



**Upper Tribunal  
(Immigration and Asylum Chamber)  
UI-2022-006587**

**Appeal Number:**

**PA/52551/2020  
IA/14125/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 08 September 2023**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**I K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms P Yong, Counsel

For the Respondent: Ms S McKenzie, Home Office Presenting Officer

**Heard at Field House on 1 September 2023**

**DECISION AND REASONS**

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Moon on 22 November 2022, against the decision of First-tier Tribunal Judge Hussain who had dismissed the appeal of the Appellant against the refusal of her international protection claim. The decision and reasons was promulgated on 16 November 2020.

2. The Appellant is a national of Uganda, born on 15 June 1958. The Appellant had entered the United Kingdom on 9 April 2009, which expired on 30 September 2009. Nevertheless the Appellant remained in the United Kingdom without any form of leave to remain. The Appellant claimed asylum on 19 November 2019 after she was discovered as an overstayer. Her claim was refused on 16 November 2020. The Appellant claimed in summary that she was at risk on return because of her same sex orientation.
3. It was accepted by the Respondent that the Appellant was a member of Particular Social Group and, if credible, was at risk of persecution. Credibility was thus of central importance. Judge Hussain identified various problems in the evidence, beginning with the Appellant's long delay in claiming asylum and the circumstances under which she claimed asylum. He found the Appellant vague and evasive, and that much her story was implausible viewed against the country background evidence. The judge found the Appellant's only witness unreliable. Hence the asylum appeal was dismissed.
4. First-tier Tribunal Judge Moon considered that it was arguable that Judge Hussain had materially erred by failing to address the medical evidence adequately before coming to his adverse credibility findings. There had been a delay of nearly three months between the hearing and promulgation of the judge's decision and reasons which rendered the decision unsafe. It was further considered that the judge's Article 8 ECHR reasoning was arguably unsafe.
5. Neither Ms McKenzie for the Respondent nor the tribunal were aware prior to the hearing that notice under rule 24 had been served by the Respondent. Ms Yong for the Appellant provided a copy of the notice dated 15 December 2022. The notice stated that the Respondent accepted that the judge had materially erred in law by failing to address the medical evidence prior to reaching his adverse credibility findings.

6. Ms McKenzie was taken by surprise as her intention had been to defend the decision. With the tribunal's consent she obtained instructions from a senior caseworker. Those instructions were that the Rule 24 concession must stand.
7. Although the tribunal is not necessarily bound by the Respondent's concession, it is rare that such a concession is not accepted as decisive. The case would have to be of the clearest kind for the tribunal to take a different position. Here the difficulty with the judge's careful and well laid out decision is that his discussion of the psychiatric evidence (about which he expressed cogent reservations) is largely if not wholly confined to Article 3/Article 8 ECHR health considerations. The structure of the decision tends to confirm that, as the discussion follows his examination of the asylum claim.
8. What is lacking, as the Respondent has conceded, is sufficient consideration of whether the mental health diagnosis for the Appellant has any impact on the extensive deficiencies the judge identified in the Appellant's evidence. The answer to that question is that the report probably does not have significant impact, but that question had to be answered by the trial judge in clear form, and cannot be supplied by the Upper Tribunal afterwards. The impression is given that the error described in Mbanga [2005] EWCA Civ 367 has occurred.
9. Ms Yong for the Appellant confirmed that she wished to add nothing in the light of the Respondent's concession.
10. The delay in promulgating the decision was also raised in the grounds of appeal. This type of ground is being raised with increasing frequency in permission to appeal applications. First-tier Tribunal Judges have a heavy workload and it may be sensible where there has been appreciable delay between the hearing and promulgation for judges to provide a brief explanation of the reason. However the tribunal does not find that there was any error of law directly arising from the delay in this instance.
11. It follows that the tribunal finds that the decision contained a material error of law in the credibility assessment only. The Appellant's appeal is allowed.

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12. Dialogue with the representatives followed. It was agreed that the decision should be set aside and remade, at a full hearing, with no findings preserved.

**DECISION**

The onwards appeal is allowed. The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

No findings of fact are preserved. The appeal is remitted to the Taylor House Hearing Centre to be reheard by any judge except Judge Hussain.

**Signed R J Manuell**

**Dated** 4 September 2023

**Deputy Upper Tribunal Judge Manuell**