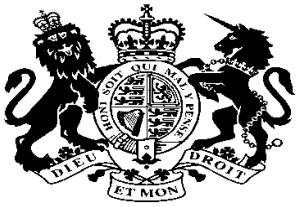

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03803/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons Promulgated**
On 4 June 2018	**On 8 June 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

A-M A B
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Hashmi (counsel) instructed by Halliday Reeves Law Firm
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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, to preserve the anonymity direction made by the First-tier Tribunal

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Moxon promulgated on 25 May 2017, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 18 February 1992 and is a national of Sudan. On 4 April 2017 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Moxon ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 30/10/2017 Upper Tribunal Judge Coker gave permission to appeal stating

> 1. It is arguable that First-tier Tribunal Judge gave weight to the lack of expert reports in reaching his conclusions and although considering the other evidence before him it is arguable that this adversely affected the conclusions when considering the evidence overall. It is arguable that these issues, including interpretation, weight given to evidence of a friend who had in his own proceedings been found credible, are arguable errors of law.
>
> 2. The appellant however needs to be aware the nature of the challenge brought by is a high test of perversity. It is doubtful that the challenge amounts to a reasons challenge.

The Hearing

5.(a) For the appellant, Ms Hashmi, moved the grounds of appeal. She focused on [38] to [44] of the decision and told me that, there, the Judge made a number of adverse credibility findings which are not sustainable. She told me that the Judge's finding that the appellant's credibility is damaged by failing to claim asylum in France (at [41] of the decision) is wholly undermined by his findings at [32].

(b) Ms Hashmi told me that the Judge found inconsistency in the appellant's evidence, but that the findings in relation to inconsistency and lack of credibility were unfairly made because the appellant speaks Bargo, but had to participate in the asylum interview in Arabic, and had to speak Arabic at the hearing before the Judge because no Bargo interpreter was available ([30] of the decision). Ms Hashmi told me that the Judge made no allowance for the appellants use of a second language in assessing consistency and credibility.

(c) Ms Hashmi told me that amendments were made to the appellant's asylum interview (in a 5 page letter dated 13/03/2017 from his solicitors), and the Judge has taken no account of those amendments. Instead the Judge has relied on the unmodified asylum interview transcript, and in doing so makes unreliable findings about inconsistency. At [42] the Judge deals with the evidence from the appellant's witness. Ms Hashmi told me that although the Judge says that he gives weight to the evidence of the appellant, no weight is actually given to his evidence and no analysis of that evidence is carried out.

(d) Ms Hashmi urged me to set the decision aside and remit this case to the First-tier Tribunal to determined of new because a further fact-finding exercise is necessary and because an expert report from Prof Vernay will be available for any future hearing of this case.

6.(a) Ms Petterson told me that, having considered [40] and [42] of the decision, she could no longer oppose the appeal. She accepted that amendments have been made to the appellant's asylum interview record and that the Judge did not take account of those amendments. She told me that the failure to take account of the amendments undermines [40] of the decision. She conceded that at [42] the Judge fails to analyse the evidence of the appellant's witness, and although the Judge says

> I give weight to the evidence of the appellant's witness…

The Judge does not say what weight is given, and (on a fair reading) it appears that the Judge actually gives the appellant's witness' evidence no weight at all

(b) Ms Petterson asked me to set the decision aside and to remit this case to the First-tier Tribunal to be determined of new.

Analysis.

7. The Judge's findings of fact start at [38]. At [38] the Judge finds the appellant's account to be incredible. At [39] & [40] the Judge finds that the appellant gives an inconsistent account. At [40] the Judge does not take into consideration the adjustments made to the record of asylum interview.

8. At [42] the Judge gives inadequate consideration to the evidence of the appellant's witness. Although the Judge says that weight is given to that witness' evidence, in reality no weight is given to that evidence & no reason for rejecting the evidence is given. There is no analysis of the evidence of the appellant's witness.

9. This appellant's case turns entirely on his ethnicity. Evidence in relation to his language and culture was presented and is not adequately analysed. The Judge gives inadequate reasons for rejecting the evidence of the appellant's witness, whose evidence goes to the very core of the appellant's claim. The Judge's reliance on the asylum interview record is flawed because the Judge overlooked the amendments made to the record of asylum interview.

10. 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.

11. The errors of law are material errors because they have the potential to affect the outcome of the appellant's appeal. As the decision is tainted by material errors of law I 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

12. 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.

13. 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.

14. I remit this case to the First-tier Tribunal sitting at Bradford to be heard before any First-tier Judge other than Judge Moxon.

Decision

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

16. I set aside the Judge's decision promulgated on 25 May 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle Date 6 June 2018

Deputy Upper Tribunal Judge Doyle