promulgated on 23 August 2017 dismissing his appeal against the Secretary of State's decision to refuse to revoke a deportation order and to refuse his human rights claim.
2. I have made an anonymity order as the appellant has made a claim to be a victim of trafficking into the United Kingdom which was subsequently considered by the Competent Authority. Under section 2 (db) of the Sexual Offences Amendment Act 1992, a person who has made an allegation that he or she has been trafficked contrary to section 2 of the Modern Slavery

Act 2015 is entitled to the same life-long anonymity as an alleged victim of a sexual offence.

3. The appellant's case is that he is at risk on return to Ghana as a former victim of trafficking and that accordingly his appeal should have been allowed. It is, I think, important to note that there is a dispute over the appellant's birth, the initial recording of his date of birth being 17 November 1989. He now states that the correct date of birth is 17 November 1996. It might be thought surprising that the Refugee Legal Centre which assisted him in 2008 did not appear to think he was a minor, or that he was later able while a young teenager to travel to Ghana to look for family.
4. There is a long and detailed procedural history to this case which I do not find necessary to set out in this decision. It is sufficient to record that there have been two assessments by the Competent Authority of the appellant, roughly a year apart which appear in the consolidated bundle prepared for this hearing. What the judge did in this case is to note that this has been done at paragraph 66 and thereon considered that the reasoning set out in the rejection letter had not been addressed by any of the evidence produced by the appellant before me. He did take a note of the report produced by an independent expert, Miss Flint, and also the other medical evidence indicating PTSD and concluded at paragraph 68:-

“On an analysis of the decisions of the Competent Authority I did not find anything within them that would render them perverse. I found that the reasoning set out in them was sustainable on the facts as I had found them.”

5. This to an extent echoes the reasoning of the Court of Appeal, though it predates it, in **MS**. The difficulty in this analysis by the judge is twofold: first, it neglects to observe that the findings reached by the Competent Authority are reached on the basis of a balance of probabilities. The existence of the report and the findings of it does not absolve a judge from making findings of his own in respect of the asylum claim in its entirety. To that extent this is explained by the Tribunal in the reported decision in **ES [2018] UKUT 35** which the judge appears not to have followed. The second paragraph of the head note in that case states:-

“The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing applying the lower standard of proof”.

I conclude that that is not what the judge did. What the judge did in this case is to in effect adopt the findings of the NRM and whilst he did make other findings with regard to health and does set out in some detail at paragraphs 47 to 63 some findings of fact, what he does not do is make any of his own findings as to the reliability or otherwise of the testimony of the appellant that he had been the victim of trafficking and would be at risk on return as a result.

6. Accordingly, I am satisfied that the decision involved the making of an error of law and in light of the fact that the core of the findings reached by the judge must be set aside (that is the entirety of the findings which are relevant to the issue of whether the appellant is at risk on return), I conclude that it would be appropriate in mind with the Presidential Guidance to remit this appeal to the First-tier Tribunal for a fresh hearing on all issues.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law.
2. Given that the findings of fact reached by the First-tier Tribunal cannot stand, and that the appeal will need to be remade in its entirety, as well as the lapse in time, I conclude that it is appropriate to remit the it to the First-tier Tribunal for a fresh determination on all issues.

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.

Signed

Date 20 March 2019



Upper Tribunal Judge Rintoul