



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04555/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 22 January 2019

Promulgated

On 8 March 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

N D

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Wood instructed by Kilby Jones Solicitors LLP
For the Respondent: Mr N Bramble, a Senior Home Office Presenting Officer

Anonymity

The First-tier Tribunal made no anonymity order, despite the Joint Presidential Guidance Note 2013 No 1: Anonymity Orders at [13] which states that protection appeals should be anonymised on issue and before the Upper Tribunal. The Upper Tribunal therefore of its own motion has made an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal, dismissing her appeal against the Secretary of State's decision to refuse her international protection under the Refugee Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Albania.
2. Permission was granted on the basis that the First-tier Tribunal failed properly to apply the country guidance in *TD and AD* (Trafficked women) Albania CG [2016] UKUT 92 (IAC) to this appellant's likely circumstances as a returning lone woman, and that at [59] the judge committed the classic error of applying negative credibility findings already reached to his assessment of the medical evidence of Dr Melanie Wood contained in two letters of 11 and 18 September 2015 (see *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367).
3. There is merit in both grounds. The country guidance in *TD and AD* is not properly summarised and is misapplied by the Judge. At [62] in the First-tier Tribunal decision in this appeal, the Tribunal found that none of the appellant's core account was accepted, and it is right to say that there are no findings of fact at all in the First-tier Tribunal decision. Nor did the Judge refer to the appellant's witness statement, although much was made of the contents of her screening interview, adopted in the appellant's witness statement, and there is also mention of some elements of the oral evidence she gave before the First-tier Tribunal.
4. The Judge at [59] placed little weight on the medical evidence because he had already concluded that the appellant was not a credible witness. The *Mibanga* error was considered by the Upper Tribunal in *HH* (medical evidence; effect of *Mibanga*) Ethiopia [2005] UKAIT 00164

"19 Finally, the grounds assert that the Immigration Judge erred in law in failing to treat the medical report as part of the overall evidence in this case, to be considered "in the round" before coming to any conclusion as to the appellant's credibility. Reference is made to the Court of Appeal judgments in *Mibanga* [2005] EWCA Civ 367, in particular paragraph 24 of the judgment of Wilson J:

"It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence"."

5. Overall, and particularly because the country guidance has been incorrectly applied and the judge has made a *Mibanga* error, this decision is irrational and cannot stand.

6. I set aside the decision and allow the appellant's appeal remitting it to the First-tier Tribunal for decision afresh with no findings of fact or credibility maintained.

DECISION

7. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law. I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal.

Date: 26 February 2019

Signed **Judith AJC**

Gleeson

Upper

Tribunal Judge Gleeson