



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

**Appeal Number: IA/01695/2021
UI-2021-001679; PA/50857/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 15th June 2022**

**Decision & Reasons Promulgated
On the 18th July 2022**

Before

**UPPER TRIBUNAL JUDGE D BLUM
& DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

Between

ONK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure
(First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

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.

Representation:

For the Appellant: Ms Misckiel (Counsel)

For the Respondent: Mr Lindsay (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This was an error of law hearing before us. The appellant appealed against a decision of the First-tier Tribunal (Judge Gurung -Thapa)("FTT") promulgated on 21st October 2021 in which the appellant's protection and human rights claims were dismissed. There was also an application made under Rule 15 before us.

Background

2. The appellant was a citizen of the DRC who claimed that he was at risk of persecution because of his father's political connections at which time the appellant was a minor. The appellant arrived in the UK as a student in 2016 and made his claim for asylum in 2019. He relied on medical evidence as to his mental ill health.

Grounds of appeal

3. In grounds of appeal the appellant argued that the FTT erred by
 - (a) failing to follow the Presidential Guidance as to the treatment of Vulnerable Witnesses in light of the psychiatric report which obliged the FTT to consider his vulnerability in the context of his interviews and at the hearing.
 - (b) failing to consider all the evidence with anxious scrutiny, including admitting video evidence relevant to incidents effecting family members - the FTT was aware of the evidence and failed to request its production.
 - (c) making unreasonable findings in respect of the arrest warrant
 - (d) failing to consider the country guidance case of BM
 - (e) making a misdirection in dealing with the issue of suicide (Jv SSHD).
 - (f) making unreasonable findings as to delay in making his claim for asylum.

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ Boyes on 1st December 2021 who found there were arguable errors of law.

Rule 24 response

5. The respondent considered that the grounds amounted to an argument as to the facts as found. There had been no application made for the Presidential Guidance to be applied to the appellant as a vulnerable witness. The FTT made clear findings as to risks associated with the connections with the appellant's father and his involvement in opposition groups. The arrest warrant was assessed in line with Tanveer Ali. The country guidance case was not relevant given that FTT concluded that the appellant's claim lacked credibility. The FTT properly considered the risk of suicide at [46].

The hearing

6. We heard no submissions. At the outset Mr Lindsay informed us that in discussion with Counsel for the appellant he indicated that he took a different view from that taken in the Review. Whilst not agreeing with all the grounds of appeal, Mr Lindsay considered that there was a material error in law by the FTT. He outlined that the FTT appeared to have misapplied the standard of proof at [28-30]. Further there was no explanation or account taken by the FTT of the appellant's vulnerability and age such that the findings made could not stand.

Discussion and conclusion

7. After hearing from Mr Lindsay and Ms Misckiel, we confirmed that our preliminary assessment of the FTT decision was consistent with the position adopted by Mr Lindsay. We were particularly concerned at the FTT's failure to treat the appellant as a Vulnerable Witness and the consequences of that failure. The FTT placed significant weight on the finding that the appellant did not know the name of his father's political group. Reasons for that could have been attributed to the appellant's mental state and age and the FTT was obliged to consider the appellant's vulnerability given that there was medical evidence before the Tribunal. The FTT had taken it into account in considering Article 3 but not otherwise. The FTT ought to have considered and applied the Joint Presidential Guidance Note No 2 of 2010:Child, vulnerable adult and sensitive appellant guidance. We did not uphold all the grounds of appeal but took the view that the decision could not stand.
8. As to the application under Rule 15 for video evidence to be admitted, we have made a direction.
9. The FTT decision promulgated on is erroneous in law. The FTT erred materially by failing to consider and apply the Presidential Guidance dealing with the treatment of Vulnerable witnesses. The decision shall be set aside.

Decision

10. The appeal is allowed and is to be remitted back to the First-tier Tribunal for hearing *de novo* before any Judge other than FTJ Gurung-Thapa.

Directions

11. The appellant's representatives are to file and serve the video evidence on the Respondent and to the Tribunal and which is to be formatted in small files such that it can be sent electronically.

Signed

Date 26.6.22

GA Black
Deputy Judge of the Upper Tribunal

Anonymity

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Signed
GA Black
Deputy Judge of the Upper Tribunal

Date 26.6.2022