



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001985
On appeal from: PA/52972/2022
IA/07040/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 20 July 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

S A
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

- 1.** The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him international protection as a refugee or leave to remain in the UK on human rights grounds. He is a citizen of Bangladesh.
- 2. Anonymity order.** 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.**
- 3.** Permission to appeal was granted by the First-tier Tribunal, principally on the basis set out in ground 1, that the First-tier Judge when assessing credibility, failed to give consideration to background and individual evidence on the effect of post-traumatic stress disorder and headaches on his recollection of past events. The refusal letter did not dispute that the appellant suffered from post-traumatic stress disorder.

- 4.** By a Rule 24 Reply dated 23 June 2023, Ms Willocks-Briscoe from the Specialist Appeals Team said this:

“2. The respondent does not oppose the appellant’s application for permission to appeal and invites the Tribunal to remit the appeal to be heard afresh, given the appellant’s mental health condition and the potential impact this may have has not been factored into the judge’s assessment of credibility.”

- 5.** It is common ground, therefore, that the First-tier Tribunal did materially err in law in its assessment of credibility and both parties agree that this is a case where the decision of the First-tier Tribunal must be set aside and remade.
- 6.** I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
- 7.** Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above.
- 8.** If in consequence an oral hearing is required, but the outcome is the same, the Upper Tribunal will consider making an order for wasted costs.

Decision

- 9.** I set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved.
- 10.** The appeal will be remitted to the First-tier Tribunal to remake the decision to allow or dismiss the appeal on the basis described in the grant of permission.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 8 July 2023

Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, 13 November 2014

9 *Transfer of proceedings*

9.1 Where:-

- (a) the Tribunal (“the original Tribunal”) has started to hear an appeal but has not completed the hearing or given its determination; and
- (b) the Chamber President decides that it is not practicable for the original Tribunal to complete the hearing or give its determination without undue delay, the Chamber President may direct the appeal to be heard by a differently constituted Tribunal (“the new Tribunal”).

9.2 Where an appeal has been transferred under paragraph 9.1:-

- (a) any documents sent to or given by the original Tribunal shall be deemed to have been sent to or given by the new Tribunal;
and
- (b) the new Tribunal will deal with the appeal as if it had been commenced before it.

9.3 Without prejudice to paragraph 9.1, the Chamber President may transfer proceedings in the circumstances described in Practice Direction 3 (procedure on appeal); and paragraph 9.2(a) shall apply in the case of such a transfer as it applies in the case of a transfer under paragraph 9.1.

Practice Directions: Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, as amended by the Senior President of Tribunals on 13 November 2014

3.4 If the Upper Tribunal nevertheless decides that it cannot proceed as described in paragraph 3.1(c) because findings of fact are needed which it is not in a position to make, the Upper Tribunal will make arrangements for the adjournment of the hearing, so that the proceedings may be completed before the same constitution of the Tribunal; or, if that is not reasonably practicable, for their transfer to a different constitution, in either case so as to enable evidence to be adduced for that purpose.

3.5 Where proceedings are transferred in the circumstances described in paragraph 3.4, any documents sent to or given by the Tribunal from which the proceedings are transferred shall be deemed to have been sent to or given by the Tribunal to which those proceedings are transferred.

3.6 Where such proceedings are transferred, the Upper Tribunal shall prepare written reasons for finding that the First-tier Tribunal made an error of law, such that its decision fell to be set aside, and those written reasons shall be sent to the parties before the next hearing.

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