



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-001615
FtT No: PA/50658/2021
IA/01835/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 21 September 2023**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**M P K
(anonymity order made)**

Appellant

and

S S H D

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Katani & Co, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

Heard at Edinburgh on 13 September 2023

DECISION AND REASONS

1. FtT Judge Stevenson dismissed the appellant's appeal by a decision promulgated on 12 January 2022. He applied for permission to appeal to the UT, in these terms:

The appellant is Angolan. He was born on ... He claimed he was at real risk due to having formed a movement opposed to the government, having participated in anti-government demonstrations, where his nephew and other supporters of the movement had been arrested and detained and where the police came to his house to arrest him. The FTT refused the appeal.

Ground 1- inconsistency and mental health issues

The FTT had a psychological report (pages 120-129 of the stitch bundle) and also a psychiatric report (pages 130-143 of the stitch bundle) before it (paragraphs 6 and 28-31 of the FTT's decision). The FTT took the view that the appellant had a higher level of engagement during the hearing than one might have expected in light of the reports. The FTT took the view that subsequent to the reports (post July 2021) the appellant had been prescribed various medication and that the FTT's view aligned with Dr Hanna's evidence that the appellant would be able to offer witness evidence if optimally treated. At paragraph 55

the FTT states that it does not accept the lack of coherence and consistency can be fully explained by the psychological issues. However the informed reader is left in real and substantial doubt as to why the FTT says this in relation to inconsistencies arising from what the appellant had said prior to receiving his medication, at a time when it is reasonably likely his psychological issues were not being treated and where even if the FTT is persuaded that the appellant was able to give effective oral evidence, the informed reader is left in real and substantial doubt as to how the FTT has assessed the inconsistencies arising from the interviews/ statements which pre-dated the appellant receiving his medication. The appellant is prejudiced as his appeal has been refused. There is no recognition by the FTT that any inconsistency prior to the appellant receiving medication may be reasonably explained by the information contained in the medical reports. Although the FTT states at paragraph 30 that there was no indication that the appellant was having particular difficulty with the previous interviews, that indication was given prior to the information in the medical reports and medication being prescribed. A person is not necessarily aware that such issues are present until diagnosed. As such the FTT's findings at paragraphs 44-45 and 47-52 are vitiated by legal error and where those findings are treated as material by the FTT at paragraph 55. For example the inconsistency at paragraph 44 where the appellant had referred to his nephew being arrested on 26th August and the article indicating they had been called to the police station on 26th September. There is a real possibility that if the appellant were believed in these aspects, a different view may be taken in respect of the remaining adverse findings which are essentially based on plausibility. For example if the appellant is believed that his nephew was arrested that may support the appellant's position, at paragraphs 41-42 of the FTT decision, that his nephew did send a video to the government and that the authorities had come to his house to arrest him.

Ground 2 - documentary evidence

The FTT erred in law at paragraph 44 (in respect of the article at page 152 of the stitch bundle) and paragraph 46 (in respect of the article at page 144 of the stitch bundle) for the following reasons. There is information on the provenance of the document where the Google search page is produced at page 154 of the stitch bundle and the first 2 entries on that search page identify the article produced with part of the URL listed. As such the informed reader is left in real and substantial doubt as to why the provenance of the article is questioned in light of the Google search page. The FTT did not say that it could not access that page. *Separatim* the FTT did not raise with the appellant or the appellant's representatives that it was concerned about the lack of URL and the appellant's representatives were unaware of such a concern where the Google search page had been produced. As such the FTT acted in a procedurally unfair manner. Had the FTT asked the appellant and his representatives would have been able to give the URL in relation to both documents, which are *[hyperlinks inserted]* ...

2. On 29 March 2022 FtT Judge Scott Baker granted permission: ...

2. The grounds assert that the FTT Judge made a material error of law in failing to consider as to whether the inconsistency in the appellant's evidence arose from his mental health issues and that findings on credibility may have been tainted as a result thereof; and that the judge had acted in a procedurally unfair manner in failing to advise the appellant that he had issues concerning the provenance of documents produced.

3. The judge had accepted that the appellant was a vulnerable witness at [8] and had taken account of the report from Dr Hanna. The two reports were considered in detail at [28] and at [55] the judge found that he could not accept that the lack of coherence and consistency could be fully explained by the psychological issues noted by the medical experts. Whilst the judge accepted that Dr Hanna's findings were that the appellant's cognitive facilities would improve with treatment there was evidence before the judge that the appellant had been receiving treatment but arguably there was scant consideration by the judge of this issue and

it is arguable that the inadequacy of his findings has tainted his findings as to credibility throughout.

4. On the issue of the provenance of the documents the judge had noted that there was no information as to the provenance of the documents at [44] and [46] which arguably was a material error of fact as the Google search page had been produced at 154 of the stitch bundle.

5. Permission is granted on all grounds.

3. Mr M Diwyncz accepted that there was considerable force in the challenge expressed in ground 1, as set out above.
4. It does not follow that the appellant's evidence must have been given more credit than it was; but its rejection cannot safely stand on the reasons given.
5. As matters had developed, I was not addressed in any detail on ground 2. However, I doubt whether the production of a google search page did much to advance the appellant's case, or whether there was any procedural unfairness. The evidence was assessed for what it was worth. It remains for evaluation in course of rehearing.
6. The decision of the FtT is set aside, and the case is remitted for fresh hearing, not before Judge Stevenson.
7. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant, pending further orders of a court or tribunal, 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 him. Failure to comply with this order could amount to a contempt of court.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
14 September 2023