



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09135/2018

THE IMMIGRATION ACTS

Heard at North Shields
On 26 July 2019

Decision & Reasons Promulgated
On 09 August 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR F H
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr R Selway, Solicitor.

For the Respondent: Mr D Mills, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal with the Secretary of State referred to as “the Respondent” and Mr F H as “the Appellant”.
2. The Appellant is a citizen of Eritrea who made an application for international protection. It was refused by the Respondent and he appealed. Following a hearing at North Shields, and in a decision promulgated on 12 April 2019, Judge of the First-

tier Tribunal Caskie allowed the Appellant's appeal under the Refugee Convention and Articles 3 and 8 of the European Convention on Human Rights.

3. The Respondent sought permission to appeal. It was granted on 17 May 2019 by Judge of the First-tier Tribunal N Haria, her reasons for so granting were: -

"1. The Appellant seeks permission to appeal, (in time), against a Decision of the First-tier Tribunal Judge Caskie who, in a Decision and Reasons re-promulgated on 12 April 2019, allowed the Appellant's appeal against the Secretary of State's decision to reject his human rights and protection claim.

2. The grounds assert that the Judge erred in failing to adequately consider the Appellant's claim in the round, to make clear findings on inconsistent evidence and give adequate reasons as to why the Appellant has discharged the burden of proof in the light of Devaseelan [2002] UKIAT 00702 principles applying to the previous findings of First - tier Tribunal Judge Holmes.

3. It is arguable that the Judge erred as claimed and that such error is capable of materially affecting the outcome.

4. All grounds remain arguable."

4. Thus, the appeal came before me today.
5. Mr Mills relied upon the grounds seeking permission to appeal. He submitted that this was an appeal to which the authority of **Devaseelan v SSHD [2002] UKIAT 000702** was applicable. There having been a previous hearing at which Judge Holmes did not find the Appellant to be a credible or reliable witness. In these circumstances the categorisation of Judge Holmes' previous findings at paragraphs 49 and 50 of Judge Caskie's decision as merely being an acknowledgment of the Appellant's failure to discharge the burden of proof, as opposed to adverse credibility findings, are at the very least inadequately reasoned and arguably irrational. Further that the Judge has inadequately reasoned his decision both generally and specifically at paragraphs 53 and 54 of his decision are other material errors. These are compounded by a failure to apply the correct burden of proof to various documents in the appeal including a birth certificate. The Judge has failed to properly apply the reasoning in **NA (UT rule 45: Singh v Belgium) Iran [2014] UKUT 00205 (IAC)**. Beyond that there has been a general failure to make findings in respect of inconsistent evidence within the appeal.
6. Mr Selway did not accept that the Judge had materially erred in his approach to the appeal and particularly the way that he had dealt with the **Devaseelan** hearing. He suggested that it was to a degree a "red herring" and, in light of the new and compelling evidence which the Judge was obliged to take into account should not find himself "Devaseelan-bound". He made further submissions in relation to other aspects of the appeal including the various documents. He acknowledged that the Judge had erred at times in making references to Ethiopia when he meant Eritrea but these were immaterial. In his analysis of the Respondent's grounds of appeal they amount to nothing more than a disagreement with the Judge's findings.

7. I do not accept that to be the position. Whilst Judge Caskie refers to the authority of **Devaseelan** in his decision and cites at length the content of Judge Holmes' original decision his analysis of the position at paragraphs 49 and 50 of his decision is flawed. Those paragraphs state: -

"49. In the present case I begin my consideration of the appellant's case with the findings made by Judge Holmes. It is clear that in relation to a series of matters Judge Holmes did not accept the appellant had discharged the burden of proof upon him. The appellant was legally represented before Judge Holmes and it is clear that he now relies upon documentation from a source it is said was not available to him in July 2015 when his previous appeal was heard.

50. It does seem to that there is a distinction to be drawn between an appellant who is unable to prove his case because, for example, there are strong reasons to doubt his personal credibility and documentation that should be available to him he has not been produced so that he has failed to discharge the burden upon him on the one hand and on the other hand, an appellant who deliberately advances falsehoods in order to advance his case. Whilst both such appellants would be unsuccessful on appeal an appellant who had an appeal rejected for the former reasons would be in a better position if documentation were to become available to them than an appellant in the latter category. Evidence from an appellant in the latter category could properly be characterised as "the fruit of a poisoned tree", whereas an appellant in the former category would not see evidence subsequently relied upon tainted, at least to the same extent."

8. This is an appeal where it was incumbent upon Judge Caskie to adequately consider the Appellant's appeal in the round and to make clear findings on inconsistent evidence and give adequate reasons for why the Appellant had discharged the burden of proof in light of the principals enunciated in the authority of **Devaseelan**. That he has failed to do. That failure alone is a material error of law that sufficiently infects this decision to render the totality of the findings unsafe.
9. In those circumstances the making of the decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Caskie and Judge Holmes.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of

their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 1 August 2019

Deputy Upper Tribunal Judge Appleyard