



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12534/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 9 November 2017

**Decision & Reasons
Promulgated**

On 21 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

MS A K

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Wilford of Counsel

For the Respondent: Mr P Nath, a Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellant is a citizen of India who was born on 30 April 1983. The respondent refused her claim for asylum and for leave under the Immigration Rules and Article 8 of the ECHR.

The appeal to the First-tier Tribunal

3. The appellant appealed against the respondent's decision to the First-tier Tribunal. In a decision promulgated on 18 July 2017 First-tier Tribunal Judge Kainth dismissed the appellant's appeal. The First-tier Tribunal found that the appellant would not be at risk of persecution on return to India and dismissed the appeal on paragraph 276ADE of the Immigration Rules and on Article 8 of the European Convention on Human Rights grounds.
4. The appellant applied for permission to appeal against the First-tier Tribunal's decision and on 15 August 2017 First-tier Tribunal Judge Chohan refused to grant permission to appeal. The appellant renewed her application for permission to appeal to the Upper Tribunal and on 12 September 2017 Upper Tribunal Judge McWilliam granted permission to appeal.

The hearing before the Upper Tribunal

5. I do not need to set out in any detail the grounds of appeal save to indicate that the principal ground of appeal was that the judge had failed to consider credibility of the appellant taking all the evidence, including the medical evidence, in the round prior to reaching findings on the appellant's credibility. The reason I do not need to set out the grounds in any detail is that the Home Office accepts that the First-tier Tribunal erred in law by failing to consider all the evidence prior to reaching credibility findings in line with the case of **Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367**.

Discussion

6. Having considered the First-tier Tribunal Judge's decision in detail I find that the First-tier Tribunal has erred in law. The error is a material error of law as clearly the judge has reached credibility findings prior to consideration of the expert medical report. This was not simply a question that the Tribunal has set out issues in an ordered fashion. The findings are set out by the First-tier Tribunal at paragraph 53 where the judge found that the appellant was not a genuine refugee in need of protection. It is only at paragraph 56 that the judge appears to consider the medical evidence and at paragraph 59 states:

"... For the reasons which I have comprehensively set out within the body of this decision, I reject the appellant's account as credible or plausible. The question of fact-finding is within my domain as is credibility. Whilst I do not criticise Dr Thomas, the information relayed to her as a matter of fact, I have rejected. Therefore, the findings made by the doctor are based on information which has no foundation."

This makes it clear that the judge had concluded her assessment of credibility prior to considering the evidence of the judge.

7. There was no appeal against the findings of the judge on paragraph 276ADE or Article 8 outside of the Immigration Rules. Mr Wilford accepted that no appeal had been made against the findings on the Immigration Rules or Article 8. Therefore this part of the First-tier Tribunal's decision stands and all those findings are preserved.

Notice of Decision

8. The decision of the First-tier Tribunal contained a material error of law. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
9. I considered whether or not I could re-make the decision myself. I considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal.
10. I remit the case to the First-tier Tribunal for the case to be heard de-novo on the asylum claim at the First-tier Tribunal at Harmondsworth hearing centre before any judge other than Judge Kainth pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date. The findings in relation to Article 8 and paragraph 276ADE stand.

Signed P M Ramshaw

Date 21 November 2017

Deputy Upper Tribunal Judge Ramshaw