



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01224/2020 (V)**

THE IMMIGRATION ACTS

Heard by “*Microsoft Teams*”
on 14 July 2021

Decision & Reasons Promulgated
On 28 July 2021

Before

UT JUDGE MACLEMAN

Between

G Y Y M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by DMO Olabamiji,
Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of FtT Judge David C Clapham SSC, promulgated on 26 January 2021. He states two grounds.
2. Ground 1 is that the judge failed to assess evidence from appellant’s parents, which had not been before a previous tribunal which dismissed the appeal of the appellant’s brother (the two cases being inextricable).
3. Ground 2, headed “expert report”, is that the judge erred when applying the report to the resolution of discrepancies arising from evidence from a

witness, Major Zelaya, (i) by discounting evidence based on the expert's interaction with Major Zelaya, there being no bar on hearsay evidence; (ii) by giving no reasons for finding the expert to have gone outside her remit, when the expert was entitled to interview witnesses to assess their plausibility; (iii) by questioning how the expert knew she was speaking to Major Zelaya, when the expert had evidence of where he was based, and the *bona fides* of the expert had not been impugned; and (iv), by questioning how the Major could recall the appellant's brother, when it was clear from the expert report that the Major had been referred to relevant documentary details.

4. Mr Winter submitted further to ground 1, referring to authorities on failure to assess the evidence of witnesses. Mr Bates replied along the lines of respondent's rule 24 response, emphasising that this was a "*Devaseelan*" type of case, and that the evidence from the witnesses did not go to the deficiencies in the evidence identified by the previous tribunal.
5. I indicated that ground 1 disclosed error of law, such that the decision could not stand.
6. The judge recorded the evidence from the appellant's mother and father, but expressed no view on its credibility or reliability. That evidence should not have been ignored because the appellant's case was otherwise found not to be credible.
7. A case might be conjectured where other reasons for a negative outcome were so powerful that an oversight of this nature could not possibly have made any difference; but this is not such a case.
8. It is unnecessary to resolve ground 2, other than to record that an entirely fresh hearing is required, when parties will be able to submit on the weight which should be given to the expert report, unconstrained by anything in the FtT's decision.
9. (I note in passing that the appellant's parents have sought asylum, based on the same claim, and that their applications are pending before the respondent.)
10. The decision of the FtT is set aside, other than as a record of what was said at the hearing. The case is remitted for fresh hearing, not before Judge Clapham.
11. An anonymity direction is in place.

Hugh Macleman

14 July 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.