



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-004419**  
**First-tier Tribunal No:**  
**PA/50361/2023**  
**LP/00867/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 15 December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**S M K**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Brakaj, Solicitor

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 14 December 2023**

**DECISION AND REASONS**

1. The Appellant is a national of Namibia. He entered the United Kingdom by plane on 13 November 2021 and claimed asylum the same day. The Respondent refused his application on 6 January 2023.
2. The Appellant appealed this decision, and his appeal came before Judge of the First-tier Tribunal Hands (hereinafter referred to as the FtTJ) on 4 August 2023 who dismissed the Appellant's appeal.
3. Upper Tribunal Judge Reeds granted permission to appeal on 9 November 2023 stating:

“ 2. In so far as paragraph [31] is challenged there is no arguable error as the reference to the background evidence as that

paragraph does not contradict the assessment of the background evidence set out between paragraphs 13 (a)-(g) and paragraph 14 where the FtTJ set out that there was evidence of corruption in the government but not evidence expressly dealing with corruption in the police force. The skeleton argument at paragraph 8 made a broad statement that the country evidence clearly demonstrates widespread corruption Namibia, but did not particularise it by reference to any of the material or by reference to the police.

3. However it is arguable that other findings identified in the grounds are arguably contradictory or irrelevant to the claim and arguably failed to take into account material evidence set out in the appellant's rebuttal statement ( see paragraph 21; relying on the decision at paragraph 27, and appellant's witness statement in rebuttal provided further evidence at paragraph 12). The finding at paragraph 23 of not having provided evidence of employment is arguably inconsistent with the other findings made where the FtTJ appeared to accept his employment and his education. Other paragraphs identified in the grounds, paragraphs 24 and 25 ( the distinctive nature of the shoes and the proximity in time) paragraph 26 where the appellant's witness statement provided a full account of factual events.

4. The grounds relating to the article 8 assessment are weaker in light of the unchallenged findings that the appellant's relationship with the children was not sufficient to engage article 8 (1) nor did he have a parental relationship with them. However I do not restrict the grant of permission."

4. Mr Bates indicated he did not rely on his colleague's Rule 24 response and accepted, for the reasons identified by Upper tribunal Judge Reeds in paragraph [3] of the permission, there was a material error in the FtTJ's assessment of the evidence. He further indicated that he did not object to the whole decision being set aside with no findings preserved.
5. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (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. Both Mr Bates and Ms Brakaj agreed that as this was a credibility assessment the matter should be remitted to the First-tier Tribunal for a de novo hearing.
7. In my judgment, given that it is necessary for all the issues in this case to be considered afresh on the merits, this case falls within para 7.2 (a) and (b) because further evidence, including oral evidence is likely, and findings of fact on the issues will need to be made.
8. I agreed that if further new evidence is available then it should be filed in line with any directions issued by the Tribunal.

**Notice of Decision**

9. The decision of the First-tier Tribunal did involve the making of an error on points of law. I have set aside the decision and remit the same back to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Hands.

Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber  
**14 December 2023**