



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11448/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 February 2019**

**Determination Promulgated
On 25 February 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**LUIS [O]
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G L Capel, Counsel
(instructed by Turpin & Miller LLP)

For the Respondent: Ms S Cunha, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Bird on 7 January 2019 against the determination of First-tier Tribunal Judge E M M Smith who had dismissed the appeal of the Appellant against the

refusal of his international protection claim. The decision and reasons was promulgated on 7 December 2018.

2. The Appellant is a national of El Salvador, born on 9 June 1979. He claimed in summary that he was at risk on return from criminal gangs. After reviewing the evidence the Appellant presented against his immigration history, Judge Smith found that the Appellant was not credible and that his claim was fabricated. He was able to return to El Salvador safely.
3. Permission to appeal was granted because it was considered arguable that the judge had placed too much emphasis on the Appellant's past deceitful conduct in the United Kingdom and had failed to give adequate reasons for rejecting the Appellant's claim.
4. No notice under rule 24 had been served by the Respondent, but Ms Cunha indicated that the onwards appeal was opposed.

Submissions

5. Ms Capel for the Appellant relied on the grounds of onwards appeal and the grant of permission to appeal in the First-tier Tribunal. In summary, counsel mounted an extensive assault on the First-tier Tribunal determination, contending that the judge had failed to have proper regard to the country background evidence and had failed to take a structured approach to the credibility assessment, ignoring the guidance set out in KB and NH (Pakistan) [2017] UKUT 491 (IAC). The judge had treated the Appellant's immigration history as both the beginning and the end of his case. This had also ignored the guidance in SM (Section 8) [2005] UKAIT 116. The fact that the Appellant had engaged in fraudulent conduct in the past did not mean that his story about reporting the theft of his identity papers was necessarily untrue. The judge had given insufficient attention to the internal consistency of the Appellant's account and to the Appellant's documents. The decision and reasons was unsafe and should be set aside and the appeal reheard before another judge.
6. It was not necessary to call on Ms Cunha.

No material error of law finding

7. The tribunal reserved its decision, which now follows. The tribunal must reject the submissions as to material error of law made on behalf of the Appellant. In the tribunal's view, the errors asserted to exist in the decision and reasons are illusory. The grant of permission to appeal was a very liberal one, because essentially the dispute is over findings of fact with which the Appellant disagrees.
8. The determination was carefully prepared by an experienced judge who stated specifically that all of the evidence had been considered: see [19] and [21] of the determination. That was no mere formula. This was not an appeal where the judge in effect relied on section 8 or the Appellant's history and went no further. The judge specifically directed himself as to the correct assessment of credibility with reference to K (DRC) [2003] UKAIT 14 and other relevant authorities. The guidance in that decision parallels that in KB and NH (above). All matters were brought to account, in the round, following a logical analysis, with a clearly structured approach.
9. The determination began in correct chronological order, setting of the scene and establishing the context, the Appellant's past and also recent dishonest attempts to gain entry to the United Kingdom and the associated dishonesty of his wife with their son. These were calculated and deliberate actions. No judge could properly ignore that in evaluating the Appellant's reliability and credibility, particularly when the Appellant in effect asserted his good character when seeking to justify his more recent actions.
10. The country background concerning El Salvador and its various serious problems was not in dispute. The judge explained why that made the Appellant's story concerning the events which he said caused him to leave significantly less likely. Similarly, the judge explained by reference to TK (Burundi) [2009] EWCA Civ 4009 why it was proper to draw adverse inferences from the selective production of documents by the Appellant.
11. The judge focussed on the central elements of the Appellant's story which if reasonably likely to be true were capable of causing real risk and explained why those claims were implausible, for example, that the Appellant would not have bothered to take the time, trouble and possible risk of making a complaint to the police, given the ease with which the supposedly stolen documents were replaced. The judge was fully entitled to examine the substance of the Appellant's claimed motivation of the

duty of good citizenship, and to find the claim hollow. The plausibility assessment was conducted against established facts, e.g., the Appellant's past conduct and the country background, not against the judge's personal view of likelihood. The plausibility assessment is an unimpeachable finding with substantial and sound reasons given. The fact that the Appellant had kept to his story and that there were no discrepancies took the case no further.

12. Perhaps even more importantly, on a fair and full reading of the determination, it is clear that the judge was constantly testing his conclusions, giving anxious scrutiny to the evidence and considering the alternatives: this can be seen in particular at [28] of the determination which sets out the judge's final reflections.
13. The judge's assessment of real risk on return, on the basis of his adverse credibility findings, was open to him. In the tribunal's view, the submissions advanced on the Appellant's behalf amount to no more than disagreement with the judge's findings of fact, all of which were available to him on the evidence presented, which evidence was plainly sufficiently considered and the consequent findings adequately reasoned. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 21 February 2019

Deputy Upper Tribunal Judge Manuell