



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004334
First-tier Tribunal No: PA/00766/2022

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On 18th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

MM (PAKISTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Kristian Wood, Immigration Advice Service
For the Respondent: Ms Alexandra Everett, Senior Presenting Officer

Heard at Field House on 24 November 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Atkins (“the Judge”) promulgated on 18 August 2023. By that decision, the Judge dismissed the Appellant’s appeal from the Secretary of State’s decision to refuse his protection and human right claims.

Background

2. The Appellant is a citizen of Pakistan and was born on 15 April 1974. He has a protracted immigration history and it is not necessary for it to be set out for the purpose of this decision. In short, he made protection and human rights claims based on a relationship with a woman in Pakistan and consequential risk of honour killing. The Secretary of State refused his claims by treating the findings made in his earlier appeal as a starting point and holding that his account was not credible. The Judge heard his appeal from the Secretary of State's decision on 27 July 2023. He gave oral evidence and was cross-examined. The Judge also treated the findings made in his earlier appeal as a starting point and rejected his account as incredible. The Judge dismissed the appeal on all grounds in a decision promulgated on 18 August 2023. Permission to appeal from the Judge's decision was granted on 14 September 2023.

Grounds of appeal

3. The pleaded grounds of appeal advance a number of arguments. It is necessary to identify only one of those arguments at this stage, namely, the Judge failed to treat the Appellant as a vulnerable witness and disregarded his vulnerability in making their decision.

Submissions

4. I am grateful to Mr Wood, who appeared for the Appellant, and Ms Everett, who appeared for the Secretary of State, for their assistance and able submissions. Mr Wood developed the pleaded grounds of appeal in his oral submissions. Ms Everett, with her characteristic candour and fairness, acknowledged the force in the arguments relating to the Appellant's vulnerability. She accepted that there was nothing in the Judge's decision to show that they followed *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* or took into account the Appellant's vulnerability.

Discussion

5. The Appellant's skeleton argument before the Judge identified the first issue as to whether he should be treated as vulnerable. The skeleton argument referred the Judge to the evidence from the Appellant's GP indicating that he has "significant physical disabilities" and was "extremely vulnerable" and in "distress". The evidence further stated that he needed assistance with daily activity and he was "unable to complete tasks on his own". There were references in the GP's evidence to issues concerning the Appellant's memory, recurrent anxiety, suicidal thoughts and anxiety disorder. There was also evidence from the Appellant's Psychiatrist stating that he has a formal diagnosis of post-traumatic stress disorder and he was "in a constant state of anxiety and distress". His symptoms, it was stated, constituted chronic adjustment disorder. The evidence also identified

medication that he was taking in order to address his conditions. It is tolerably clear that the Appellant, on this evidence, was a vulnerable individual.

6. The Judge simply failed to address the issue as to the Appellant's vulnerability. As Ms Everett fairly accepted, there is nothing in the Judge's decision to show that they followed *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*. The Court of Appeal in *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123 [2018] 2 All ER 350, at [30], noted that such a failure "will most likely be a material error of law".
7. The Presidential Panel in *SB (vulnerable adult: credibility) Ghana* [2019] UKUT 398 (IAC), at (2), noted that two aims are achieved by applying *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance*. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Second, the vulnerability will also be taken into account when assessing the credibility of that evidence. I have no confidence that best practicable conditions were secured for the Appellant to give his evidence. The Judge, in any event, has not taken into account the Appellant's vulnerability in assessing the credibility of his evidence.
8. This appeal, given that it relates to a protection and human rights claims, calls for anxious scrutiny. As was explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not engage with the Appellant's vulnerability and its implications. There was no anxious scrutiny of the Appellant's claims.
9. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reason set out above, I am satisfied that the Judge's decision is materially wrong in law.

Conclusion

10. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and preserve no findings of fact.
11. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Atkins.

Decision

12. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

13. In my judgment, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, 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 his family. This direction applies to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik KC
**Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 12 January 2024**