



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

**Appeal
Number**

AA/11065/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 17 June 2014**

**Sent
On 20 June 2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

TM
(Anonymity direction made)

Appellant

and

**Secretary of State for the Home Department
Respondent**

Representation

For the Appellant: Ms. H. Short of Counsel instructed by Turpin & Miller Solicitors.

For the Respondent: Mr. P. Duffy, Home Office Presenting Officer.

MEMORANDUM AND DIRECTIONS

1. This is an appeal against the decision of First-tier Tribunal Judge Naphtine promulgated on 25 March 2014, dismissing the Appellant's appeal against the Respondent's decision dated 23 November 2012 to remove the Appellant from the UK following the refusal of her second application for asylum.

2. Before me today the parties indicated that there was common ground as to there being an error of law on the part of Judge Naphthine. They were also in agreement regarding the future conduct of the appeal: that it should be heard again before the First-tier Tribunal.

3. By way of clarification I invited Mr Duffy to identify the specific paragraphs in the Appellant's grounds in support of the application for permission to appeal which he acknowledged amounted to an error of law. He struggled immediately to put his finger on a specific paragraph in what are lengthy grounds, but stated that he accepted the substance of paragraph 3 of the grant of permission to appeal, which he paraphrased as being an inconsistency between the Judge's finding that a witness who confirmed that the Appellant had been a teacher was a credible witness, and the Judge's rejection of the Appellant's claim to have been a teacher.

4. In the circumstances I did not invite Ms Short to amplify the challenge to the decision of the First-tier Tribunal Judge, but invited the parties' observations on future conduct. As indicated above, they both agreed that the effect of the Judge's error went to the overall credibility assessment of the Appellant and warranted a fresh hearing. Indeed, it was possible to fix a date for hearing at Hatton Cross on 2 December 2014.

5. Thereafter, I had a brief discussion with Ms Short about the pleading in the grounds that the Appellant should have been treated as a vulnerable witness - noting, which Ms Short confirmed, that this did not appear to have been the subject of a submission before the First-tier Tribunal Judge - and indicating in such circumstances I would have been unlikely to find much merit in that ground of challenge. However, I also indicated that I was troubled by Judge Naphthine's approach to the supporting medical evidence - but did not invite either party to address me in this regard or state any conclusion in the absence of submissions.

6. Upon coming to write up the 'error of law' determination it has become apparent that Mr Duffy may have been mistaken in his reference to paragraph 3 of the grant of permission to appeal.

7. This appeal has some history. It relates to the Appellant's second application for asylum - an earlier application having been refused on 22 July 2009 and a subsequent appeal dismissed by Immigration Judge Emerton in a determination promulgated on 23

September 2009 (ref AA/07818/2009). Following the refusal of an application for reconsideration, the Appellant made repeated further representations to the Respondent: her representations were rejected, but they were accepted to constitute a 'fresh claim' giving rise to a further right of appeal against a removal decision made on 23 November 2012. This is the relevant immigration decision herein.

8. The Appellant's appeal was heard on 7 May 2013 by First-tier Tribunal Judge Widdup and dismissed. An application for permission to appeal to the Upper Tribunal was granted on 13 June 2013 by First-tier Tribunal Judge Osborne, and subsequently Upper Tribunal Judge McGeachy found that there had been an error of law and that the appeal should be remitted to be heard afresh in the First-tier with all issues at large. It was in such circumstances that the appeal came before Judge Napathine.

9. It would appear that Mr Duffy's reference to paragraph 3 of the grant of permission to appeal relates to Judge Osborne's grant in respect of the previous appeal hearing before Judge Widdup.

10. In such circumstances it seems clear to me that Mr Duffy's concession was premised on a misconception. In my judgement - save with one caveat - the interests of justice require that I reconvene the appeal before me in order that I hear further submissions on the issue of error of law, with a view to immediately proceeding to a rehearing of the appeal if I find there is an error of law. (This will also have the advantage of likely leading to a quicker resolution than awaiting the December listing at Hatton Cross.)

11. The single caveat is this: if the Respondent confirms the concession on error of law justifying a fresh hearing - whether that be on the basis seemingly erroneously indicated by Mr Duffy or on some other basis - then it will be unnecessary to reconvene the hearing before the Upper Tribunal and the case can proceed in accordance with the listing at Hatton Cross.

12. Accordingly, I make the following **Directions**:

(i) The Respondent is to file and serve within ten days of the sending of these Directions written confirmation of whether or not it is accepted that there was a material error of law on the part of First-tier Tribunal Judge Napathine, such that a fresh hearing of the Appellant's appeal is warranted. In the event

that it is conceded that there was such an error of law, the Respondent is to particularise the accepted error.

(ii) In the event that the Respondent concedes the issue of error of law, a brief Determination will be prepared to this effect by me and promulgated to the parties and the appeal will proceed to a rehearing as already listed at Hatton Cross on 2 December 2014.

(iii) In the event that the Respondent does not concede the issue of error of law, the hearing date at Hatton Cross will be vacated and the appeal will be listed before me at Field House on the first available date for consideration of the issue of error of law with a substantive rehearing to remake the decision on the appeal to follow immediately in the event that such error is found. The appeal will be listed for one day to permit sufficient time.

(iv) In this latter circumstance it will be necessary for the Appellant to attend Field House with her witnesses. Any further documentary evidence or statements upon which she may wish to rely should be filed and served at least seven days prior to the hearing.

Deputy Judge of the Upper Tribunal I. A. Lewis 17 June 2014