



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

Appeal Number: PA/04777/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 April 2019**

**Decision & Reasons Promulgated  
On 14 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**M D A N  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No attendance

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Tanzania born on 25<sup>th</sup> June 1978. The Appellant had made application for asylum claiming to have a well-founded fear of persecution on the basis of his political opinion. The Secretary of State refused that application by Notice of Refusal dated 26<sup>th</sup> March 2018.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Bristow sitting at Birmingham on 14<sup>th</sup> May 2018. In a decision and reasons promulgated on 1<sup>st</sup> June 2018 the Appellant's appeal was dismissed on all grounds.

3. On 12<sup>th</sup> June 2018 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 10<sup>th</sup> July 2018 First-tier Tribunal Judge Nightingale granted permission to appeal. Judge Nightingale noticed that the grounds argued that the judge erred by considering the screening interview but by failing to take into account the statement the Appellant had submitted at that time which raised sexual and physical abuse. It was also argued that the judge had erred in failing to make any finding with regard to the four letters which had led him to make his claim for asylum. Consequently it was contended that the judge had failed to consider all the relevant evidence.
4. Judge Nightingale considered that it was arguable that the judge had erred in giving undue weight to the failure of the Appellant to mention sexual and physical abuse during his screening interview and that it was arguable that the judge had fallen into error in failing to appreciate that the witness statements supplied at the interview did raise the abuse he claimed to have suffered. Further he considered that it was arguable that whilst considering the letters referred to in the Grounds of Appeal (at paragraph 58(d)) the judge erred in failing to make a finding with regard to the reliability or otherwise of those letters.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant does not appear. I do note however that the Appellant lives in Coventry. The Appellant is acting in person. He appeared in person before the First-tier Tribunal and he personally is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Mr Avery. I further note that the First-tier Tribunal Judge granted the Appellant anonymity and no application is made to vary that order and none is made. I am substantially assisted in this matter by the approach adopted by Mr Avery. Mr Avery advises that he concedes that there is a material error of law in the decision of the First-tier Tribunal Judge. He points out that the Appellant had provided a detailed witness statement with regard to his ill-treatment and that the failure to consider it must, in the view of the Secretary of State, substantially undermine the assessment of credibility made by the First-tier Tribunal Judge. In such circumstances even though the Appellant fails to attend he advises that the correct approach is for the matter to be remitted back to the First-tier Tribunal for rehearing.

### **Findings on Error of Law**

6. Having heard the submissions of Mr Avery and considered the decision of the First-tier Tribunal Judge and the witness statement of the Appellant I agree with the comments made by Mr Avery that the failure to consider the witness statement of the Appellant and in particular the details made therein with regard to the findings on credibility substantially undermine the decision. A finding on credibility will involve consideration of the facts and the plausibility of the Appellant's version of events. Such evidence is normally readily available within the evidence produced. In this instance

the judge appears to have missed part of that evidence or indeed if he has considered it he has unfortunately failed to make specific reference to it.

7. In such circumstances I am satisfied that there is a material error of law and the decision of the First-tier Tribunal Judge is unsafe. I make this finding despite the fact that the Appellant has failed to personally attend. He will of course on the basis that I now remit the matter back to the First-tier Tribunal need to ensure that he is present at the further hearing.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge contains material error of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

- (1) On finding that there is a material error of law in the decision of the First-tier Tribunal Judge the decision of the judge is set aside and the matter is remitted to the First-tier Tribunal sitting at Birmingham for rehearing on the first available date 28 days hence with an ELH of three hours.
- (2) None of the findings of fact of the First-tier Tribunal are to stand.
- (3) That the hearing is to be before any judge of the First-tier Tribunal other than Immigration Judge Bristow.
- (4) That there be leave to either party to file and serve an up-to-date bundle of subjective and/or objective evidence upon which they intend to rely at least seven days prior to the restored hearing.
- (5) That a Swahili interpreter do attend the restored hearing.

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

### **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 him or any member of their 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.

Signed

Date 11 May 2019

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 11 May 2019

Deputy Upper Tribunal Judge D N Harris