



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003678
First-tier Tribunal No:
PA/00905/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

PN
(ANONYMITY ORDER MADE)

Appellant

and
SECRETARY OF STATE FOR THE
HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi, Counsel

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 1 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant brings this appeal against the decision of First-tier Tribunal Judge Swinnerton who dismissed his appeal on protection and human rights grounds in a decision dated 20 June 2023.

Decision and reasons

2. It is not necessary to set out fuller reasons for the basis of setting this decision aside. Ms Lecointe on behalf of the Secretary of State accepted that there were

material errors of law in the decision of the Judge such that his decision had to be set aside. The basis of those areas are:

- a. The Judge failed to determine the issue as to whether the appellant is at risk on return for the purposes of the Refugee Convention and/or Article 3 ECHR relating to how he will be treated as someone with mental health difficulties on return.
 - b. The Judge failed to consider the appellant's narrative through the prism of someone with a diagnosed mental health condition. The appellant's case was that the medical condition he has been diagnosed with could lead to a different assessment of his credibility given that he did not have that diagnosis when his appeal was heard previously.
 - c. The Article 8 assessment both ignores a previous finding as to when the appellant arrived in the UK in 2002, and is also fundamentally lacking in undertaking a meaningful balancing exercise.
3. Given the concession made by Ms Lecointe I treat this appeal as allowed by consent under rule 40(3)(a), and the decision of the Judge is set aside.
 4. In terms of remaking the decision no findings of fact can be preserved, the case must start again. The appropriate forum for this is in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside because it contained a material error of law.

The case is remitted to the First-tier Tribunal to be heard *de novo*.

Judge T.S. Wilding

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 20th November 2023