Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12609/2018**

THE IMMIGRATION ACTS

Heard at Manchester
On 27 January 2020

Decision & Reasons Promulgated
On 05 February 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

A K
(ANONYMITY DIRECION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Schwenk (counsel) instructed by Kalsi solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, because this is a protection claim and to preserve the anonymity direction deemed necessary by the First tier Tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lloyd-Smith promulgated on 17 June 2019, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 01/01/1997 and is a national of Afghanistan. On 17/10/2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lloyd-Smith ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 24 July 2019 First-tier Tribunal Judge Bulpitt granted permission to appeal stating inter alia

> 3. It is arguable that the Judge has fallen into the error identified at [24] of Mibanga v SSHD (2005) EWCA Civ 367. At [41] of her decision the Judge says that when considering the medical diagnosis she must take into consideration her credibility findings. It is arguable in view of this comment that the Judge has reached her conclusion on the appellant's credibility before considering the medical evidence about him.
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> 4. It is also arguable that the Judge has fallen into error by failing to consider whether, given his particular characteristics, including his mental health diagnosis, the appellant could relocate to Kabul.

The Hearing

5. (a) For the appellant, Mr Schwenk moved the grounds of appeal. He told me that the Judge had taken an incorrect approach to the totality of evidence. He said that the Judge failed to consider the medical evidence in the round, and so fell into the error discussed in Mibanga v SSHD (2005) EWCA Civ 367. He took me to [41] of the decision and told me that the second sentence of [41] is plainly an error. He told me that between [23] and [40] of the decision the Judge makes credibility findings before turning to the medical evidence at [41], where, he said, the Judge looked at the medical evidence through the lens of the adverse credibility findings she has already made.

(b) Mr Schwenk told me that the Judge made a further material error of law because she did not take account of the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, and failed to identify the appellant as a vulnerable witness. Mr Schwenk took me through the psychiatric report relied on by the appellant and emphasised the diagnosis of complex PTSD. He referred me to AM (Afghanistan) v SSHD [2017] EWCA Civ 1123.

(c) Mr Schwenk told me that the Judge's consideration of internal relocation is inadequate. Even though the Judge took guidance from AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118, the Judge did not consider the appellant's mental illness, nor other factors such as the appellant's lack of education, the language he speaks (Pashtu) and his lack of a support network when considering whether or not relocation to Kabul is a viable option for the appellant.

(d) Mr Schwenk told me that the Judge's treatment of the expert report is inadequate. He told me that the decision contains material errors of law and asked me to set the decision aside.

6. (a) For the respondent, Mr Tan told me that the decision does not contain errors, material or otherwise. He took me to [9] and [14] of the decision, and told me that, there, the Judge makes it clear that she considers all of the evidence, including the medical evidence and expert report, before reaching conclusions. He told me that what is said at [23] is an introduction summarising the Judge's findings before discussing the reason for making those findings. He told me that the Judge unambiguously states that she has considered the medical expert evidence before reaching conclusions. He reminded me that there are many findings within the decision which are not challenged by the appellant.

(b) Mr Tan moved to the second ground of appeal and told me that the grounds of appeal do not raise issues about the impact of the appellant's vulnerability. He took me to [7] of the decision where the Judge records that the appellant was able to participate in the hearing.

(c) Mr Tan told me that the Judge's treatment of internal relocation is flawless and that at [43] the Judge reached conclusions well within the range of conclusions available to her. He told me that the Judge carefully considers the experts report before analysing the viability of internal relocation.

(d) Mr Tan resisted the appeal in its entirety. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. In Ex parte Virjon B [2002] EWHC 1469, it was held that it is wrong to use adverse credibility findings as a basis for rejecting medical evidence without first considering the medical evidence itself. That too was the view of the Court of Appeal in the case of Mibanga 2005 EWCA Civ 367**.**

8. At [11] of the decision the Judge lists the documentary evidence before her. At [14] of the decision the Judge declares that she has carefully

considered all of the evidence in the round in an overall assessment before reaching any findings of fact. The Judge directs herself correctly, and is clearly aware of the need to take an holistic approach to the totality of evidence.

9. The problem is that in the first sentence of [23] the Judge finds that the appellant is not a credible witness and rejects his account. It may be that the Judge intended that sentence to be part of a summary of the discussion of evidence that follows, but at [36] and [41] the Judge's words create (at least) the impression that she separately considers the appellant's account and reaches a conclusion about the appellant's credibility before considering the expert country report and the psychiatric evidence produced.

10. Between [34] and [37] the Judge considers the country expert report. At [36], whilst considering the expert report, the Judge says

> Having rejected the appellant's account, I do not accept that he would be without family support if he were to relocate to a different area.

It appears that, in the midst of considering the country expert report and before turning her attention to the medical evidence, the Judge has already rejected the appellant's account.

11. The Judge turns to the medical evidence between [30] and [42] of the decision. In the first sentence of [41] the Judge says

> In considering the diagnosis, which I have no basis upon which to dispute, I have to take into consideration my credibility findings.

The Judge clearly says that she considers her credibility findings separately to the diagnosis of PTSD. The Judge clearly says that her separate credibility findings are used to consider the impact of the diagnosis of mental illness.

12. The effect is that, despite taking correct guidance in law, the Judge appears to separate consideration of the various strands of evidence rather than taking an holistic approach before reaching conclusions. It is the Judge's own words which indicate that the Judge makes her credibility findings before considering the medical evidence. That is a material error of law.

13. The Judge accepts the appellant's been diagnosed with PTSD. I cannot see that any request was made for changes in procedure to assist the appellant's evidence, however, the medical evidence indicates that the diagnosis of anxiety and depression with complex PTSD may affect the appellant's ability to provide flawless recall and give comprehensive and accurate evidence. The Judge does not consider whether the appellant's mental illness caused some of the inconsistencies discussed in his evidence to occur. The Judge makes no reference to the Joint Presidential

Guidance Note. At paragraph 30 of AM (Afghanistan) v SSHD [2017] EWCA Civ 1123 it was said that failure to follow the Joint Presidential Guidance Note No 2 of 2010

> … Will most likely be a material error of law.

14. In AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118 the Upper Tribunal held that having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul. However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within that general position. A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.

15. The Judge accepted that the appellant suffers from complex PTSD. At [43] the Judge took guidance from AS (safety of Kabul) Afghanistan CG [2018] UKUT 00118, but did not set the facts and circumstances of this appellant's case against the guidance given in the headnote of AS (safety of Kabul) Afghanistan CG. There is no analysis in the Judge's decision of the viability of relocation to Kabul for a young man suffering from PTSD, anxiety and depression, and who only speaks Pashtu.

16. The decision is tainted by material errors of law. I set the decision aside. None of the findings of fact can stand. I cannot substitute my own decision because a further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
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> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

19. I remit the matter to the First-tier Tribunal sitting at Manchester to be heard before any First-tier Judge other than Judge Lloyd-Smith.

Decisio

20. The **l is tainted by a material error of**

21. I set **aside the judge's decision promulgated on 17 June 2019. The appeal is remitted to the First-tier Tribunal to be determined of new.**

Signed Date 29 January 2020

Deputy Upper Tribunal Judge Doyle