IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000080

First-tier Tribunal No: PA/53124/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th February 2024

Before

UPPER TRIBUNAL JUDGE KAMARA
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

BK
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr A Smith, instructed by South West London Law Centres
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 7 February 2024

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

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge JG Raymond heard on 11 October 2023.

2. Permission to appeal was granted by First-tier Tribunal Judge Elliott on 3 January 2024.

Anonymity

3. An anonymity direction was made previously and is reiterated because this is a protection claim and in addition there is evidence which relates to the appellant's mental health.

Factual Background

4. The appellant is a national of Albania now aged twenty. He left Albania in June 2019 and arrived in the United Kingdom later the same month. The appellant applied for asylum on 19 September 2019. The basis of the appellant's claim was that he was a potential victim of a blood feud because he feared the brothers of a former girlfriend who had previously assaulted him. That claim was refused on 1 July 2022, principally because the Secretary of State did not accept that the appellant had experienced any problems with the family of his former girlfriend.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant, his uncle, and aunt gave evidence. In a 25-page decision, the appellant's claim was rejected as being a 'complete fabrication.' The appellant's mental health condition was found to fall short of the Article 3 ECHR threshold and his Article 8 ECHR private life claim was refused.

The grounds of appeal

6. The grounds of appeal can be summarised as follows.

i. The judge erred in law by failing to address the application to treat the appellant, who has been diagnosed with PTSD and recurrent Major Depressive Disorder and was a child aged 15 when he arrived in the UK, as a vulnerable witness and by failing to apply the relevant guidance in the practice directions and caselaw to the determination of his appeal.

ii. The judge erred in his approach to the expert psychological evidence of Dr Saima Latif and failed to give any or any adequate reasons for rejecting her evidence and/or made contradictory and inconsistent findings about her evidence.

iii. The judge has erred in his approach by an over-emphasis on credibility and by rejecting the appellant's account before he had considered the expert and other evidence contrary to the principle in *Mibanga* [2005] EWCA Civ 367.

7. Permission to appeal was granted on the basis sought.

The error of law hearing

8. Ms Ahmed confirmed that no Rule 24 response had been drafted but that the respondent opposed the appeal. Thereafter we heard detailed submissions from the representatives and at the end of the hearing we reserved our decision.

Decision on error of law

9. Addressing the first ground, we note that an application was made to treat the appellant as a vulnerable witness in the appellant's skeleton argument which was before the First-tier Tribunal. The application was based on the appellant's young age when he arrived in the United Kingdom and his subsequent diagnoses of PTSD and recurrent major depressive disorder. While the judge refers to this application at [9], he did not apply the UNHCR guidelines nor the Joint Presidential Guidance Note in considering the appellant's claim and did not state, at the outset, whether he was treating the appellant as a vulnerable witness. The judge does not consider the appellant's vulnerability again until [86], at page 20 of the decision and after he has found that, '*there are certain evidence inconsistencies in the asylum narrative itself, that also call into question the credibility of the asylum narrative*.' Immediately after this statement, the judge indicates that he has had regard to '*the fact that it was proper to treat*' the appellant as a vulnerable witness but does not return to this issue in the following paragraphs where he makes further extensive negative credibility findings. The medico-legal report gave detailed advice as to how the hearing should be conducted at 16.9-16.10. We find that the brief references by the judge to the appellant's vulnerability do not demonstrate that the judge took the advice in that report into account or that he applied the relevant guidance to the assessment of the issues in this appeal which include the credibility of the appellant's claim. In this he materially erred.

10. The second ground concerns the judge's approach to the expert psychological evidence. At [98] the judge states that he accepts the evidence of Dr Latif which would necessarily include the diagnoses of PTSD and recurrent major depressive disorder and the events leading to those diagnoses as set out at pages 9-16 of the report. Yet, at [101] the judge substituted his own opinion for that of the doctor as to the cause of these disorders in concluding that this was owing to the appellant's immigration history and status. The judge does not suggest there is a specific traumatic event in the appellant's immigration history which would result in a diagnosis of PTSD. We find that it was not open to the judge to reach such a finding, which was outside of his area of expertise and that this amounts to a material error.

11. The third and final ground concerns the judge's approach to the expert country report. We accept the submission that the judge began his consideration of this appeal by focusing on credibility. The judge sets out the appellant's claim over the first 13 pages of the decision and reasons, including much negative commentary on the veracity of his account. It was only at [60] that the judge mentioned the country report and does so by way of a consideration of discrete aspects of that report. We should add that the judge took the same approach to the medico-legal report in that multiple findings were made before there was any consideration of it. We find that there is no detailed consideration of the evidence, including that of the experts, in the round.

12. In *Mibanga*, the following was said at {24}:

> ‘a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto…What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant’s evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.’

13. Ms Ahmed referred the panel to *QC* (verification of documents; *Mibanga* duty) China [2021] UKUT 00033 (IAC), making the point that the judge had to start somewhere in his assessment of the evidence. We have carefully considered that point but in the case before us, the judge has rejected the appellant’s account long before considering the expert evidence.

14. The First-tier Tribunal fell into the error described in *Mibanga* and it is a material error. For the reasons given above, we accept the submission made that the judge had already assessed the appellant’s credibility as being lacking before looking at the country and medical reports as opposed to looking at all the evidence in the round, prior to coming to a global conclusion on credibility. The judge’s analysis of the evidence ought to have been informed by the expert evidence, which he stated he accepted, and not the reverse, which is what occurred here.

15. We canvassed the views of the parties as to the venue of any remaking should the panel detect a material error of law and have taken them into account. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), the panel carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President’s Practice Statements. We took into consideration the history of this case, the nature and extent of the findings to be made as well as our conclusion that the nature of the errors of law in this case meant that the appellant was deprived of a fair hearing. We further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and we therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Raymond.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 February 2024