



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09174/2019

THE IMMIGRATION ACTS

Decided without a hearing
under rule 34 (P)

Decision & Reasons
Promulgated
On 27 August 2020

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

T Z
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent.

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 17 August 2019 to refuse a fresh protection and human rights claim.

2. First-tier Tribunal Judge C.E. Roblin (“the judge”) dismissed the appeal in a decision promulgated on 22 January 2020.
3. The appellant appealed the First-tier Tribunal decision on the following grounds:
 - (i) The judge erred in her application of the *Devaseelan* principles.
 - (ii) The judge failed to consider the evidence in the round.
 - (iii) The judge failed to attach appropriate weight to the expert evidence; and
 - (iv) Failure to apply the guidance relating to vulnerable witnesses properly.
4. First-tier Tribunal Judge Bulpitt granted permission to appeal to the Upper Tribunal in an order sent on 05 March 2020.
5. In the light of the need to take precautions against the spread of Covid-19 the Upper Tribunal reviewed the file and sent directions to the parties on 07 April 2020.
6. The appellant filed further written submissions on 21 April 2020. Those representing the appellant submitted that the case was suitable for an oral hearing rather than for determination on the papers due to the nature of the issues involved and the appellant’s vulnerability.
7. The respondent filed a rule 24 response on 28 April 2020. The respondent does not oppose the appeal and accepted that the First-tier Tribunal materially erred in its approach to the application of the *Devaseelan* principles.
8. Having reviewed the submissions made by the parties I am of the view that, despite the appellant’s submissions, it is not necessary to determine the question of whether there is an error of law in the First-tier Tribunal decision by way of an oral hearing. The Upper Tribunal is conscious of fairness issues but also needs to make decisions about the administration of cases with reference to the overriding objective and the current need to take measures to prevent the spread of Covid-19. The respondent having conceded that there is a material error of law in the First-tier Tribunal decision, the appellant has achieved all she sought from the appeal before the Upper Tribunal. It will not be an effective use of court time to list the matter for a hearing when it can be determined on the papers without any detriment to the appellant.

Decision and reasons

9. I am satisfied that the respondent made a proper concession. The first two grounds of appeal relating to the judge’s approach to the *Devaseelan* principles have merit. An earlier First-tier Tribunal decision is only a starting point but must still be considered in the round with all the other evidence before making findings about the facts of the

case. The judge's findings at [59-61] in which she found that there was "no reason to depart" from the previous First-tier Tribunal decision were made before she considered the substance of the further evidence produced in support of this appeal and therefore amounted to an error of law. As noted by First-tier Tribunal Judge Bulpitt, the third and fourth grounds are less persuasive, but it is sufficient for the appellant to succeed in relation to the first and second. I note that the judge also failed to make any clear findings in relation to the material matter, which was not raised before the previous First-tier Tribunal, of whether the appellant was likely to have been the victim of a serious sexual assault.

10. Although there was no direct challenge to the First-tier Tribunal's findings relating to Article 8, the findings relating to the appellant's protection claim were likely to be relevant to a proper assessment of those issues. The appellant's vulnerability and past history in Georgia are matters that would be relevant to the overall balancing exercise under Article 8.
11. For these reasons I conclude that the First-tier Tribunal decision involved the making of an error of law. The error goes to the heart of the fact-finding exercise and the assessment of the protection and human rights claims. The decision is set aside.
12. The usual course of action is for the Upper Tribunal to remake the decision. However, the nature and extent of the fact finding that will be necessary is such that a fresh decision needs to be made. No findings are preserved. I also need to consider the practicalities of rehearing the case at the current time within the context of the overriding objective of the Procedure Rules. The appellant made no submissions on the suitable venue for remaking if an error of law was found. The respondent invited the Upper Tribunal "to determine the appeal with a fresh oral (continuance) hearing". I note that the appellant's case was previously heard in the First-tier Tribunal in Newport. It is likely that the appellant will need to give evidence again with the assistance of an interpreter. Unfortunately, the Upper Tribunal in Cardiff is not yet in a position to conduct face to face hearings. I am told that the First-tier Tribunal in Newport is. In light of this information and considering the extent of the fact finding that will be necessary, I have decided that the appropriate course of action is to remit the case to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The case will be remitted to the First-tier Tribunal for a fresh hearing

Signed *M. Canavan*
Upper Tribunal Judge Canavan

Date 25 August 2020