



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09785/2019**

THE IMMIGRATION ACTS

**Heard at Manchester (via Decision & Reasons Promulgated
Microsoft teams) On 15 June 2021**
On 28 May 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MJNNM

(Anonymity direction made made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs A Mughal of AMB Advocates & Accountants Ltd
For the Respondent: Mr McVeety Senior Office Presenting Officer.

DECISION AND REASONS

- 1 The appellant appeals with permission a decision of First-tier Tribunal Judge Kudhail ('the Judge') promulgated on 27 January 2001, in which the Judge dismissed the appellant's appeal on all grounds.
- 2 Permission to appeal was granted by another judge of the First-tier Tribunal who found it to be arguable that the Judge erred in (a) failing to follow and apply the Presidential guidance on vulnerable witnesses, (b)

failure to consider the appellant’s PTSD, depression and anxiety in the credibility assessment and (c) the article 8 assessment outside the Immigration Rules in relation to family life.

- 3 There was before the Judge a letter from Freedom of Torture, dated 20 March 2020, and a letter from Notre Dame Refugee Centre, dated 5 March 2020, which it is said the Judge did not consider when assessing the appellant’s credibility, especially finding the appellant to be “vague” in her evidence when she has a medical condition affecting the manner in which she gives her evidence.
- 4 The Presidential Guidance makes it clear a Judge is required to record whether it is accepted the appellant is a vulnerable or sensitive witness and the effect that any vulnerability had on the assessment of the evidence given. It is recognised that failure to do so and to follow the guidance may be capable of giving rise to a ground of appeal.
- 5 Mr McVeety accepted that the Judge did not mention the medical condition and did not appear to have given proper consideration to whether the appellant is a vulnerable witness and how her vulnerability was factored into the assessment of the evidence. I find for this reason the appellant has established material legal error with specific reference to the guidance of the Court of Appeal in AM (Afghanistan) [2017] EWCA Civ 1123.
- 6 As the appellant has not had a proper assessment of the weight that should be given to her evidence, she has not received a fair hearing. I find that the only proper course is for the decision to be set aside with no preserved findings and for the appeal to be remitted to the First-tier Tribunal sitting at Taylor House to be heard afresh by a judge other than Judge Kudhail.

Decision

7. The Judge materially erred in law. I set the decision aside. This appeal shall be remitted to the First-tier Tribunal sitting at Taylor House to be heard de novo.

Anonymity.

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 1 June 2021