



Upper Tribunal (Immigration and Asylum Chamber)

Appeal Number: PA/00645/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5 June 2017**

**Decision & Reasons Promulgated
On 8 June 2017
Before**

UPPER TRIBUNAL JUDGE HANSON

Between

**SAA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Iengar instructed by Malik & Malik Solicitors.

For the Respondent: Mr Tarlow Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge LK Gibbs promulgated on 20 March 2017, following a hearing at Taylor House, in which the Judge dismissed the appellant's appeal on asylum and human rights grounds.
2. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on the basis it was arguable that the evidence of two witnesses had not been fully considered.
3. As the respondent had not had sight of the decision the Rule 24 reply did not set out to the Secretary of State's case, leading to Mr Tarlow to invite Ms Iengar to outline her position, after which he would indicate his view on the matter.
4. Accordingly, Ms Iengar made such submissions referring to the grounds asserting a flawed approach in relation to the evidence of witnesses, the failure to make proper findings of fact on material issues, the deprivation of positive evidence in the appellant's favour, a

- misunderstanding of submissions made, failure to adequately reason why the Judge gave no weight to a letter from an NGO, and making perverse findings in relation to article 8 ECHR.
5. The alleged failure of the Judge in relation to the evidence of witnesses in producing a decision which seems to rest wholly on the appellant's evidence, without cross-referencing or having regard to the detailed oral evidence of the appellant's partner or friend, stands not only as an allegation of legal error in relation to the treatment of that evidence in isolation but also its knock-on effect in relation to the article 8 assessment of family and private life.
 6. Having heard the submissions Mr Tarlow accepted that legal error had been made out specifically in relation to Ground 1 relating to the approach by the Judge to the evidence of the witnesses and the failure of the Judge to apply the relevant country guidance to the protection element of the appeal. The appellant's grounds in relation to article 8 were also accepted as being infected by arguable legal error, leading to the conclusion that the decision, as a whole, was poor.
 7. I find it has been made out for the reasons set out in the grounds seeking permission to appeal to the Upper Tribunal and the positional statements by both advocates before this tribunal, that the approach taken by the Judge is infected by arguable legal error such that the determination dismissing the appeal is unsafe and cannot stand.
 8. It was agreed that the appropriate way forward, in light of the extent of the errors, is for the decision to be set aside with there being no preserved findings and for the matter to be remitted to the First-tier Tribunal at Taylor House to be reheard by a judge other than Judge Gibbs.

Decision

9. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at Taylor House to be heard afresh by a judge of that tribunal other than Judge L K Gibbs.**

Anonymity.

10. 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 7 June 2017