



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/02523/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 4 January 2018

On 10 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**H C L
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Saifolahi (counsel) instructed by ATM Law solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity order made by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding

the proceedings which would be likely to lead members of the public to identify the appellant.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Amin promulgated on 27 February 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 01 January 1994 and is a national of Vietnam. The appellant claims to have arrived in the UK in November 2012. On 20 November 2012 he was encountered and detained. He then claimed asylum. He was granted temporary release on 23 November 2012, and he absconded on 28 November 2012. As a result, his asylum claim was withdrawn on 30 November 2012. The appellant was encountered again on 5 November 2015. When he was detained he claimed asylum of new.

4. On 06 November 2015 the Secretary of State refused the Appellant's protection claim. The appellant appealed that decision to the First-tier and in a decision promulgated on 13 April 2016 the appellant's appeal was refused. The First-tier decision promulgated on 13 April 2016 was set aside by a decision of the Upper Tribunal promulgated on 28 October 2016.

The Judge's Decision

5. The Appellant's appeal was remitted to the First-tier Tribunal. First-tier Tribunal Judge Amin ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 25 September 2017 Judge Ford gave permission to appeal stating

2. It is argued that the tribunal erred in

(a) Failing to consider whether the appellant's account was consistent with the background evidence/expert report. Although there were good reasons based on internal inconsistencies to doubt the appellant's truthfulness, it is arguable that the background evidence should have been considered as part of the overall credibility assessment and it was not.

(b) Failed to consider the appellant's explanation for any internal inconsistencies in his evidence. This is arguable as the appellant did set out his explanations in his witness statement of 06 January 2016 and I cannot see that they were considered.

(c) Making speculative findings as to what the Vietnamese government would have done that were not supported by evidence. This is not arguable. At paragraph 30 the tribunal was commenting on the plausibility

of the appellant's account. There is no arguable material error in its doing so.

The Hearing

7. (a) For the appellant, Ms Saifolahi moved the grounds of appeal. She told me that although there are inconsistencies in the appellant's account, the appellant explains the inconsistencies in a screening interview in 2012, yet the judge failed to take account of reasonable explanations given for inconsistency in both the appellant's most recent witness statement and his full asylum interview in 2015. As a result, it was argued that the Judge's credibility findings are flawed. Ms Saifolahi told me that the Judge had taken inadequate account of background information and expert report. She told me that the Judge refers to neither the background evidence nor the experts report anywhere in her decision.

(b) Ms Saifolahi told me that the Judge's credibility findings are flawed because no weight has been given to either the expert report or the background materials; she argued that instead of taking an holistic approach to each strand of evidence, the Judge compared the appellant's performance at different interviews, decided that the appellant gives an inconsistent account and so found that the appellant was neither a credible nor a reliable witness, despite the fact that the inconsistencies in the accounts are explained. She told me that the Judge does not deal with the appellant's explanation for the discrepancies in his asylum interviews.

(c) Ms Saifolahi urged me to allow the appeal, to set the decision aside and then to remit this case to the First-tier to be determined afresh.

8. (a) For the respondent, Ms Isherwood told me that the decision does not contain any errors. She reminded me that this is a case with some procedural history and told me that the expert report relied on was dated March 2015. She told me that neither the expert report nor the background evidence had been updated for the First-tier hearing in February 2017. She invited me to consider the skeleton argument relied on by the appellant. Paragraph 6 of the skeleton argument says

The only issue to be determined in this appeal is whether the appellant engaged in protests against the government as claimed. If he did, the Secretary of State accepts that political protesters, and therefore the appellant, are refugees.

(b) Ms Isherwood told me that the challenges argued in this appeal depart from what was argued before the First-tier. She told me that between [22] and [41] the Judge gave detailed consideration to the appellant's evidence, and that at [4] & [15] of the decision the Judge says plainly that he has considered all of the evidence. Ms Isherwood argued that the appeal is just a disagreement about the weight to be assigned to each strand of evidence. She told me that what the appellant cannot avoid is that the Judge did not believe him.

(c) Ms Isherwood asked me to dismiss the appeal and allow the decision promulgated on 27 February 2017 to stand.

Analysis

9. The Judge's findings of fact start at [22] of the decision. Between [22] and [37] the Judge highlights inconsistencies in the accounts given by the appellant by comparing the account he gave at the screening interview in 2012 with what he said at the asylum interview in 2015. The Judge focuses on inconsistencies and starts [28] of the decision by saying

I find the appellant is dishonest and that his account is fabricated.

10. The account that the appellant gave in 2012 and his performance at asylum interview in 2015 are only two of the strands of evidence in this case. The appellant provided a witness statement dated 6 January 2016. In that witness statement the appellant concedes that he gives an inconsistent account, and offers an explanation. The witness statement dated 6 January 2016 does not form part of the Judge's analysis of the accounts given by the appellant.

11. The appellant relies on an expert report by Dr Tran. The statement of truth attached to that report is dated 17 March 2016. The Judge makes no reference to Dr Tran's report. It is not clear from the Judge's decision that the Judge has read the report or taken account of the report. Because the appellant's witness statement of 6 January 2016 is not analysed by the Judge, and because Dr Tran's report is not even mentioned by the Judge, the decision gives the appearance that two significant sources of evidence do not form part of the Judge's fact-finding process.

12. In FS (Treatment of Expert evidence) Somalia [2009] UKAIT 00004 the Tribunal held that Immigration Judges have a duty to consider all the evidence before them when reaching a decision in an even handed and impartial manner. In assessing the evidence before them they must attach such weight as they consider appropriate to that evidence. It may on occasions be appropriate to reject the conclusions reached by an expert. What is crucial is that a reasoned explanation is given for so doing.

13. In M (DRC) 2003 UKIAT 00054 the Tribunal said that it was wrong to make adverse findings of credibility first and then dismiss the report. Similarly, in Ex parte Virjon B [2002] EWHC 1469, Forbes J found that an Adjudicator had been wrong to use adverse credibility findings as a basis for rejecting medical evidence without first considering the medical evidence itself. In HE (2004) UKIAT 00321 the Tribunal said that "*where the report is specifically relied on as a factor relevant to credibility, the adjudicator should deal with it as an integral part of the findings on credibility, rather than just as an add on, which does not undermine the conclusions to which he would otherwise come*".

14. I have to find that the decision is tainted by material errors of law because of inadequacy in reasoning and fact-finding. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. As the decision is tainted by material error of law I must set it aside. I am asked to remit this case to the First-tier. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal 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.

17. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

18. I remit this case to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Amin.

Decision

19. The decision of the First-tier Tribunal is tainted by material errors of law.

20. I set aside the Judge's decision promulgated on 27 February 2017. The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed
2018

Paul Doyle

Date 8 January

Deputy Upper Tribunal Judge Doyle