



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

Appeal Number: PA/00628/2020

THE IMMIGRATION ACTS

**Heard at Manchester CJC via Decision & Reasons Promulgated
Skype
On 23 November 2020 On 26 November 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**SM
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Greer, Counsel

For the respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The appellant has appealed against a decision made by First-tier Tribunal ('FTT') Judge Shergill, sent on 18 March 2020 in which his appeal was dismissed on international protection and human rights grounds.
2. At the beginning of the hearing before me, Ms Everett accepted that the FTT decision contains an error of law, such that the decision of the FTT must be set aside. Ms Everett was correct to make this concession and I accept that the FTT has committed a straightforward and fundamental error of law that vitiates its credibility findings.
3. In her decision letter dated 20 December 2019 the SSHD expressly accepted at [68] that the appellant was suffering from PTSD. This was based upon an implicit acceptance of the evidence adduced on behalf of the appellant in support of this, as summarised by the SSHD at [67] – a letter from Spinning World ALW Psychological therapies confirming that he suffered from PTSD due to events that happened in Iraq and he was likely to need long term therapeutic support. This concession was not withdrawn at any stage – I note from the record of proceedings that the SSHD's representative continued to fully rely upon the decision letter at the beginning of his submissions. This issue does not appear to have been raised by Judge Shergill during the course of the hearing. It follows that the judge did not invite submissions on whether the respondent was correct to make this concession. At [22] the judge made it plain that he regarded the evidence said to support the PTSD diagnosis to be insufficient and inadequate. This has led to procedural unfairness. As the diagnosis was accepted by the SSHD there was no need for the appellant to have produced further evidence for the hearing.
4. The PTSD diagnosis was directly relevant to the approach that ought to have been taken toward the appellant's credibility and vulnerability. The FTT noted that the previous Tribunal's adverse findings of fact (particularly in relation to the significant disputed issues of family contact and redocumentation) did not have the benefit of evidence relevant to the appellant's mental health. In those circumstances the judge was obliged to make his factual findings with this undisputed evidence in mind, and in failing to do so has erred in law.
5. It is unnecessary to address the remaining grounds of appeal because the findings of fact need to be remade entirely. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the FTT.
6. It would be helpful if the FTT holds a directions hearing in order to address issues arising in relation to the appellant's past and present vulnerability, with a view to narrowing the issues in dispute.

Decision

7. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside. The decision shall be remade in the FTT, by a judge other than Judge Shergill.

Signed: *UTJ Melanie Plimmer*
Judge of the Upper Tribunal

Dated: 23 November 2020