



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11665/2018

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 20<sup>th</sup> September 2019

Decision & Reasons Promulgated  
On 25<sup>th</sup> September 2019

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

[W N T]

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Azmi, Counsel instructed by J M Wilson Solicitors

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

**DECISION AND REASONS**

1. The appellant is a national of Cameroon. He arrived in the UK on 18 December 2012 having successfully applied for a visa to study in the UK valid until 14 May 2016. He subsequently made a claim for asylum that was refused by the respondent for the reasons set out in a decision dated 21 September 2018. The appellant's appeal was allowed, on human rights grounds, by First-tier Tribunal Judge Grimmett for the reasons set out in a decision promulgated on 28<sup>th</sup> March 2019.

### The decision of the First-tier Tribunal

2. A brief summary of the matters relied upon by the appellant in support of his claim for international protection is set out at paragraph [10] of the decision of the FfT judge. The judge found, at [10], that it is reasonably likely that the appellant was of some interest to the authorities between 2005 and 2008. The only reason given is that the appellant “... *Has given detailed evidence about the arrests and detentions.*”. The judge considered the appellant’s account that his family home was then visited twice by the police in November and December 2017 and considered the warrant of arrest relied upon by the applicant. At paragraph [13], the judge states:

“I was not satisfied that the appellant has shown there has been any interest in him in Cameroon since 2008 as I do not accept the arrest warrant is a reliable document as it is incomplete, and no summons has been produced requiring him to attend court. I do accept it is reasonably likely he was active prior to coming to the UK but not that he is now in fear of ill-treatment on return as I do not believe there has been any interest in him since 2008. I take into account that the appellant failed to seek protection on arrival.”

3. At paragraphs [14] to [15] of the decision, the judge considers the Article 8 claim, and sets out briefly, her reasons for allowing the appeal on human rights grounds.

### The appeals before me

4. The appellant claims that at the conclusion of the respondent’s submissions, the judge stated that the appeal would be allowed with written reasons to follow. It is said that clarification was sought as to the basis upon which the appeal was to be allowed, and the judge indicated that it was on asylum grounds. The appellant claims that there is no power to revise or revoke the decision given orally at the hearing of the appeal, and in the alternative, the written reasons in relation to the asylum and humanitarian protection claim, are infected by material errors of law. The appellant claims that in reaching the decision, the judge fails to have any regard to material evidence that was before the Tribunal.

5. Permission to appeal was granted by FtT Judge Scott Baker on 23<sup>rd</sup> May 2019. In granting permission, the judge noted:

“3. The judgement consists of four pages being 17 paragraphs in all. There was no indication as to what evidence had been before the judge, nor any indication that the judge stated that the appeal would be allowed on asylum grounds.

4. The judge made a finding at [10] that the appellant had come to the attention of the authorities in Cameroon between 2005 and 2008 and accepted that he had been detained but gave arguably insufficient reasons for these findings. Whilst the appeal was allowed on human rights grounds there are arguably insufficient reasons and an absence of a considerations to whether it would be reasonable for his British child to leave the UK.

5. In the circumstances of these grounds it is also arguable that the failure by the Judge to produce a detailed judgement setting out the procedure at the hearing and what evidence was considered, is arguably an error of law.”

6. I refer to those observations because when granting permission, FtT Scott Baker was not only concerned about the way in which the claim for international protection had been determined, but also, at paragraph [4], was concerned that there were arguably insufficient reasons for allowing the appeal on human rights grounds.
7. Under cover of a letter dated 18<sup>th</sup> September 2019, the respondent has belatedly provided the Tribunal with a Rule 24 response. The respondent confirms that the respondent does not oppose the appeal. The respondent has provided a copy of the Presenting Officer’s minute dated 1<sup>st</sup> April 2019, that confirms that following the submissions made by the Presenting Officer, the judge announced that she was going to allow the appeal on asylum grounds, and indicated that the appeal was unlikely to be allowed on Article 8 grounds. That is broadly in line with the position set out by the appellant. The respondent accepts that in light of the guidance of the Vice President in PAA (FtT: Oral decision – written reasons) Iraq [2019] UKUT 00013 (IAC), where a FtT judge gives a decision orally at a hearing, that is the decision on the appeal and there is no power to revise or revoke the decision later. If the written decision when issued, is inconsistent with the oral decision, both decisions, being decisions of the Tribunal, stand until set aside by a court of competent jurisdiction; but neither party is entitled to enforce either decision until the matter has been sorted out on appeal.

8. The respondent claims that the member of staff who processed the decision when the written decision was received by the respondent, was unaware of the oral decision, and so treated the appeal as one allowed on Article 8 grounds only. The respondent has acted on that decision, and the appellant has been granted 30 months leave to remain on 27<sup>th</sup> June 2019. The respondent claims that it is apparent that the judge has failed to give adequate reasons for allowing the appeal on asylum grounds, as no reasons were provided when the oral decision was handed down at the hearing of the appeal, and the written reasons point to the claim for international protection being dismissed. The respondent therefore seeks permission to appeal against the oral decision to allow the appeal on asylum grounds and seeks an extension of time to do so.
9. On behalf of the respondent Mr Mills accepts that there has been a significant delay in making an application for permission to appeal. He submits that the reason for that delay is explained by the unusual circumstances of this case, in that the respondent believed that the appeal had been allowed on human rights grounds only and has acted on that decision. He submits that it is entirely understandable that the member of staff who processed the decision when the written decision was received, was unaware of the oral decision to allow the appeal on asylum grounds, and it is in the interests of justice for an extension of time to be granted.
10. In reply, Mr Azmi opposes the application for an extension of time, and submits that the appeal should be allowed on asylum grounds, as that is what First-tier Tribunal Judge Grimmett had decided and intended to do. He submits that there has been a significant failure on the part of the respondent to make an application for permission to appeal in a timely manner, and there is no good reason for that delay. He submits that there was correspondence that passed between the appellant's representatives and the respondent drawing the matter to the attention of the respondent. He referred me to correspondence sent by the appellant's representatives to the FtT on 3 June 2019 requesting a transcript of the proceedings, and to correspondence sent by the appellant's representatives to the respondent on

19<sup>th</sup> June 2019, 4<sup>th</sup> July 2019 and 5<sup>th</sup> September 2019, in which the applicant's representatives invite the respondent to confirm that the intention was that the appellant's appeal would be allowed on asylum grounds.

11. I grant the respondent permission to appeal, out of time. In reaching that decision I have had regard to the matters set out in the Joint Presidential Guidance 2019 No 1; Permission to appeal to UTIAC. In considering whether to exercise discretion to extend time for seeking permission to appeal I apply the three stage approach commended by the Court of Appeal in Mitchell -v- News Group Newspapers Ltd [2013] EWCA Civ 1537, Denton -v- White [2014] EWCA Civ 906 and R (Hysaj) -v- SSHD [2014] EWCA Civ 1633.
  
12. Mr Mills candidly accepts that there has been a serious and significant failure to comply with the time limit by the respondent. I have considered whether there is a good reason for the delay. I have carefully read the decision of FtT Judge Grimmett, and there is not even a hint in that decision, that the judge had reached any decision immediately after the hearing of the appeal on 1 March 2018, that she had handed down. Nowhere in the decision does the judge even indicate that at the conclusion of the hearing, she had informed the parties that the asylum appeal was allowed, and her reasons would follow in writing, in due course. It is perhaps unsurprising that an individual reading that decision would simply assume that the appeal had been allowed on human rights grounds only. Here, the respondent accepted the decision of the judge to allow the appeal on human rights grounds and acted on that decision by granting the appellant 30 months leave to remain. I accept that the applicant's representatives were subsequently in correspondence with the respondent, and it would have been preferable for an application for permission to appeal to have been made earlier. In PAA (FtT: Oral decision - written reasons) Iraq, the Vice President confirmed that both the oral decision and the written decisions of the Tribunal stand, but neither party is entitled to enforce either decision until the matter has been sorted out on appeal. The appellant is therefore unable to enforce the oral decision to allow the appeal on asylum grounds until the matter is resolved by this appeal.

13. In my judgement, it is in the interests of justice, considering all of the circumstances of this case for me to grant an extension of time to the respondent. Here, it is common ground between the parties that the judge did not give any reasons at all for allowing the appeal on asylum grounds at the conclusion of the hearing. The respondent is entitled to know the basis upon which the asylum claim has succeeded. The written decision of the FtT judge in fact points the other way. The judge was not satisfied that the appellant has shown there has been any interest in the appellant in Cameroon since 2008, and she found the arrest warrant relied upon by the appellant, to be an unreliable document. The judge expressly rejects the appellant's account that he is now in fear of ill-treatment on return, and she did not believe there to have been any interest in him since 2008.
14. Mr Azmi accepts, rightly in my judgement, that there is nothing set out within the decision of the FtT Judge, upon which I could simply conclude that there is a material error of law in the written decision, and remake the decision in favour of the appellant upon the findings of fact made. The findings of fact made by the judge in fact all weigh against the appellant. Furthermore, the appellant claims that in reaching that decision, the judge failed to have regard to other evidence that was before the Tribunal.
15. It is simply impossible to know why the judge decided at the hearing of the appeal that the appeal against the decision to refuse the asylum claim is allowed. It is inevitable therefore that the proper course is for the decision of FtT Judge Grimmett to be set aside, and for the appellant's appeal against the decision to refuse his claim for international protection, to be decided afresh by the FtT.
16. There is no appeal by the respondent against the decision to allow the appeal on article 8 grounds and that decision stands.

Decision:

17. The decision of First-tier Tribunal Judge Grimmett promulgated on 28<sup>th</sup> March 2019 in respect of the appellant's appeal against the decision to refuse his claim for asylum is set aside and remitted for rehearing before the First-tier Tribunal afresh with no findings preserved. The parties will be notified of a hearing date in due course.
  
18. The decision of First-tier Tribunal Judge Grimmett promulgated on 28<sup>th</sup> March 2019 allowing the appeal on human rights grounds (*for the reasons set out at paragraphs 14 to 15 of the decision*) shall stand.

Signed

Date

23<sup>rd</sup> September 2019

**Upper Tribunal Judge Mandalia**