



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03274/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd January 2019**

**Decision & Reasons Promulgated
On 31st January 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**ED
(Anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Bonanvero, instructed by Kilby Jones Solicitors LLP
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as ED. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. In a decision promulgated on 26th April 2018, First-tier Tribunal Judge Davidge dismissed the appellant's appeal against a decision by the respondent refusing her claim for international protection.
2. Permission to appeal was sought on three grounds:
 - (i) The First-tier Tribunal judge had erred in law in her approach to the NRM trafficking decision;
 - (ii) There was procedural unfairness in the judge's approach to the evidence of movement records; and
 - (iii) Although the judge had said she would treat the appellant as a vulnerable witness there was nothing in the decision to indicate that she had or had considered the impact vulnerability may have had on her evidence.
3. Since the First-tier Tribunal judge decision was promulgated, *ES (s82 NIA 2002; negative NRM) Albania* [2018] UKUT 00335 (IAC) and *MN* [2018] EWHC 3268 (QB) have considered the impact of *MS (Pakistan)* [2018] EWCA Civ 594 on international protection claims. A decision of the Competent Authority is not appealable and there cannot be a 'backdoor' appeal against that decision in a statutory international protection claim appeal, but the NRM decision is not a starting point for consideration of the international protection claim. The NRM decision is a piece of evidence that is required to be taken into account, taking into consideration the evidence relied upon as a whole.
4. In this decision, the First-tier Tribunal judge stated in [19] that she had considered the evidence "in the round and as a complete picture", stated that her starting point was the NRM decision ([22]), set out the elements and findings of the NRM decision in brief form ([23] to [26]) and stated that she found that the NRM decision provided cogent reasons for the finding that the appellant was not a victim of trafficking. In [27] the judge then goes on to record her conclusion that the appellant's account in connection with being able to secret money and the arrangements with the doctor was not credible; she refers to that decision being for the same reason as given in the NRM decision.
5. The significant difficulty with the decision of the First-tier Tribunal judge is that although the judge has said she is looking at the evidence in the round, she makes no reference to the appellant's witness statement where elements of the NRM credibility findings are disputed. The judge has considered the evidence before her in the context of whether it can displace the NRM decision; she has not considered the evidence in the round as a complete picture applying the relevant standard of proof in an international protection claim.
6. Ground 1 is made out and is of such significance that the decision of the First-tier Tribunal is set aside to be remade.
7. The respondent failed to produce the movement record. There is reference to the movement record in the NRM decision. Mr Tufan submitted that although the record had not been produced, the appellant had been aware of it and had

not requested its production and the respondent would not have said that such a document existed and said what it said if it did not. Whilst that may well be correct, and there was nothing to challenge that, given that it formed a part of the appellant's disputed international protection claim it should have been produced.

8. Nevertheless, even if it had been made out, I cannot see that it would have made any significant difference to the appellant's appeal on its own. Although ground 2 is made out as an error of law, on its own the error is not such as would result in the setting aside of the decision.
9. The judge did not refer to the appellant being a vulnerable witness in her decision, but it is not disputed that the judge agreed to treat her as such. The grounds do not identify issues that her vulnerability could have impacted upon in determining the credibility of her account, particularly in the light of the error of law by the First-tier Tribunal judge in the context of the NRM decision. Ground 3 is not made out, although of course the remake of the decision will require the judge to take account of the vulnerability of the appellant.
10. I set aside the decision of the First-tier Tribunal to be remade.
11. When a decision of the First-tier Tribunal is set aside, s12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions or remake it myself. In this case the fundamental findings of the First-tier Tribunal judge are set aside – she has not approached the evidence correctly and none of the findings can stand. The factual matrix of this appeal is disputed; I conclude that the decision should be remitted to the First-tier judge to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal to the First-tier Tribunal, no findings preserved.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 23rd January 2019



Upper Tribunal Judge Coker