



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00640/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 27th September 2018**

**Determination
Promulgated
On 15th November 2018**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**ALI [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Braganza, Counsel (instructed by Duncan Lewis & Co)

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Grimmett on 7 August 2018 against the determination of First-tier Tribunal Judge S Gillespie who had dismissed the Appellant's protection appeal. The decision and reasons was promulgated on 5 July 2018.
2. The Appellant is a national of Afghanistan, whose date of birth was disputed. He had claimed asylum on the basis of his fear of the consequences of his Christian conversion. Judge Gillespie found that the Appellant had not proved his conversion and could be returned safely to Kabul where he had family.
3. Permission to appeal was granted because it was held arguable that the judge should have treated the Appellant as a child and had also failed to take into account the Appellant's PTSD and cognitive problems.
4. At the hearing Mr Kandola for the Respondent informed the tribunal that the Respondent was not able to defend the determination. It was not however possible to proceed to the rehearing which was necessary in consequence because the Home Office file was missing.
5. The substance of Ms Braganza's submissions on behalf of the Appellant was set out in her skeleton argument. The judge should have treated the Appellant as a vulnerable witness and followed the Tribunal's Practice Direction on Child, Vulnerable Adult and Sensitive Witnesses. The judge had cross-examined the Appellant. The medical evidence concerning the Appellant had not been factored into the judge's credibility assessment.
6. In the light of the Respondent's concession, the tribunal accordingly finds that there were the material errors of law identified by First-tier Tribunal Judge Grimmett. Unfortunately, the judge failed to examine the evidence on the correct basis that the Appellant was vulnerable for several possible reasons and might still be a child. Moreover and in any event, there was significant medical evidence which although briefly mentioned by the judge was not discussed nor considered for its potential impact on the Appellant's testimony. This is particularly

unfortunate given the Tribunal's Guidance and other assistance available to judges such as the Equal Treatment Bench Book, to which all judges should refer when faced with vulnerable witnesses.

7. The key and relevant authority of AM (Afghanistan) [2017] EWCA Civ 112 was not mentioned by the judge. Perhaps it was not cited to him by either side. There is no mention of the decision in the judge's record of proceedings and no mention of any request for reasonable adjustments, surprisingly. There is no record of any objection to cross-examination on the Appellant's behalf. It may well be that the judge was not given the assistance which was so obviously desirable in this type of appeal.
8. In fairness to the judge, he was not assisted by the jumble of bundles which was submitted on the Appellant's behalf, some 800 pages, in three separate bundles, as well as various loose papers. The country background evidence copied at length was excessive on any view, largely undigested and hardly needed at all given the bespoke country expert's report which was submitted. If there was an essential reading list, the tribunal was unable to find it. It is to be hoped that all of these problems will be corrected before the rehearing. It is recommended that a single, concise bundle is prepared and submitted promptly.
9. The tribunal was informed that it is not intended to call the Appellant at the rehearing, so that appeal will be way of submissions. As indicated above, however, that rehearing was not possible in the Upper Tribunal today. It was not reasonable to expect the Home Office Presenting Officer to prepare an appeal of this nature at short notice, especially given the length and state of the Appellant's bundles.
10. The onwards appeal is allowed. The original decision and reasons is set aside. An early date for the rehearing should be found if at all possible, given the delays to which this appeal has been subject.

DECISION

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

The appeal is to be reheard before any First-tier Tribunal Judge except First-tier Tribunal Judge S Gillespie.

Signed
2018

Dated 27 September

Deputy Upper Tribunal Judge Manuell