



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005096

First-tier Tribunal Nos: PA/56803/2023
LP/00601/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

10TH February 2025

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

HH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Attended in person

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

Heard at Field House on 16th January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, appeals against the decision of First-tier Tribunal Judge B Hughes, promulgated on 22nd August 2024, dismissing his appeal against the decision to refuse his protection and human rights claims.
2. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Turner in the following terms:
 1. The application was made in time.
 2. The grounds assert that the Judge erred in failing to note the Appellant's mental health conditions when assessing credibility in line with the Joint Presidential Guidance note No 2 2010.
 3. I note that the determination fails to make reference to the Joint presidential guidance note in relation to any special measures or in relation to the assessment of credibility, despite the grounds noting that the Appellant's mental health was acknowledged by the Tribunal and that special measures were put in place.
 4. The determination makes several references to the Appellant's evidence being confusing and unclear yet fails to consider why this may be in the context of the Appellant's mental health conditions. Whilst the determination does refer to other factors considered in the context of the Appellant's credibility, the nature of the Appellant's oral evidence was clearly a matter considered when assessing this. As such, a failure to note the Appellant's mental health is an arguable error of law, as per AM (Afghanistan) v SSHD [2017] EWCA Civ 1123.
 5. The Appellant has identified an arguable error of law and permission to appeal is granted.
3. The Respondent had filed a Rule 24 response in advance of the appeal which indicated the appeal was resisted.

Preliminary Matters

4. Two days before the hearing, Vanguard Solicitors wrote to Field House confirming that they were no longer instructed to act on behalf of the Appellant and asked to be removed from the Tribunal record. Thus, when the appeal came before us, we asked Mr Deller if he would make his arguments first in order to assist the Appellant.

Findings

5. At the outset of the hearing, Mr Deller confirmed that he had formed a different view to the appeal than that conveyed by the Rule 24 response and informed the panel that he agreed with the grounds of appeal. Consequently, the respondent did not resist the appeal at the error of law stage.
6. Considering the ground of appeal ourselves, we note that the complaint is chiefly that the First-tier Tribunal Judge failed to follow the Joint Presidential Guidance Note, No. 2 of 2010: Child, Vulnerable adult and sensitive appellant and thus failed to make due allowance for the Appellant's vulnerability when determining his credibility. This is indeed one of the aims that the Note has as confirmed by the second judicial headnote in SB (vulnerable adult: credibility)

Ghana [2019] UKUT 398 (IAC): “(2) By applying the Joint Presidential Guidance Note No 2 of 2010, two aims are achieved. First, the judicial fact-finder will ensure the best practicable conditions for the person concerned to give their evidence. Secondly, the vulnerability will also be taken into account when assessing the credibility of that evidence.” Indeed, the Court of Appeal has confirmed in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 at [30] that where there is a failure to follow the Joint Presidential Note and to make due allowance for an individual’s vulnerability, it “will most likely be a material error of law”.

7. Turning to the decision itself, there is no indication on the face of the decision that the judge was aware of or considered applying the Joint Presidential Note. The judge was plainly aware of the Appellant’s mental health issues as they are explicitly mentioned in paragraphs 27 and 39 of the decision. However, paragraph 29 merely records the Appellant’s complaints in the context of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 whilst paragraph 39 notes his mental health in the context of his medical issues. In the latter instance, the judge merely finds that “...they add no weight because they do not bear upon the central issue of his credibility in claiming to be gay”. We find these cursory references to the Appellant’s mental health issues represent insufficient regard being given to the Appellant’s vulnerability, particularly in relation to the treatment of his evidence and the judge’s finding at paragraph 24 that his account was “inconsistent and at times unclear”.
8. We consider Mr Deller to have acted properly in accepting that the Joint Presidential Note was not adequately applied and such material error adversely impacted the credibility assessment undertaken by the judge.
9. In light of our above findings, and in accordance with AM (Afghanistan), we find this omission represents a material error of law requiring the decision to be set aside in its entirety.

Directions

10. The decision of the First-tier Tribunal sent to the parties on 22 August 2024 is set aside in its entirety for material error of law.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 February 2025