



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12062/2016

THE IMMIGRATION ACTS

Heard at Stoke
On 6th December 2017

Decision & Reasons Promulgated
On 7th December 2017

Before

UPPER TRIBUNAL JUDGE REEDS

Between

HB

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Khan, Counsel instructed on behalf of the Appellant
For the Respondent: Mr C. Bates, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Algeria.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

2. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant, with permission, appeals against the decision of the First-tier Tribunal (Judge Asjad), who in a determination promulgated on the 11th July 2017 dismissed his claim for protection. The Appellant's immigration history is set out within the determination at paragraph [1] and in the decision letter issued by the Secretary of State. It can be summarised briefly as follows. The applicant left Algeria in 2008 or 2009 and went to France to study. He met a British national and married her on 29 October 2010. In November 2010 he submitted application for leave to remain based on his marriage to a British national but was refused with no right of appeal on 4 January 2011. He was later served with an IAS 151 A (notice to a person liable to removal). On 13 July 2012 the First-tier Tribunal (Judge Narayan) heard his appeal against a decision made to remove him on 14 May 2012. In the determination promulgated on 25 July 2012 the judge dismissed his appeal under the immigration rules but allowed the appeal on Article 8 grounds. On 9 March 2015 he applied leave to remain as the spouse of a settled person. The claim was refused on 3 August 2015.
4. On 4th April 2016 the Appellant made his application for protection which resulted in a substantive interview and a decision letter issued by the Secretary of State dated 19th October 2016 in which his application for asylum was refused. The basis of his claim related to his fear of his family on account of having married a Christian woman. Whilst the marriage was no longer subsisting, it was asserted that the family continued to threaten him with harm. The threats had been relayed to him by his sister. The appellant relied upon a number of documents that have been sent from Algeria to demonstrate that he would be at risk of harm upon return, including court documentation.
5. The Appellant exercised his right to appeal that decision and the appeal came before the First-tier Tribunal on the 15th June 2017. The basis of the Appellant's protection claim is recorded in the decision of the First-tier Tribunal and the findings of fact reached at paragraphs [6] to [19]. The judge considered the applicant's claim in the light of the previous findings made by Judge Narayan (see paragraphs 8 - 13) and reach the conclusion that there had been only a passing reference to any potential risk in Algeria in 2012. The judge also made reference to the lack of a "letter produced in 2012" (see paragraph 14). The judge also considered a number of documents which purported to support his claim to be at risk of harm. In particular copies of the appellant's father's identity cards and information confirming his father's employment. There were a number of photographs and also court documentation. The judge did not find the appellant had given consistent evidence as to how the documents had come into his possession (see paragraphs 15 - 18). Consequently the appeal was dismissed on credibility grounds principally relating to how the documents had originated.
6. The Appellant sought permission to appeal that decision and the grounds are set out in the papers dated 21st July 2017. Permission was granted by First-tier Judge Kelly on the 5th October 2017.
7. Thus the hearing came before the Upper Tribunal. There was some discussion between the parties concerning the record of the evidence given by the applicant as set out in Ground 1 and the witness statement made by the advocate concerned (see

supplementary bundle). Mr Bates was able to extract the relevant parts of the former presenting officer's notes and I provided them with an extract of the judge's note. The advocates then discussed this issue and they reached agreement that having considered that evidence that ground 1 was made out. There was also agreement as to the other grounds of challenge and it was conceded that there was a material error of law in the judge's assessments of credibility and in particular the consideration of the documentary evidence. However, whilst he submitted that there were adverse credibility points which were properly made by the judge, some of those did not go to the core of the claim and the findings that related to the documents and how they were obtained, which were pivotal to the overall refusal of the claim. Nonetheless, he considered that there was a material error of law and that in those circumstances he agreed with Ms Khan who invited the Tribunal to set aside the decision and for the appeal to be reheard so that all issues relating to credibility could be considered.

8. In the light of that concession made by Mr Bates that there is a material error of law in the determination of the First-tier Tribunal, it is the case that both parties agree that the determination cannot stand and must be set aside.
9. I am satisfied that the central submissions made on behalf of the Appellant to which I have made reference to, which concern the adverse credibility findings are made out. In respect of ground 1, it had been asserted that there had been a misunderstanding of the evidence which related to how the documents came into the appellant's possession. At paragraph 15 the judge had stated that there was an inconsistency between the appellant's witness statement at paragraph 10 of his appeal that his Algerian lawyer had sent him the photographs of his father and that this was inconsistent with his evidence and cross-examination that a journalist friend had sent them to him. The appellant's representative provided a statement along with her handwritten notes in support of that ground. Mr Bates checked the presenting officer's note and it was accepted by him that it did not demonstrate any inconsistency because when seen in the context of the questions and answers given consecutively the appellant had stated that the photos had been sent via the lawyer but that the original source came from the journalist. As to ground 2, it was similarly common ground that the interpretation of the evidence that related to how the documents had come into the possession of the Algerian lawyer was also not inconsistent. At paragraph 16, it was found that the appellant's evidence was inconsistent because he had stated that the lawyer had handed his file accidentally with another file. However there was no inconsistency between that answer and the letter produced within the bundle and that his account that she had been handed them accidentally was not inconsistent with that evidence. It is plain from considering the evidence that the appellant had produced a number of documents from Algeria which purported to demonstrate a risk of harm. They were central to his appeal in establishing that risk. However it is plain also from reading the determination that the judge had not found his explanation credible as to the origins of those documents and thus rejected them all as being "suspect in nature". It is now accepted that there had been a misunderstanding relating to the evidence and that those findings are therefore undermined. As the documents were relevant to the core of his claim and the establishment of risk, those findings are not sustainable.

10. There is also a third ground of challenge which relates to the Internet domain names on the documentation. It appears that this had been raised in cross examination based on documentary evidence produced at the hearing on behalf of the respondent. The judge placed weight on that at paragraph 17 and this did not give the opportunity for the appellant to meet that evidence it had been presented on the day of the hearing. There is now further evidence in that respect.
11. Mr Bates is right to observe that there were some adverse credibility findings made by the judge which were not the subject of challenge. However, I am satisfied for the reasons given by both advocates that the decision cannot stand and will be set aside.
12. As to the remaking of the decision, both advocates submitted that the correct course to adopt in a case of this nature would be for the appeal to be remitted to the First-tier Tribunal because it would enable the judge to consider the Appellant's evidence and also of a witness who did not give evidence before; this is a case in which the adverse credibility findings are therefore unsafe and cannot be preserved although as Mr Bates stated the determination is a record of the evidence given by the appellant at that time.
13. In the light of those submissions, I am satisfied that this is the correct course to take and therefore I set aside the decision of the First-tier Tribunal and it will be remitted to the First-tier Tribunal to hear afresh. Ms Khan has requested that a case Management Review be held before the final hearing to finalise any necessary directions relating to the attendance of a witness.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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SM Reeds

Signed
Upper Tribunal Judge Reeds

Date: 6/12/2017