



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001791
First-tier Tribunal Nos:
PA/50110/2022
IA/00411/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 September 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

ATS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson, Counsel, instructed by Shawstone Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 22 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

EXTEMPORE

1. This is an appeal by a citizen of Ethiopia against a decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State to refuse her international protection.
2. Permission to appeal was given by the Upper Tribunal because it was arguable that the judge had not had proper regard to the appellant's vulnerability. The contention that she is, or may be, vulnerable was supported by evidence from a psychiatrist.
3. On the morning of the hearing the appellant's representative produced an attendance note from the First-tier Tribunal recording as a preliminary issue a request that the appellant be treated as vulnerable with the observation that a psychiatric expert report was submitted and was in the bundle and the appellant was currently taking antidepressant medication. It is recorded there was no objection from the Home Office that the appellant be treated as vulnerable when giving evidence and the clear implication is that the judge should have treated the appellant as vulnerable. It does not follow from this that she has a strong claim but it does follow that an important, or possibly important, element of the case has not been shown to have been factored into the judge's reasoning.
4. Ms Everett, for the Secretary of State, considered her position. Of course she accepted that the attendance note was accurate, as we do. She could not confirm it from the Home Office minute but very fairly told us that the Home Office minute was rather short and she did not regard the omission as indicating that the note was other than a true records of what had happened. She also took the view that she could not argue sensibly that it could not have made a difference if the appellant had been conspicuously treated as vulnerable which is clearly what should have happened unless a persuasive contrary reason was given.
5. It follows therefore that she cannot oppose the appeal. We thank Ms Everett for her professional approach and, with respect, we find that she has got it absolutely right. This is an error by the judge that *might* have made a difference and that is sufficient to show that there has been a material error of law. The appeal has to be redetermined and Mr Nicholson recognises that the appeal should be redetermined in the First-tier Tribunal with all issues unresolved. No findings are preserved.
6. Without elevating it into a big issue I do want to gently chide the appellant's representatives for not getting this memo to the attention of the Tribunal and the Secretary of State before today. It should have been done electronically and it should have been done in advance of the hearing. If it had been then we might all have been saved some time. I understand that these things happen and this is not intended as a condescending rebuke but I hope the point will be noted.

Notice of Decision

7. Our decision is that the First-tier Tribunal erred in law. We set aside this decision and direct that the case be reheard in the First-tier Tribunal.

Jonathan Perkins
Judge of the Upper Tribunal
Immigration and Asylum Chamber
29 August 2023