



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004838
UI-2023-003857

On appeal from: PA/08535/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

BETWEEN

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A
[ANONYMITY ORDER MADE]

Respondent

and between

A A
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Secretary of State: Ms Alexandra Everett, a Senior Home Office Presenting Officer

For the Claimant: Ms Marisa Cohen of Counsel, instructed by Coram Children's Legal Centre

Heard at Field House on 19 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant has been granted anonymity, and is to be referred to in these proceedings by the initials A A. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. Both parties challenge the decision of the First-tier Tribunal allowing the claimant's appeal against the Secretary of State's decision on 23 August 2019 to refuse him international protection or leave to remain on human rights grounds. The claimant is a citizen of Morocco.
2. The First-tier Judge dismissed the international protection element of the appeal but allowed it pursuant to Article 3 and Article 8 ECHR. The Secretary of State and claimant both challenged the decision on rationality and anxious scrutiny grounds.
3. For the reasons set out in this decision, we have come to the conclusion that the appeal and the cross-appeal succeed. The First-tier Tribunal's decision is set aside to be remade afresh in the First-tier Tribunal.

Procedural matters

4. **Vulnerable appellant.** The appellant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. He has a diagnosis of first episode psychosis, with paranoid and grandiose delusions, thought insertion, and auditory hallucinations. He also experiences disorganisation of speech and thought, social withdrawal, mood symptoms and functional impairment.
5. In the light of his significant mental health issues, the claimant did not give evidence in the First-tier Tribunal, nor before the Upper Tribunal, but provided witness statements to which the First-tier Judge had regard in considering the appeal. No other adjustment was necessary to ensure a fair hearing, either in the First-tier Tribunal or before us.
6. We record that the claimant's Counsel, Ms Cohen, has hearing difficulties. She was accompanied, as always, by a support worker who typed what everyone said for her to read in real time. With that assistance, Ms Cohen was able to represent the claimant and although occasionally she could not understand what was said, or we could not, repetition resolved that and there were no significant difficulties in the hearing. We are satisfied

that an adequate adjustment was made to meet Ms Cohen's reasonable adjustment needs.

7. **Mode of hearing.** The hearing today took place face to face.

Background

8. The claimant was born in Italy in 1999. In 2007, when he was 7 years old, he returned with his family to live in Morocco, his country of origin. The family lived first in Casablanca, where he 'had a lot of family', and then his parents relocated to Marrakech due to high crime levels in Casablanca.
9. The claimant got a Facebook account when he was about 15, and also began blogging. He claims to have blogged against the Moroccan King and government. He left Morocco following threatening telephone calls received in July 2015 and deleted his Facebook account. He has given differing accounts of whether he left Morocco immediately, or 6 months later.
10. The claimant travelled by car to the Moroccan coast, then stowed away on a freight ship going to Spain. He travelled by train from Spain to Belgium, then on a lorry, through France and on to the UK. The claimant has lived in the UK since May 2016, having arrived clandestinely. He was then 16 years old.
11. The claimant claimed asylum in July 2019, three years after he arrived here. He was 19 years old. He said he had been living with people from the Arab community in the UK, and that he did not become aware he could claim asylum until then.
12. The main basis of the claimant's case was that he had a well-founded fear of persecution in Morocco because of his perceived anti-monarchy political opinion, alternatively that it would be a breach of his human rights and/or he would not be able to reintegrate there by reason of his mental health issues.

Refusal letter

13. On 23 August 2019, the Secretary of State refused the asylum claim, with an in-country right of appeal. She served the claimant with an illegal entrant notice. She accepted that given his young age when he made the journey to the UK, he had provided a reasonable explanation for not claiming asylum in Belgium, France or Spain, and that accordingly, section 8(4) of the Asylum and Immigration (Treatment of Claimants) Act 2004 was not applicable when considering the credibility of his account.
14. The Secretary of State in her refusal letter accepted that the claimant was a Moroccan citizen but refused the asylum and humanitarian protection claims, by reference to paragraphs 339 and 339F of the Immigration Rules HC 395 (as amended). She also refused the claimant's private and family life claim, both pursuant to paragraphs 276ADE(1)-276CE of the Rules,

with reference to paragraph 326B, and to Article 8 ECHR outside the Rules. The application was refused under paragraph 276CE and the Secretary of State also decided that the claimant's circumstances were not such as to merit a grant of discretionary leave outside the Rules.

15. The Secretary of State considered that as the claimant had stopped blogging in 2015, stopped using Facebook, and deleted his previous posts, he would no longer be at risk. He had never been arrested. She had regard to the claimant's asserted ability (on one version of his account) to live in Morocco for 6 months after the threatening telephone calls.

First-tier Tribunal decision

16. The First-tier Judge dismissed the asylum appeal, but allowed it on both Article 3 and Article 8 ECHR grounds, based on the claimant's serious mental health problems and the risk of societal discrimination and/or adverse treatment by the Moroccan state. He concluded:

"14. Looking at all the evidence in the round I conclude that the Appellant is not now likely to face risk because of his posts sufficiently long ago but that his mental health is the key to the issues of return in that removing the Appellant from his support network, given his serious mental health problems and vulnerability, showed that there was the real risk of Article 3 ECHR ill-treatment either arising through societal discrimination or through the state in its treatment of him. I further conclude that the effect of removal would be significant in terms of the Appellant's ability to cope with his life, to make a life for himself and to have recourse to treatment. In the circumstances therefore I also concluded that the Appellant's removal is disproportionate to achieving the legitimate aims reflected in Article 8(2) ECHR and therefore a breach of Article 8. I take into account for obvious reasons the significance of maintaining effective immigration controls and the public interest. This was not a case where the Appellant's conduct of himself has given rise to harm within the United Kingdom and it seemed to me that the Respondent's approach has simply not got to grips with the difficulties faced by the Appellant as a result of his evident deterioration in mental health since he has been in the United Kingdom."

17.

18. Both parties challenged the decision, and permission to appeal was granted to both.

Secretary of State's grounds of appeal

19. Permission to appeal to the Upper Tribunal was granted on the following basis:

"1. The Respondent's grounds essentially make two points.

2. First, it is said that the First-tier Tribunal did not explain properly why the Appellant would not be supported adequately by his family in Morocco. This was, arguably, a pressing point because it was a main reason for an earlier

determination of the appeal being set aside. I have read paragraph 16 ¹of the Decision presently complained about. Arguably it is not enough.

3. Second, it is said that the Decision does not explain adequately how the appellant's poor mental health entitles him to remain on human rights grounds. That is clearly arguable.

4. I give permission on all grounds."

Claimant's Rule 24 Reply and grounds of appeal

20. There was a delay in serving that grant of permission, but the claimant filed his combined Rule 24 Reply and grounds of cross-appeal promptly once he was aware that permission to appeal had been granted to the Secretary of State. By a decision dated 3 October 2023, UTJ Perkins extended time for appealing and we treat the cross-appeal as timely.
21. Permission to appeal was granted on the cross-appeal for the following reasons:

"4. It may be that the First-tier Tribunal Judge did not have proper regard to the expert report and gave no proper reasons for concluding that the [claimant] would not be at risk now for things that may have happened some time ago. For the avoidance of doubt, I give permission on each ground."

Secretary of State's Rule 24 Reply

22. There was no Rule 24 Reply on behalf of the Secretary of State.
23. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

24. The oral and written submissions at the hearing are a matter of record and need not be set out in full here. We had access to all of the documents before the First-tier Tribunal. We are grateful to Ms Cohen for the claimant and Ms Everett for the respondent for the detailed and helpful discussion they provided of the reasons why this decision appears to lack anxious scrutiny and/or that the reasoning thereof is sufficiently inadequate to be 'rationally insupportable': see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] in the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed.
25. For the Secretary of State, Ms Everett accepted that the First-tier Judge's decision did not deal properly with the country report produced by the claimant, nor with the assessment of risk on return.
26. She argued that the First-tier Judge had given inadequate reasons for his conclusion that family support was not available to the claimant. That was obviously material: if a person had a supportive family, that was part of

¹ This appears to be a reference to paragraph 14 cited above

what needed to be considered when assessing whether he was a member of a particular social group.

27. For the claimant, Ms Cohen submitted that there was overwhelming evidence for both a lack of family support and a risk of intense suffering on return.

Conclusions

28. Given those concerns, and the mirror criticisms of the First-tier Judge's reasoning by both the Secretary of State and the claimant, we are satisfied that this decision cannot stand. The appeals of the Secretary of State and the claimant both succeed.
29. The decision in this appeal will be remade afresh in the First-tier Tribunal with no findings of fact or credibility preserved.

Notice of Decision

30. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 29 November 2023

