



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

Appeal Number: AA/06664/2014

THE IMMIGRATION ACTS

**Heard at: Columbus
Newport**

House,

Determination Promulgated

On: 10 August 2015

On: 13 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

SAID ZARWAL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Neale, Counsel instructed by Migrant Legal Project

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against the determination of First-tier Tribunal Judge Cassel in which he dismissed the appeal of the Appellant, a citizen of Morocco, against the Secretary of State's decision to refuse asylum.
2. The Appellant, having previously travelled through a number of European countries, arrived in the United Kingdom on 10 November 2013 and claimed asylum. His application was refused by the Respondent on 26 August 2014. The Appellant exercised his right of appeal against this decision and this is the appeal that was heard before Judge Cassel on 1 April 2015 and dismissed. The Appellant's

application for permission to appeal against the First-tier Tribunal Judge's decision was granted on 20 May 2015 by First-tier Tribunal Judge McDade in the following terms

"The grounds of application for permission to appeal state, *inter alia*, that the judge has failed to give adequate reasons for his findings in relation to credibility and internal relocation. The judge's decision is a short one and while this is often laudable it is arguable in these circumstances that anxious scrutiny has not been given to the entirety of the matters before him. There is an arguable error of law."

3. At the hearing before me Mr Richards appeared for the Secretary of State and Mr Neale represented the Applicant. Mr Neale submitted a written skeleton argument.

Submissions

4. Mr Neale referred to his skeleton argument and said that the only real adverse credibility findings were made by reference to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 with regard to the Appellant's immigration history and indeed these were the sole reasons for the Judge finding his account not to be credible. I was referred to the authority of IT (Cameroon) [2008] EWCA Civ 878. Section 8 should not be the sole basis for assessment of credibility. The Judge has not given sufficient reasons for his findings and has not taken proper account of the Appellant's evidence. The Judge has not engaged with the Appellant's explanations for the section 8 credibility issues raised. The Judge was obliged to consider the explanations given and to give reasons for rejecting those explanations. The Judge found that the Appellant might face some risk if he returned to Western Sahara but does not go on to properly deal with internal relocation.
5. For the Respondent Mr Richards said that whereas the acceptance of a possible risk to the Appellant in Western Sahara seems to come as a result of a concession by the Presenting Officer there was no concession in the refusal letter or in the Presenting Officer's notes. Nevertheless there are far too many imponderables in the decision and reasons for the decision to be defended. It is perhaps an extreme example of section 8 being taken as the deciding issue.
6. I said that it was clear the decision contained material errors of law and could not stand and I reserved my written decision. Both advocates agreed that the proper course was to remit to the First-tier Tribunal for hearing *de novo*.

Error of law

7. The Appellant is a citizen of Morocco from the region of Western Sahara. He does not claim to have had any personal political involvement or to have had troubles with the authorities until May 2013 when he was at a friend's house and received a telephone call telling him that his home had been raided by masked police and his father and two of his brothers arrested for alleged involvement with

the separatist group Polisario. The Appellant feared that he too faced danger by association with his family and this was borne out when a few days later the police came to his house looking for him. As a result the Appellant left the country and travelled via Turkey, Hungary, Austria, Italy and France to the United Kingdom where he claimed asylum.

8. The Respondent refused the Appellant's claim on the basis that his account was not credible and that his credibility was further damaged by his conduct firstly in not pursuing an asylum claim in any of the countries that he passed through and secondly because he initially gave a false date of birth when he claimed asylum.
9. At the hearing before the First-tier Tribunal the Appellant gave oral evidence and submitted a substantial appeal bundle. In dismissing his appeal the Judge found that the Appellant was not a credible witness. However in making this finding the Judge refers only to the Appellant's conduct in failing to pursue a claim elsewhere and claiming to be a minor when first interviewed. The Judge says that the Appellant gave no credible explanation for these failures but does not examine the explanations that were undoubtedly given and explain why he found them not to be credible. This in my judgement is a material error of law. So far as the core of the Appellant's claim is concerned the Judge only says that he does not find the Appellant to be credible without giving any reasons for this finding. Indeed the Judge does not record in any detail either the Appellant's claim or the Appellant's explanations for any of the credibility issues that were raised and upon which the Judge may have based his decision. In my judgement these omissions are material and the inadequacy of explanation constitutes an error of law. It is impossible reading this decision and reasons as a whole to say with any confidence that the Judge has engaged with the Appellant's account in any substantive way.
10. In my judgment the First-tier Tribunal has not given adequate reasons for its findings on material matters. In particular the Tribunal has failed to give adequate reasons for adverse credibility findings and not only has the Tribunal taken section 8 above as the starting point for its adverse credibility findings it has failed to engage with the Appellant's explanations in these respects in any meaningful way. These are material errors of law.
11. Due to the nature of the errors of law and in accordance with the President's direction it is appropriate for this matter to be remitted to the First-tier Tribunal for hearing de novo with no findings preserved.

Conclusion

12. The decision of the First-tier Tribunal involved the making of an error of law for the reasons set out above.

13. I set aside the decision of the First-tier Tribunal and in accordance with the President's direction this matter is suitable for and should be remitted to the First-tier Tribunal.

Signed:

Date:

J F W Phillips
Deputy Judge of the Upper Tribunal