



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

Appeal Number: PA/06976/2019

THE IMMIGRATION ACTS

Field House

**Decision & Reasons Promulgated
On 01 September 2020**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MAR
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

1. This is an appeal against the decision issued on 7 February 2020 of First-tier Tribunal Judge Moffatt which refused MAR's appeal brought on protection and human rights grounds.

2. The appellant is a citizen of Bangladesh.
3. The appellant came to the UK as a student in 2010 and remained after his leave expired on 29 November 2011. On 13 March 2017 he made an asylum claim. This was refused on 7 September 2017 and his appeal was dismissed on 10 January 2018. He became appeal rights exhausted on 5 April 2018.
4. The appellant made further submissions on protection and human rights grounds on 27 February 2019. The respondent found that the protection and human rights claims were not made out but accepted that the submissions amounted to a fresh claim so the appellant was able to appeal to the First-tier Tribunal. The appeal came before First-tier Tribunal Judge Moffatt on 6 December 2019 at Hatton Cross.
5. As above, Judge Moffatt refused the appeal on all grounds on 19 December 2019. On 5 May 2020 the Upper Tribunal granted permission to appeal the decision of the First-tier Tribunal.
6. On 8 July 2020 the Upper Tribunal directed that the parties provide written submissions on whether the Tribunal could make a decision on the papers on whether there was an error of law.
7. The respondent indicated in a response made on 13 July 2020 that:

“The respondent does not oppose the appellant’s application for permission to appeal and accepts that the FTTJ did not adequately address the medical evidence which may have infected the credibility findings.”
- The respondent appeared to consider that the Upper Tribunal could re-make the decision.
8. In a response dated 21 July 2020 the appellant maintained that as the respondent had conceded that the First-tier Tribunal erred in law there was no requirement for an oral hearing of the error of law challenge and maintained that the nature of the error of law meant that the correct disposal was a remittal to the First-tier Tribunal for a *de novo* hearing.
9. Part of the challenge conceded by the respondent was that the First-tier Tribunal failed to take a lawful approach to the medical evidence setting out the appellant’s mental health problems and his status as a vulnerable witness. The respondent accepts that this “infected the credibility findings”. Failing to consider the potential for the appellant to be treated as a vulnerable witness is a material procedural error.
10. It is therefore my conclusion that the decision of the First-tier Tribunal discloses a material error of law such that it must be set aside to be re-made *de novo* in the First-tier Tribunal. The presumption in paragraph 7.2 the Senior President’s Practice Statement dated 11 June 2018 for a re-making to take place in the Upper Tribunal is rebutted where there is a

procedural error undermining all aspects of the findings and the re-making must be made again entirely.

Notice of Decision

11. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
12. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

Signed: S Pitt
2020
Upper Tribunal Judge Pitt

Date: 26 August