



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004212

First-tier Tribunal No: PA/67100/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th November 2024

Before

UPPER TRIBUNAL JUDGE BLUM

Between

TA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By a decision dated 10 September 2024 Judge of the First-tier Tribunal Turner granted the appellant permission to appeal the decision of Judge of the First-tier Tribunal Chana, promulgated on 25 July 2024, dismissing the appellant's appeal against the decision by the SSHD dated 19 December 2023 refusing the appellant's asylum application.
2. The grounds of appeal contend that the judge (1) conducted herself in a manner that gave rise to a perception of bias and/or was procedurally unfair; (2) erred in law by failing to treat the appellant as a vulnerable witness or to consider his

evidence in light of the appellant's vulnerability, and failed to adequately consider an expert medical report; (3) failed to consider or apply extant Country Guidance decisions on Sri Lanka and background evidence.

3. On 25 October 2024 Upper Tribunal Judge Lodato issued the following directions:

Upon consideration of the grounds of appeal (which includes an allegation of judicial bias) and a transcript of the hearing before Judge Chana at Hatton Cross on 5 July 2024 (both of which are attached to this order), I make the following direction:

- i. By 5pm on 8 November 2024, the respondent must file a position statement in response to the grounds of appeal. In particular, the respondent must state whether the transcript provided with the grounds, which was prepared by a privately instructed stenographer, is agreed as an accurate record of the hearing or whether the respondent invites the tribunal to order an official transcript of the proceedings and/or the recording.

4. In a response to the above directions dated 31 October 2024 Mr Alan Tain, Senior Presenting Officer, stated:

1. Further to the directions of Judge Lodato dated 25 October 2024, the SSHD having reviewed the detailed grounds and attached transcript, does not oppose the grounds as lodged.
2. It is accepted that the ASA and preliminary discussions identified the A as a vulnerable witness and requested the FTTJ to treat him as such. However, the FTTJ does not appear to feature such a request in the decision nor factor in any vulnerability into the assessment of credibility. This in conjunction with the failure to consider the report of Dr Galappathie (which was arguably supportive of the account given) as part of a credibility assessment contaminates the findings made as to the historic account. The assessment on risk on return is vitiated for the same reasons, in addition to the points raised in ground 3.
3. As to the issue of procedural fairness, the SSHD accepts that the transcript provided appears to accord (as far as can be identified) with the record maintained by the Presenting Officer. Part of the findings made in [16] appear to be based on a mistake as identified in the grounds. However, in light of the identified and accepted material errors identified in grounds 2 and 3, the Tribunal is invited to set aside the decision of the FTTJ in its entirety and remit the matter to the First-tier Tribunal to be heard afresh.

5. On 13 November 2024 I issue the following directions:

1. No later than 10 days after these directions are sent the parties must inform the Upper Tribunal whether they object to the appeal being determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 on the basis that an error of law has been identified and the matter is remitted back to the First-tier Tribunal for a de novo hearing before a different judge.
2. If the Upper Tribunal does not receive any correspondence from the parties pursuant to (1) it will proceed on the basis that neither party objects to the appeal being determined pursuant to rule 34 on the basis set out above.

6. On 25 November 2024 I was informed by the Tribunal staff that no written response had been received from either party.

7. I am satisfied that both parties have been given an opportunity to give their views on whether an 'error of law' hearing is necessary.
8. In the absence of any further written response from either party I am satisfied, for the reasons summarised by the respondent at [4] above, that the First-tier Tribunal decision is vitiated by a material legal error. I am further satisfied that the interests of justice require the appeal to be remitted to the First-tier Tribunal to be determined afresh before a judge other than Judge of the First-tier Tribunal Chana. I therefore determine this appeal without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Notice of Decision

The appeal is allowed on the basis that the First-tier Tribunal's decisions contains a material error of law; the matter is remitted back to the First-tier Tribunal for a fresh hearing before a judge other than Judge of the First-tier Tribunal Chana

D. Blum

Principal Resident Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 November 2024