



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03054/2019 (P)**

THE IMMIGRATION ACTS

**Decided under rule 34
On 5 June 2020**

**Decision & Reasons Promulgated
On 19 June 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**SD
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati, Counsel

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The respondent, in her response to the grounds of appeal made pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, accepts that the decision of the First-tier Tribunal was materially flawed and concedes that the decision should be set aside with no findings preserved. In the light of this concession, I will give only brief reasons.
2. The appellant is a citizen of Jamaica who claims, inter alia, to be at risk from a gang. She claims that the gang will target her because her brother, who is gay, refused to join - and escaped from - them. She claims that her brother was granted refugee status in the UK.

3. Following the respondent's refusal of her protection and human rights claim, the appellant appealed to the First-tier Tribunal. In a decision promulgated on 29 October 2019 Judge of the First-tier Tribunal Meah ("the judge") dismissed the appeal. The judge did not find the appellant or her brother, both of whom gave oral evidence, credible.
4. The Presenting Officer at the First-tier Tribunal hearing did not challenge the evidence of the appellant's brother, as set out in his witness statement, about the reasons he left Jamaica. In addition, the judge did not pose any questions on this issue.
5. The grounds of appeal argue that it was procedurally unfair for the judge to make adverse credibility findings against the appellant's brother when his evidence had not been challenged and the judge's concerns had not been put to him.
6. Mr Lindsay accepts in the respondent's rule 24 response that the First-tier Tribunal's assessment of the credibility of the account given by the appellant and her brother was inadequate. I agree with Mr Lindsay. It was procedurally unfair, and erroneous in law, to make adverse credibility findings in respect of the appellant's brother when his evidence was not challenged and where none of the concerns identified by the judge in the decision were put to him.
7. I also agree with Mr Lindsay that no findings of the First-tier Tribunal should be preserved. Having regard to the nature and extent of judicial fact finding that will be necessary for the decision to be remade, I have decided, having regard to paragraph 7.2 of the Senior President's Practice Statement, that the appeal will be remitted to the First-tier Tribunal to be considered afresh.

Decision

8. The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. The appeal is remitted to the First-tier Tribunal to be heard afresh by a different judge.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

9. 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 his 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

Daniel Sheridan
Upper Tribunal Judge Sheridan

Dated: 5 June 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent" is that appearing on the covering letter or covering email**