



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

Appeal Number: PA/05633/2016

THE IMMIGRATION ACTS

Heard at Field House

On 16 November 2018

**Decision & Reasons
Promulgated
On 25 January 2019**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**M K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Sood, instructed by Paragon Law

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant appeals with permission against the decision of First-tier Tribunal Judge Gurung-Thapa, promulgated on 29 August 2018 dismissing his appeal under the Nationality, Immigration and Asylum Act 2002 against the decision made on 13 May 2016 refusing his asylum and human rights claim.
- 2.** In Mibanga v SSHD [2005] EWCA Civ 367 the Court of Appeal drew attention to an earlier statement HE (DRC -Credibility and Psychiatric Reports) [2004] UKIAT 00321:

“Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come.”

3. The Court of Appeal also said this:

“What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.”

4. Despite the 14 or so years since these clear statements, that is, with all due respect, exactly the error that Judge Gurung-Thapa committed. As both parties rightly agreed, Judge Gurung-Thapa simply ignored relevant reports from two medical experts which went to (a) the appellant's learning disabilities and (b) as to whether he should have been treated as vulnerable witness. Both of these were manifestly relevant to a proper assessment of the appellant's credibility. Judge Gurung-Thapa's failure even to indicate she had taken them into account in assessing credibility undermines the entirety of the credibility finding. Judge Gurung-Thapa's decision must therefore be set aside and remade.

5. Given that, owing to the nature of Judge Gurung-Thapa's manifest error of law, none of the findings she made can be sustained, this appeal must be remade in the First-tier Tribunal. I therefore remit it to be heard again by a judge other than Judge Gurung-Thapa.

Notice of Decision

- (1) The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- (2) I remit the decision to the First-tier Tribunal for a fresh decision on all issues, the appeal not to be heard by First-tier Tribunal Judge Gurung-Thapa.
- (3) I maintain the anonymity direction made.

Signed

Date 19 November 2018



Upper Tribunal Judge Rintoul