



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/11897/2016

THE IMMIGRATION ACTS

Heard at: Field House
On 23 August 2017

Decision & Reasons promulgated
On 8 September 2017

Before

Upper Tribunal Judge Gill

Between

MND
(ANONYMITY DIRECTION MADE)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr N Paramjorthy, of Counsel, instructed by KQ Solicitors

For the respondent: Mr P Armstrong, Senior Presenting Officer.

Decision and Directions

1. In her decision signed on 13 June 2017 and promulgated on 7 July 2017, Upper Tribunal Judge Bruce set aside the decision of Judge of the First-tier Tribunal Suffield-Thompson to dismiss the applicant's appeal on human rights grounds.
2. On an unspecified date, Upper Tribunal Judge Dawson, as resident judge and acting under delegated powers, approved a request by Judge Bruce for a direction, pursuant to para 9.1 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements"), that this appeal be heard by a differently constituted Tribunal, it having been indicated to the resident judge that Judge Bruce was not available until 1 August 2017 to hear this appeal.
3. Thus this case came before me as a resumed hearing on 23 August 2017.

4. Having been seised of this appeal, I considered whether to remit this case to the First-tier Tribunal or re-make the decision on the appeal, pursuant to my duty under section 12(2)(b) of the Tribunals, Courts and Enforcement Act 2007.
5. In the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, para 7.2 of the Practice Statements recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it 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
 - (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.”
6. I noted that Judge Suffield-Thompson upheld the certificate under s.72 of the Nationality, Immigration and Asylum Act 2002. For this reason, the appellant’s appeal was dismissed on asylum grounds. However, the factual basis of his asylum claim fell to be considered in relation to his appeal on humanitarian protection grounds and his appeal on human rights grounds (Article 3). In the instant case, this necessitated an assessment of the appellant’s credibility.
7. At para 34 of her decision, Judge Suffield-Thompson said that, as she had found that the appellant’s continued presence was not conducive to the public good, she did not need to consider the asylum claim. She said that, for the sake of clarity, she did not find the appellant a credible witness. She did not give any reasons at all for her adverse credibility finding. She said that, had the appellant not met section 72(2), she would have dismissed the asylum claim based on her negative credibility finding.
8. It is evident that not only did Judge Suffield-Thompson fail to give any reasons at all for her adverse credibility finding, she did not engage with the factual basis of the appellant’s asylum claim in order to decide whether the appellant’s removal would be in breach of his Article 3 or whether there would be a real risk of serious harm if he is removed from the United Kingdom. Accordingly, in effect, the appellant was deprived of the opportunity of a fair hearing of his protection claim. I am satisfied that para 7.2(a) of the Practice Statements applies. I am also satisfied that para 7.2(b) applies.
9. For the reasons given above, this case falls within para 7.2 of the Practice Statements, in my judgment. In addition, having regard to the Court of Appeal’s judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am of the view that a remittal to the First-tier Tribunal is the right course of action. The parties agreed.

Notice of Decision

This case is remitted to the First-tier Tribunal for the decision on the appellant’s appeal on humanitarian protection grounds and human rights grounds to be re-made by a Judge of the First-tier Tribunal other than Judge Suffield-Thompson.



Signed
Upper Tribunal Judge Gill

Date: 8 September 2017