



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/00210/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 17th May 2019**

**Decision & Reasons Promulgated
On 20th June 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**F N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Malik, instructed by City Heights Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was born in July 1978 and is a citizen of Bangladesh. She appeals against the decision of First-tier Tribunal Judge Beach, promulgated on 12 February 2019, dismissing her appeal against the refusal of indefinite leave for remain on human rights grounds.
2. The grounds of appeal submit that the judge erred for four reasons. Firstly, the decision and findings as to the Appellant's credibility were vitiated by procedural impropriety, namely there was a failure to recognise that the Appellant was a vulnerable witness. Secondly, the judge erred in law in

considering whether the conflicting accounts put forward by the Appellant were due to her mental health. Thirdly, the judge erred in failing to appreciate that dishonesty was needed to justify the Secretary of State's decision. Fourthly, the judge did not follow the three-stage approach to the burden of proof in relation to the allegation of dishonesty and thereby erred in law.

3. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 3 April 2019 for the following reasons; "The grounds seeking permission have been drafted by Counsel who did not appear at the hearing. They assert that the judge erred in failing to recognise that the Appellant was a vulnerable witness, that she erred in failing to consider whether the conflicting accounts advanced by the Appellant may be attributable to her mental health issues, that she failed to appreciate that dishonesty was necessary in order to justify the Respondent's decision and that she failed to apply the three-stage approach to the burden of proof in establishing dishonesty. There is nothing in the decision to show that the Appellant was treated as a vulnerable witness. Arguably this amounts to a defect in process. The use of the word arguably in paragraph 59 of the decision suggests that the correct standard of proof may not have been applied in determining the issues of dishonesty. It is also arguable from that paragraph that the judge erred in her approach to the shifting burden in the allegations of dishonesty."
4. It was agreed at the hearing that the Appellant should have been treated as a vulnerable witness and there had been procedural impropriety giving rise to an error of law in the decision. Mr Malik submitted that the Appellant had been deprived of a fair hearing and therefore the appeal should be remitted. It was through no fault of the Appellant that she would be deprived of an avenue of appeal if the appeal was not remitted to the First-tier Tribunal.

Conclusions and reasons

5. There was nothing in the First-tier Tribunal's Judge's decision to show that the judge followed the practice direction 'First-tier and Upper Tribunal Child, Vulnerable adult and Sensitive Witnesses' and the guidance given by the Court of Appeal as to vulnerable witness in AM (Afghanistan) v the Secretary of State for the Home Department [2017] EWCA Civ 1123. Although I accept that there was no submission made by counsel representing the Appellant at the First-tier Tribunal, there was evidence before the judge to show that the Appellant should have been treated as a vulnerable witness. I find that the judge erred in law in failing to consider this issue of her own motion. There were no findings on this point in the decision and therefore the judge failed to demonstrate she took into account the Appellant's vulnerabilities in assessing credibility.
6. I am of the view that the failure to consider whether the Appellant was a vulnerable witness, given that the judge acknowledged the psychological

assessment in which the Appellant set out a history of childhood abuses and familial difficulties leading to depression and a history of previous suicide attempts, amounts to an error of law.

7. The judge referred to the psychological assessment by Dr Sreenan, at paragraph 49, and acknowledged that the Appellant had received cognitive behavioural therapy and was in receipt of medication. The judge stated: “The appellant’s evidence was that counselling had now ceased but that she was still taking medication. Dr Sreenan’s conclusion was that the appellant was suffering from a high level of anxiety as a result of her visa status and that this was one of the ‘primary drivers’ for her symptoms of anxiety and reactive mild depression. He did not conclude that the Appellant was suffering from Post Traumatic Stress Disorder. The assessment also did not suggest that the Appellant was unable to contradict or challenge people where she felt that she had not done as they should have done on her behalf. Nor does it state that at the time of submitting her tax returns she was suffering particular issues or was unable to properly engage with the process.”
8. However, having acknowledged that assessment, the judge ought to have considered whether the Appellant should be treated as a vulnerable witness and, following AM (Afghanistan), it was incumbent on the judge to make a finding on such a point. Her failure to do so gives rise to an error of law such that the very comprehensive decision must be set aside and reheard.
9. I find that paragraph 7.2 of the Practice Statement of 25 September 2012 is satisfied. The Appellant has in essence been deprived of a fair hearing at the First-tier Tribunal and the matter should be remitted to be remade. It was not a case where the judge relied on overwhelming evidence to substantiate her finding that the Appellant was not credible and there was evidence which supported the Appellant’s account. Her credibility on matters in issue was finely balanced and her vulnerability may well have affected the assessment of credibility had the judge considered it in examining the evidence. Unfortunately, although the judge set out the psychological assessment and the findings, the judge does not demonstrate in her credibility findings that she has considered how that assessment might have affected the Appellant’s ability to give evidence. The judge relied on the assessment in her Article 8 findings at paragraph 61.
10. I find that the judge erred in law and I set the decision aside. I remit the matter to the First-tier Tribunal to be heard by a First-tier Tribunal Judge other than First-tier Tribunal Judge Beach. None of the judge’s findings are preserved.

Notice of decision

Appeal allowed and remitted to the First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

J Frances

Signed

Date: 17 June 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

J Frances

Signed

Date: 17 June 2019

Upper Tribunal Judge Frances