



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**  
**Extempore**

**First-tier Tribunal No:**  
**PA/02404/2019**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**[I A]**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms C Alexander, Katani & Co., solicitors

For the Respondent: Mr M Dywnicz, Senior Home Office Presenting Officer

**Heard at 50 Melville Street, Edinburgh on 26 June 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.**

**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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Farrelly promulgated on the 13 August 2019, dismissing his appeal against a decision of the Secretary of State to refuse his asylum protection claim.
2. Permission to appeal in this case was initially refused by the First-tier Tribunal and again by Upper Tribunal Judge Allen in 2020. That decision was subsequently overturned following a successful petition to the Court of Session and the matter then came back in front of a differently constituted panel of the Upper Tribunal, which granted permission to appeal, but also identified that there was a significant problem regarding the appellant's nationality, that is to say, he claims to be a citizen of Western Sahara, which is not a country which the United Kingdom recognises.
3. In a decision of the Vice President dated the 29 December 2021, the Upper Tribunal ruled that the appellant is to be treated as a citizen of Morocco.
4. For reasons that were not entirely clear, but presumably related to the COVID lockdowns, this matter did not come back in front of the Upper Tribunal until today, the 26 June 2024. It is unfortunate that notice of that hearing was not properly issued and indeed gave the wrong venue for the hearing. I am grateful however to Ms Alexander for being able to deal with this matter so quickly and at very short notice.
5. The appellant's case is that he is a citizen of Western Sahara and identifies as that and as such that territory being occupied by Morocco, in his view, unlawfully. He would be at risk were he to assert the fact that he is a Western Saharan and/or to demonstrate on that in connection with that political belief. He says that that was mentioned in his interview and in his subsequent statements.
6. The decision of the First-tier Tribunal is relatively short. The judge makes limited findings in effect that the appellant has not claimed any political activity and that the basis for the claim has not been demonstrated. The judge does refer to the background material at paragraph 9, but he finds at paragraph 12 that there is no evidence that suggests the appellant was in any way engaged or that he is at any particular risk on return. The judge then went on to dismiss the appeal on human rights grounds as well.
7. The grounds of appeal are twofold. First, that the judge failed to engage with the appellant's case, that on the principles set out in **HJ (Iran)** he is at risk of persecution were to manifest his political beliefs and that his political beliefs are suppressed out of fear of persecution and that the judge simply failed to engage with that. The second ground is that there was a failure of anxious scrutiny given the delay in this case.
8. Having heard submissions from Ms Alexander, I am satisfied that the core issue - whether the appellant would refrain from identifying as Western Saharan and taking part in activities to manifest that identity was due to a fear of persecution - was sufficiently raised in a number of places in the interview in his supplementary statement and the context for him fearing attending demonstrations was set out in his appeal statement.

9. To an extent, there is some evidence in the relatively short background material set out in the first inventory of productions supportive of the view that the Moroccan authorities take a dim view of those who assert Western Saharan independence or identity and that demonstrations to that effect are suppressed often violently and with arrests of those protesting. I am satisfied that the judge failed to engage with this evidence and failed to make any findings with regard to the appellant's political beliefs, whether he would seek to assert those on return or whether his reason for not doing so is out of fear of what would happen to him. Accordingly, for these reasons, I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
10. It is unnecessary in the circumstances for me to consider the second ground.
11. I consider, having had regard to the relevant presidential guidance, that this is a case which should be remitted to the First-tier Tribunal for a number of reasons. First, we now have clarity over the appellant's nationality and the situation of Western Sahara. Second, it is now five years since this matter was heard and there may well be a difference in the appellant's situation with regard to background evidence available and third, it would be necessary to remake almost all the findings reached, and specifically on the core of the claim.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside
2. I remit the appeal to the First-tier Tribunal in Glasgow to be heard by a judge other than Judge Farrelly. None of the findings of fact are preserved, save for the finding that the appellant is (as is set out in the decision of the Vice President) to be treated as a citizen of Morocco for the purposes of determining his appeal.
3. An Arabic interpreter will be required for the appeal

Signed

Date: 28 June 2024

Jeremy K H Rintoul  
Judge of the Upper Tribunal