Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01608/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 24 September 2018	**On 19 October 2018**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

G K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of Designated Judge Coates promulgated on 18th December 2014, dismissing his appeal against the decision of the respondent made on 7 March 2014 to remove him from the United Kingdom by way of directions made under Section 10 of the Immigration and Asylum Act 1999.

2. The appellant is a citizen of the Ivory Coast who arrived in the United Kingdom on 10 January 2008 with leave to enter for four years to join his father who had been recognised as a refugee. On 8 February 2012 the appellant was arrested and charged with fourteen counts of rape of a minor but was found not guilty on 31 January 2013. In the interim, on 22 October 2012, prior to his then extant leave expiring, he applied for further leave to remain. That application was refused on 15 November 2012. A further application for leave to remain on 23 February 2013 was refused with no right of appeal and following further arrests, which did not result in convictions, he was served with a notice declaring him to be an overstayer on 23 January 2014. Subsequent to that he claimed asylum, an application which was refused for the reasons set out in a letter of 7 March 2014.

3. In the letter of 7 March 2014 the respondent concluded the appellant would not be at risk of persecution on return to Ivory Coast and also that his removal there would not be in breach of Articles 2, 3 and 8 of the Human Rights Convention. In particular, reliance was placed on a report from the Metropolitan Police including that he was deemed of high harm to society given his arrest history.

4. At the hearing before Judge Coates the Secretary of State's case was that the appellant was not credible and that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was engaged, given the appellant had not claimed asylum prior to 30 January 2014. The judge then went on to dismiss the appeal on grounds which upheld that observation.

5. At the time of the appeal, the appellant was not represented but subsequently his current solicitors began to act for him in connection with a civil action for false imprisonment. As a result of the disclosure made by the respondent in that case, it appears that the appellant had in fact, as he had said, had been recognised as a refugee since 8 September 2009 and an application for permission to appeal was made years out of time on the grounds that the judge had erred:-

   (i) In treating the appellant as a person who did not have refugee status in the United Kingdom and who thus bore the burden of establishing he is a refugee; and, in not noting that the respondent had taken no action to cease the appellant's refugee status and thus erred in not allowing the appeal;

   (ii) in treating the appellant's credibility as damaged by his failure to claim asylum given that he was in fact a refugee;

   (iii) in finding the appellant had in fact committed the offence of which he had been acquitted in law, the hearing being fundamentally unfair.

6. On 23 May 2018 Upper Tribunal Judge Smith granted permission to appeal.

7. Since the grant of permission was made and subsequent to the Rule 24 response which now is of little or no relevant, the Secretary of State has accepted that the appellant was granted refugee status and whilst consideration had been given as to whether to revoke refugee status or not, the Secretary of State stated:-

> "Having assessed the particular circumstances of your case, I have decided not to revoke the refugee status on this occasion. Therefore, your status as a refugee in the United Kingdom remains in tact."

A letter to the appellant's solicitors of the same date notes that there is an outstanding application for indefinite leave to remain on the basis of settlement protection under consideration from the UK Visas and Immigration. It was noted that the application was on hold awaiting the outcome of police investigation.

8. On 7 September the applicant's solicitor sought an adjournment on the basis that if the appellant's application for leave to remain were to be granted, the appeal would be academic thus an adjournment would save court time. That application was refused by an Upper Tribunal lawyer on 10 September 2018.

9. As Mr Diwnycz accepted at the hearing, the appeal before Judge Coates proceeded on a misconceived basis. It is unclear how in light of the acceptance that the appellant had had refugee status since 2009 this could have occurred.

10. Mr Diwnycz did not seek to persuade me that the decision of Judge Coates was sustainable.

11. In light of the fact that the appellant had in fact been recognised as a refugee and granted status as such, and in light of the acceptance by Mr Diwnycz that it would be necessary for the Secretary of State to take steps to cease refugee status, Judge Coates' decision is unsustainable because for reasons which are entirely unclear he was not provided with the correct picture and proceeded on an entirely incorrect basis through no fault of his own.

12. In the circumstances the decision did involve the making of an error of law as the judge was unaware that the appellant had been recognised as a refugee as he himself had said; in drawing adverse inferences from a failure to claim asylum which in the context of somebody who has refugee status makes no sense and given that the latter was held against him on credibility terms, the findings in respect of credibility are unsustainable. It therefore follows that the findings with respect to whether the appellant now had not perpetrated the crimes of which he had been accused, was unsustainable and these too must be set aside.

13. Having announced that I would be setting aside the decision I asked whether in light of the acceptance of the applicant as a refugee, the

Secretary of State wished to submit either that the appellant's status had ceased or whether Mr Diwnycz would seek to persuade me that, despite it being accepted that the appellant has refugee status, the appellant could still be removed on the basis he did not have a well-founded fear of persecution. Mr Diwnycz made no such submissions.

14. It is not in doubt that the appellant has refugee status. It is accepted in the letters of 1 August 2018 that the Secretary of State would need to take steps to cease this, the burden being on him. On that basis, the appeal falls to be allowed on refugee grounds.

15. If, however, I am in wrong in that, then I am satisfied that the appeal ought to be allowed on the basis that the decision was not in accordance with the law, the decision having been vitiated by a fundamental misunderstanding of the appellant's legal position.

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

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 their 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.

Signed Date 4 October 2018

Upper Tribunal Judge Rintoul