



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05991/2019**

THE IMMIGRATION ACTS

**Heard at Manchester CJC via
Skype
On 8 October 2020**

**Decision & Reasons
Promulgated
On 14 October 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**RA
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Butler, Counsel

For the respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant has appealed against a decision made by First-tier Tribunal ('FTT') Judge Craft, sent on 23 December 2020 in which his appeal was dismissed on protection grounds and allowed on human rights (Art 8) grounds. The SSHD has not cross-appealed the decision to allow the Article 8 appeal.
2. At the beginning of the hearing before me, Mr Bates accepted that the FTT decision contains errors of law for the reasons set out in the grounds of appeal, such that the decision of the FTT must be set aside. For the reasons I set out below Mr Bates was correct to make this concession. Both representatives accepted that the findings as to Article 8 are preserved, as they are not infected by any material error of law but the findings on the appellant's asylum claim need to be remade.
3. The FTT's conclusion at [52] that the appellant's "*evidence still leaves unexplained the contradiction that he was, from records examined by the respondent, in Greece when the raid in which his father was shot took place*" is a clear error of law. There were two witness statements from the appellant (dated 4 October 2018 and 15 July 2019) explaining the apparent contradiction in detail. Over the course of several paragraphs the appellant explained that when he arrived as a lonely and scared 17 year old he was encouraged by members of the UK Kurdish community to conceal the time he spent in Greece. Although this is summarised by the FTT at [14], the FTT has not engaged with this evidence when making its findings of fact from [49]. The FTT has also failed to engage with the submission in the appellant's skeleton argument that the appellant's vulnerability and claimed sexual abuse in Greece was an additional explanation for the apparent contradiction. The FTT has not engaged with this submission or given reasons for rejecting it. Mr Bates was therefore entirely correct to concede ground 1.
4. In concluding at [51] that the extent of the appellant's vulnerability before the 2015 FTT remains uncertain, the FTT failed to take into account relevant evidence or give reasons for rejecting that evidence. Ground 2 is therefore made out. Although the FTT noted that there was important new evidence before it not available to the 2015 FTT, it failed to fully engage with this evidence when determining whether or not to depart from the earlier adverse credibility findings. This new evidence was clearly and comprehensively set out in the skeleton argument before the FTT. It was crucial to consider whether there was evidence to support the submission that the appellant was sufficiently vulnerable at the 2015 hearing, such that little weight should be given to findings that were made in the absence of adjustments as to that vulnerability. After all, it was agreed that by the time of the FTT hearing in October 2019 (four years later) that the appellant was so vulnerable that he should not be called to give evidence, and the FTT also accepted the medical evidence and the

evidence from Sutton social services when allowing the appeal on Article 8 grounds.

5. The FTT summarised Dr Oyebode's report in detail at [20] to [23] and records Dr Oyebode's opinion (at [3.11] to [3.16] and [3.46] of his report) that the appellant's experiences in Iran and reasons for leaving together with his experience of sexual abuse in Greece led to symptoms of generalised anxiety disorder. Yet, when considering the extent of the appellant's vulnerability before the 2015 FTT, this FTT did not clearly or expressly address this evidence. Although Dr Oyebode's report was considered at [50], the FTT failed to engage with the specific psychological evidence relevant to 2015. In particular the FTT failed to address Dr Oyebode's observations regarding the appellant's limited cognitive abilities at [2.47] of his report and the extent to which those might have impacted upon his ability to give evidence before the 2015 FTT. It would have been much more helpful if the appellant's solicitors had included a specific question to Dr Oyebode regarding the appellant's psychological state in 2015. Nonetheless, when Dr Oyebode's report is read as a whole, there is no suggestion that the appellant's presentation and accompanying diagnosis is of recent vintage. In the premises, the FTT was obliged to carefully consider this evidence when determining the nature and extent of any vulnerability at the time of the 2015 FTT hearing.
6. The FTT was aware that the 2015 FTT did not have the documentation from the London Borough of Sutton [9]. This included a 2012 age assessment report which accepted the appellant to be broadly credible and recorded that he presented with symptoms of PTSD, who was struggling to cope with separation from his father - see [17] of the FTT's decision. This is consistent with Ms Reynolds' letter dated 12 July 2019. Ms Reynolds is the Team Manager for the Leaving Care Team at Sutton. She has known the appellant since 2014. She described the appellant as requiring significant support from the leaving care team and mental health services since arriving in the UK, as a result of the trauma in his life. Ms Reynolds' evidence clearly corroborates the appellant's claim to have been vulnerable at the time of the 2015 FTT hearing, yet when addressing that issue, the FTT made no clear findings on this important evidence.
7. In addition, as Mr Bates noted, the FTT missed an entirely obvious matter when assessing the nature and extent of the appellant's likely vulnerability before the 2015 FTT. It was not in dispute that the appellant arrived in the UK as an unaccompanied minor in July 2012 when he was only 16. Although he was no longer a minor before the 2015 FTT he was only 19 and continued to be a person without any family members who was looked after by the local authority.

8. Mr Bates also correctly accepted that as contended in ground 3 the FTT made a mistake of fact when dealing with the appellant's claim as to the level of his father's political involvement.

Disposal

9. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision on protection grounds only, and I have decided that this is an appropriate case to remit to the FTT. This is because completely fresh findings of fact are necessary.
10. It would be helpful if the FTT holds a directions hearing in order to address issues arising in relation to the appellant's past and present vulnerability, with a view to narrowing the issues in dispute.

Decision

11. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside. The decision on protection grounds shall be remade in the FTT, by a judge other than Judge Craft.

Signed: *UTJ Melanie Plimmer*
Judge of the Upper Tribunal

Dated: 8 October 2020