



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08684/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 March 2014

Date sent
On 31 March 2014

Before

UPPER TRIBUNAL JUDGE WARR

Between

OR
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Robinson of Counsel instructed by Coram Children's Legal Centre
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Morocco born on 30 October 1996. He left Morocco in 2011 travelling through Spain and he arrived in the UK on 22 March 2011. He was put on a boat back to Spain the following day. He again left Morocco in January 2012

and arrived in the UK on 29 January 2012, applying for asylum on 31 January 2012. He had an asylum interview booked for 27 April 2012 but did not attend. On 26 September 2012 he was convicted of burglary and sentenced to a nine month referral order. He ran away from his foster carers in January 2013. He had an asylum interview on 19 April 2013. His application was refused on 5 July 2013.

2. The appellant appealed and his appeal came before First-tier Judge Chamberlain on 3 December 2013. The appellant was represented then, as he is now by Ms Robinson.
3. The judge heard oral evidence from the appellant as well as his appropriate adult and key worker. The judge refers to the Joint Residential Guidance Note number 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. The judge reminded herself in paragraph 22 of the case of Karanakaran [2000] Imm AR 271 including the duty to evaluate all the material made available and the country situation generally. In paragraphs 23 to 26 of the determination the judge made findings as to the appellant's credibility:

"23. I did not find the Appellant to be a credible witness. I am mindful of the Appellant's age, and mindful of the evidence of Ms. Hogg and also Dr. Perrin regarding his state of mind, but I find that at the date of the hearing the Appellant was 17 years old. I find that although he is still a child, he is not so young that he did not understand the importance of the hearing. I found him to be evasive in his answers, and unwilling to answer questions put to him regarding inconsistencies in his evidence. He became irritated by the questions put to him by the Respondent's representatives and a break had to be taken in order for the Appellant to compose himself.

24. At the hearing the Appellant was asked whether he had sniffed glue in the United Kingdom and he said that he had not. At paragraph 10.4 of Dr. Perrin's report, the Appellant admitted to sniffing glue. This inconsistency was put to the Appellant and he answered that this was different to what he was using in Morocco. I find that the question was put to the Appellant simply and reasonably, and the Appellant's failure to tell the truth at the hearing in regard to this damages his credibility.

25. I have considered the Appellant's behaviour in relation to section 8 of the 2004 Act. Bearing in mind the age of the Appellant, I do not find that the Appellant's behaviour on his first arrival in the United Kingdom in 2011 damages his credibility, although I note that the Appellant on that occasion did not mention that he was in fear for his life in Morocco. However I find that the Appellant's behaviour since his arrival in 2012 does cast doubt on his credibility even bearing in mind his age. I find that he failed to claim asylum in Spain or France on his way to the United Kingdom in 2012. I find that he failed to attend his first asylum interview in 2012. I find that he admitted in his witness statement that he has not always told the truth. Even bearing in mind the Appellant's age, I find his

behaviour since his arrival in the United Kingdom in January 2012 is behaviour which falls under section 8 and accordingly I find that his credibility is damaged.

26. I find that the Appellant has been open that he has not always told the truth to the Respondent since his arrival in the United Kingdom. I find that he said he did this to confuse. I find that there are many discrepancies in his evidence between that he gave when he first arrived, and that given in his later witness statement in April 2013. These go to the core of his claim as they relate to his life in Morocco. They include matters such as the death of his father, when he left home to start living on the streets, what work he did and who borrowed money. I find these significant discrepancies between the first witness statement made in February 2012, shortly after his arrival, and the second one made in April 2013, cast doubt on his claim. I find this is the case despite his age.”
4. The judge rejected the claim that 50,000 dirhams had been borrowed from money lenders for detailed reasons given in paragraphs 27 to 32 and rejected the claim that he had a fear of returning to Morocco because of owing a debt.
5. In the concluding part of the determination the judge dealt with the risk on return. In paragraphs 34 to 37 the judge found as follows:
 - “34. The Appellant gave evidence that his mother is still alive. He said that he did not know her whereabouts and it was submitted that their relationship had broken down. However as I have not found the Appellant to be a credible witness I cannot rely on this claim. I find that although the Appellant said that he was not close to his mother, he also said that his mother was prepared to borrow 50,000 dirhams for him to leave Morocco. I do not find that this is consistent with the claim that their relationship had broken down.
 35. The Appellant’s evidence as to when he had left home to live on the streets is not consistent. He said that his father had died before he left school, but then later changed this evidence to say that his father died when he was 11 years old and by this time he was not living with his parents. He said he only knew about his father’s death because there were people gathered around his house. I find that this change in the Appellant’s evidence casts doubt on his account of his life in Morocco.
 36. The Appellant’s representative submitted in her skeleton that the Appellant, as a street child, had suffered at the hands of the police. I find in the Appellant’s statement dated February 2012 he did not mention any ill-treatment at the hands of the police. I find that he only mentioned this in his statement in April 2013. I find this casts doubt on his claim. I have considered the objective evidence of Dr. Joffé. As I have not found the

Appellant's account of his family situation to be true, I do not find that there is any reason for him to be living on the streets. I do not find that he is to be considered as somebody who would be on his own on return to Morocco.

37. In relation to the Appellant's age, I find the Appellant is a child but as I have found above his is not an orphan. I have considered the case of *LQ* in this regard but I have not accepted the Appellant's evidence regarding his relationship with his mother. In the case of *LQ* it was found that the Appellant was an orphan who would be at risk. However in the Appellant's case I do not find that he is an orphan and I therefore find that he would not be returning to live on the streets as a child but would be returning to live with his mother."

6. The judge went on to dismiss the appeal on all grounds.
7. The grounds settled by Ms Robinson take three points. The Tribunal had erred in not giving the country expert evidence proper consideration: had misinterpreted the appellant's behaviour and demeanour and failed to consider Section 55 of the Borders, Citizenship and Immigration Act when approaching the appellant's evidence and had given Section 8 a status and a compartment of its own rather than taking it into account as part of a global assessment of credibility. The Tribunal had failed to take account of the detailed evidence provided by the appellant giving reasons for his delayed disclosure of pertinent information about his life in Morocco. Permission was granted by First-tier Judge Lloyd on 15 January 2014. On 30 January 2014 a response was filed by the Secretary of State. It was noted that the judge had not believed that the appellant would be forced to live in Morocco as a street child and it was not shown that the judge had acted in any way that could be said to have contravened Section 55 and the best interests of the child. No material error of law had been identified in the judge's treatment of issues arising under Section 8. The appellant has filed a response. The fact that the appellant was not a street child in Morocco did not mean that the First-tier Tribunal's approach to the expert evidence was not flawed. More weight should have been given to the objective evidence bearing in mind that the appellant was a child under paragraph 351 of the Rules. Reliance was placed on **DS (Afghanistan) [2011] EWCA Civ 305** where the Court of Appeal had stated at paragraph 71 that the Tribunal should have borne the obligation under Section 55 when deciding the appeal. Reference was also made to **ZH (Tanzania) [2011] UKSC 4**. In relation to the appellant's demeanour the appellant was often emotional and angry and the Tribunal had acted irrationally and had failed to discharge its functions in accordance with Section 55 and apply the guidance for vulnerable witnesses when this was held as evidence of the appellant not being credible.
8. Counsel referred to the three strands of her argument - (a) not giving the expert evidence proper consideration: (b) misdirecting herself in respect of the appellant's demeanour: and (c) misdirecting herself in relation to the application of Section 8.

There was further evidence from Michelle Hogg in a letter of 28 February 2014 going to the issue of the appellant's demeanour. She was not present in the courtroom on the day of the hearing when the appellant was giving evidence but sought to provide possible explanations as to why the appellant's conduct might have been interpreted by the judge as it was. She referred to her earlier evidence about how the appellant reacted when he had been informed that he could not open a bank account. He had become upset during the hearing and the judge had erred in holding his behaviour against him. The judge had been in error in not taking into account the best interests of the child and Section 55 although she accepted that section 55 had not been raised.

9. In relation to Section 8 the Tribunal's approach had been unclear in saying that it was not holding the appellant's behaviour in 2011 against him on the one hand but noting that the appellant had not mentioned that he was in fear of his life in Morocco at that point – see paragraph 25 of the determination. Too much weight had been given to Section 8.
10. Mr Tarlow relied on his reply and submitted that the judge had not believed that the appellant would be returned to live on his own. He would be returned to live with his mother and there was no need to give extensive consideration to the expert report in the premises.
11. In relation to the appellant's demeanour the judge noted that the appellant had become irritated and that a break was taken. Section 55 had not been raised and it was not an error not to deal with it. It was clear that the judge had dealt with the appellant being a child and had borne that in mind – see paragraph 6 of the determination. The findings were adequately reasoned. There was no material error of law.
12. Ms Robinson submitted that while the judge did not believe the appellant had she taken the expert material into account this might have made a difference to her findings.
13. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision if it was materially flawed in law.
14. In relation to the judge's approach to the evidence of the appellant given that he was a child, Mr Tarlow points out that in paragraph 6 of the decision the Tribunal stated that she was mindful of the fact that the appellant was a child and that she had borne this in mind when considering when considering the credibility of the evidence. I have already referred to what she said in paragraph 21 about being mindful of the Joint Presidential Guidance Note relating to Child, Vulnerable Adult and Sensitive Appellant Guidance. She indeed spoke to Counsel and the appropriate adult about the matter.
15. In paragraph 23 – which I have set out above – the judge for the third time reminds herself about the appellant's age when making her credibility assessment. It was for

her to form an impression of the witness before her and she found him to be evasive and unwilling to answer questions. Mr Tarlow makes the point that the judge records the appellant becoming irritated and a break had to be taken. I do not find that this reference is an indication that the judge improperly relied on the appellant's demeanour. The judge gave a break when it became apparent that the appellant had become irritated. I am not satisfied that the judge neglected to conduct the hearing in accordance with the guidance or took unfair points against the appellant because of his demeanour.

16. It is said that the judge erred in relation to Section 8. However she gave him the benefit of the doubt about his first arrival although Counsel takes the point that the judge noted that he had not mentioned a fear of life in Morocco at that stage. I do not find that this indicates muddle or confusion in the judge's approach to Section 8. It is quite clear from paragraph 25 that the judge was concerned with the appellant's behaviour since his arrival in 2012. Again I note the judge had fully in mind the appellant's youth at that stage as she adds the words, "even bearing in mind his age". The judge noted the appellant had failed to claim asylum en route and had failed to attend his first asylum interview. The appellant had admitted that he had not always told the truth and concluded "even bearing in mind the appellant's age, I find his behaviour since his arrival in the United Kingdom in January 2014 is behaviour which falls under Section 8 and accordingly I find that his credibility is damaged." Moreover the appellant had admitted he had not always told the truth and had done this in the judge's view to confuse. There were many discrepancies in the appellant's evidence which went to the core of his claim. The judge was entitled to find the discrepancies to be of significance. Again she reminds herself about the appellant's age.
17. The judge as I have said went into detail about the appellant's claim in paragraphs 27 to paragraphs 32 of the determination. The precise order in which a judge sets out findings is not material. It is quite plain that Section 8 formed a proper part of the judge's evaluation of the evidence. The judge in my view was not wrong in law to take into account the appellant's behaviour in the circumstances of this case having had due regard to his young age.
18. In relation to the expert evidence I have already referred to the judge's self-direction in paragraph 22 and the duty to evaluate material about the country situation. She confirms in paragraph 20 that she had taken into account the documents provided. She makes express reference to the objective evidence of Dr Joffé in paragraph 36 of the determination. Mr Joffé refers to the appellant's belief that money lenders will seek to recover the monies lent from his mother in paragraph 15 of his opinion and in paragraph 67 to the fact that the appellant would be severely personally disadvantaged if he is returned to Morocco and does not or cannot return to his mother.
19. The judge simply did not accept the appellant's evidence about his family situation and rejected the claim that money was lent and found that he would not be returning

to live on the streets as a child but would be returning to live with his mother. The judge states that she had considered the objective evidence of Dr Joffé and I have no reason to doubt that she did. I do not find that she failed to give the entirety of the material before her proper and anxious scrutiny. She had full regard to the fact that the appellant was a child and did not neglect to look at the entirety of the evidence in that light. There was no conflict in her duty to have regard to the child's best interests and her findings and assessment. I do not find that she failed to give appropriate weight to the objective and country information in all the circumstances. The judge's approach was not in conflict with ZH (Tanzania) or DS (Afghanistan) or indeed her duty under Section 55.

20. For the reasons I have given the decision is not materially flawed in law and this appeal is dismissed.
21. The anonymity direction made by the First-tier Judge continues.

Signed

Date 14 March 2014

Upper Tribunal Judge Warr