



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

Appeal Number: HU/20001/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 19 December 2019**

**Decision & Reasons Promulgated
On 9 January 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MS
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mair instructed by ASR Advantage Solicitors

For the Respondent: Mr A McVeety Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge O R Williams promulgated on 9 July 2019 in which the Judge dismissed the appellant's appeal on all grounds.
2. Permission to appeal has been granted by a judge of the Upper Tribunal on a renewed application for the following reasons:
 - i. I remind myself that the test for 'arguable' is low. The appellant is a national of Pakistan who asserts that he is a victim of domestic

- violence. He seeks leave to remain in this country on human rights grounds.
- ii. It is arguable that the Judge of the First-Tier Tribunal has made several errors of fact as to oral evidence presented at the hearing. It is also arguable that the decision was subject to speculation and selective consideration of evidence. It is arguable that these errors infected the overall credibility assessment.
 - iii. I am not presently satisfied that Ground 4 is arguable. However, it is appropriate that the Tribunal is able to consider matters in the round at an oral hearing and so I grant permission on all grounds. The appellant will be required to establish the materiality of the purported errors of fact in law.

Error of law

3. The appellant relied on a number of grounds the first of which asserts the Judge failed to properly take the appellant's vulnerability into account. It was accepted the appellant should be treated as a vulnerable witness but argued there is no indication in the determination in which the Judge was satisfied that the appellant's account was "vague and riddled with inconsistencies" such that little weight could be placed upon the same [12] or in the paragraphs that followed that the Judge had paid any regard to the appellant's vulnerability when assessing credibility in accordance with the Practice Statement regarding vulnerable witnesses.
4. Ground 2 asserts the Judge made a material error of fact with regard to the appellant's evidence concerning a trip to Pakistan failing, when determining that the appellant had given conflicting accounts about travel plans to Pakistan, to have regard to the fact that the appellant's clear evidence was that he was discussing two different trips and not one trip. The first trip was only for the appellant's wife and mother-in-law in October 2014 with the second trip in March 2016 being the trip in relation to which the appellant claimed his mother-in-law took his passport and booked a ticket against his wish and later demanded repayment for the ticket. The grounds assert had the Judge considered the evidence correctly it was not contradictory but rather related to different occasions. It is said this error also infects the finding the appellant's wife and mother-in-law travelled to Pakistan without the appellant's prior knowledge for which the correct reference is to the October 2014 trip but not the 2016 journey. The appellant's claim he did not want to go to Pakistan because he could not get time off work or afford the trip was correct in relation to the 2016 journey. The grounds assert the Judge's finding of inconsistency is material as it gives rise to the question whether the Judge considered the evidence with the required degree of anxious scrutiny in the round. It is also asserted it was procedurally unfair that these issues were never put to the appellant despite the fact in re-examination the appellant was asked and confirmed there were two different trips and what his evidence was in regard to each.
5. The Grounds also assert the Judge impermissibly speculated and made selective references to the evidence, failed to consider the

- evidence in the round, and failed to apply the required degree of anxious scrutiny to aspects of the evidence. A transcript of the oral evidence has been provided which supports the appellant's assertion. Whilst the Judge is not required to set out findings in relation to each and every aspect of the evidence it is important that the totality of the evidence is taken into account and factored into the decision-making process which clearly did not occur in relation to this matter.
6. There is criticism of the Judge for the finding at [16] where it is stated the appellant created evidence regarding significant incidents in his oral evidence which the Judge found was the appellant bolstering his case 'on the spot' in such evidence, when it is clear from reading the transcript that the first time the appellant was asked in any details about the physical violence was in his oral evidence to which the response was given. The Judge is also criticised for failing to consider the appellant's vulnerability in failing to put to him that this evidence was manufactured or to give the appellant or his representative a chance to respond.
 7. It is also stated there are factual inaccuracies in the Judge's findings at [17 - 18] for the reasons pleaded.
 8. Ground 4 asserted a lack of procedural fairness in the hearing.
 9. The Court of Appeal in *ML (Nigeria) [2013] EWCA Civ 844* found that where there were serious errors in the judge's record of the facts there was an error of law even though there were sound reasons for dismissing the appeal because the errors effectively negated a fair hearing.
 10. Ground 4 relating to fairness is important for although individually some of the matters pleaded against the Judge may not amount to material errors of law taken cumulatively the grounds establish that it is arguable the Judge had not carefully and conscientiously considered the arguments and evidence provided both for and against the appellant's case.
 11. Mr McVeety, having considered the matters, accepted the appellant had made out his case and that the extent of the concerns are such that the determination cannot stand.
 12. I find the appellant has established material legal error in the determination under challenge in relation to both the treatment of the appellant as a vulnerable witness and the errors identified in the Grounds. I find that the errors seriously undermine the question of whether the appellant received a fair hearing and/or a fair assessment of the evidence. Accordingly the determination must be set aside with there being no preserved findings.
 13. Having considered the Presidential Guidance concerning remitting appeals and in light of the fact that a full rehearing of this matter is required with fresh findings of fact being made by another judge who has considers the evidence afresh, it is appropriate in all the circumstances for the appeal to be remitted to be heard by a judge other than Judge Williams.
 14. Directions:

- a. The determination of Judge O R Williams shall be set aside.
- b. There shall be no preserved findings.
- c. The appeal shall be remitted to the Bradford Hearing Centre to be heard by a judge other than Judge O R Williams on a date to be allocated in accordance with Bradford's operational requirements.
- d. Further case management directions shall be given by Bradford upon receipt of the file.

Decision

- e. **The First-Tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the decision to the Bradford Hearing Centre in accordance with the directions set out above.**

Anonymity.

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 19 December 2019