



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

Appeal Number: PA/13932/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 26th July 2019**

**Decision & Reasons Promulgated
On 05th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**A A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sills of Counsel, instructed by JD Spicer Zeb Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Knowles (the judge) of the First-tier Tribunal (the FTT) promulgated on 2nd May 2019 following a hearing on 15th March 2019.
2. The Appellant is a female citizen of Ethiopia born 3rd May 1986. She arrived in the UK on 5th June 2017 and claimed asylum. The application

was refused on 21st November 2018 and the Appellant appealed to the FTT.

3. The judge heard evidence from the Appellant. The judge noted that the Appellant claimed to be at risk in Ethiopia by reason of her political opinion in that she claimed to support PG7 and also because her brother had killed his wife's cousin, and the wife's family wanted to take revenge.
4. The decision of the FTT is lengthy running to 49 paragraphs. The findings of fact commence at paragraph 44. The judge reached the following conclusion at paragraph 45;

“45. Considering the Appellant's evidence, her documents and the submissions of both parties in the round, I do not consider that the Appellant has provided a credible account of her core situation. In my conclusion, taking into account the volume of inconsistencies in her evidence, in matters which I consider are material, added to her section 8 issues, I find that the Appellant's account of her core situation not reasonably likely to be true applying the lower standard of proof.”
5. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

6. In summary it was contended that the judge had made material errors of law by failing to make adequate findings, failing to take material matters into account, provided inadequate reasoning, and failed to consider paragraph 276ADE of the Immigration Rules. The submissions as to error of law are summarised below.
7. The judge had considered the evidence at paragraph 44 and reached a brief conclusion at paragraph 45 but failed to make findings on material matters. The judge had not accepted the Appellant had provided a credible account of her core situation but it was unclear what the core situation was said to be.
8. There were no specific findings in relation to the Appellant's claimed activities with PG7 in Ethiopia, in the UK, or in relation to her claimed family problems. The Appellant had been left to guess which elements of her claim were considered to be core aspects and why the claim had been rejected.
9. Paragraph 44 contained both positive and negative factors, which meant that paragraph 45 failed to clearly explain why the Appellant had been found to be incredible on whatever the core situation was considered to be.
10. The judge failed to make clear findings on matters. At paragraph 44(xii) the judge considers the section 8 issues, those being failure to claim asylum in Italy or France. The judge notes the Appellant's explanation but does not state whether the explanation is adequate or not.

11. The judge failed to take account of the Appellant's medical evidence when considering credibility issues. A letter from Dr Farrington dated 17th December 2018 confirms the Appellant has a diagnosis of PTSD with symptoms including poor concentration and memory. There is no reference to the significance of this evidence in relation to credibility. The reference to medical evidence in the FTT findings refers to a rule 35 report not the letter from Dr Farrington. By failing to consider the medical evidence when assessing credibility, the judge had erred in law.
12. The judge failed to consider paragraph 276ADE. Given the Appellant's medical conditions, and the finding by the judge that the Appellant "is very ill" this was relevant and material and should have been considered.

Permission to Appeal

13. Permission to appeal was granted by Judge L Murray in the following terms;
 - "3. It is arguable that the judge failed to adequately consider the contents of the psychological report and grapple with the diagnosis that the Appellant had a major depressive disorder and PTSD. It is arguable that the judge failed adequately to consider this evidence in coming to conclusions on credibility. The judge also did not consider paragraph 276ADE and this is also an arguably an error of law."
14. Following the grant of permission to appeal, directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

My Analysis and Conclusions

15. At the oral hearing before me Mr Bates conceded that the judge had erred in law by failing to consider paragraph 276ADE(1)(vi). It was accepted that this was a material error.
16. Mr Bates argued that while that aspect of the decision would need to be made again, the remainder of the decision could be preserved. It was argued that the judge had made adequate findings and given sustainable reasons for those findings.
17. Mr Sills relied and expanded upon the grounds contained within the application for permission to appeal. The findings by the judge are contained in paragraph 44(i) - (xii). There were no findings in that paragraph in relation to the aspect of the Appellant's claim which related to her fear from another family because it was claimed that her brother had killed a member of that family.
18. I was asked to note paragraph 44(i) in which the judge considers the failure by the Appellant to mention her political activity until nearly eight months after her initial claim, and comments that the reasonableness of that explanation "falls to be considered with her credibility in the round."

Mr Sills pointed out that the judge made no further reference to that issue, but simply dismissed the Appellant's claim at paragraph 45, which is set out earlier in this decision. A similar example was given by Mr Sills, with reference to paragraph 44(xii) in which the judge, when considering failure to claim asylum in Italy or France, explained that he had taken into account the Appellant's explanation regarding her health, and being under the instructions of an agent, and stated that "these issues fall to be considered in the round with her evidence generally." There was no further consideration of that evidence, the judge concluding at paragraph 45 that the Appellant's account "of her core situation" was not reasonably likely to be true.

19. I find that the concession by the Respondent that the judge had materially erred in failing to consider paragraph 276ADE(1)(vi) was rightly made. The judge recorded at paragraph 48 that there was no doubt that the Appellant "is very ill". The medical evidence before the judge included a letter from Dr Farrington dated 17th December 2018. In this letter it is confirmed that the Appellant has a diagnosis of PTSD and her symptoms are described as distressing. A psychological report dated 28th February 2019 prepared by Peter Thorne was also before the judge. At paragraph 49 the Appellant is described as "a deeply traumatised woman, emotionally numb a lot of the time and requiring careful support and clinical assistance to process her past trauma and the loss of her daughter so that she can work towards recovery."
20. Given the mental health issues disclosed in the medical evidence, which was not challenged, I find that the judge erred in law in failing to consider whether there would be very significant obstacles to the Appellant's integration in Ethiopia given those mental health issues.
21. I am persuaded that the judge also materially erred in law in failing to adequately consider the medical evidence in relation to the Appellant's mental health when assessing credibility. The Appellant is a vulnerable witness by definition because she suffers from PTSD. This is explained in the Joint Presidential Guidance Note No 2 of 2010. This makes it clear that the primary responsibility for identifying a vulnerable individual lies with the representative. It appears that the judge was not assisted by the Appellant's representative in this case.
22. However there was clear medical evidence produced on behalf of the Appellant. The letter from Dr Farrington confirms the diagnosis of PTSD, and also states that the Appellant "has poor concentration and memory".
23. The psychological report at paragraph 30 states that the Appellant "reported poor concentration and episodes of confusion regarding the events of the last two and a half years."
24. At paragraph 32 it is stated that the Appellant meets the criteria for a diagnosis of depressive disorder with anxiety at a moderate to severe degree. At paragraph 42 the opinion is given that the Appellant has a

major depressive disorder to a moderate to severe degree with comorbid post-traumatic stress disorder which is present to a severe degree. She is described as suffering from intrusive memories, and disturbing dreams.

25. There is no adequate consideration of the Appellant's mental health issues and how this may be relevant to credibility and this is a material error of law.
26. I am persuaded that the judge failed to make specific findings as contended in the grounds upon which permission to appeal was granted, as it is not clear, from the decision, whether the Appellant's account was rejected in its entirety or whether part of the account was accepted.
27. The errors referred to above, cumulatively, mean that the decision is unsafe and must be set aside. Both representatives submitted that if there was an error of law as contended by the Appellant, the appeal should be remitted to the FTT to be heard again.
28. I have considered paragraph 7 of the Senior President's Practice Statements and concluded the appropriate course is to remit the appeal back to the FTT to be heard afresh with no findings preserved. This is because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
29. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FTT Judge other than Judge Knowles.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

29th July 2019

**TO THE RESPONDENT
FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

29th July 2019