



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00945/2018

THE IMMIGRATION ACTS

Heard at Field House
On 22nd May 2018

Decision & Reasons Promulgated
On 6th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

GMO FARAIDON KARIM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mukherjee of Counsel, Rodman Pearce Solicitors
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant, born on 17th February 2000, is a citizen of Iraq. The Appellant had made application for asylum and that application had been refused by the Respondent on 4th January 2017.
2. The Appellant had thereafter appealed that decision to the Tribunal and his appeal was heard by Judge of the First-tier Tribunal Twydle sitting at Taylor House on 16th February 2018. The judge had dismissed the appeal on all grounds. Application for permission to appeal was made and that application was granted by First-tier Tribunal

Lambert on 3rd April 2018. It was said that an arguable error of law was disclosed in the application, namely that the judge had failed to have regard when assessing credibility to the Appellant's mental health and vulnerability as a child applicant. Directions were issued for the Upper Tribunal to firstly consider whether an error of law had been made in this case and the matter came before me in accordance with those directions.

Submissions on Behalf of the Appellant

3. The cases of **NR Jamaica [2009]** and **AM [2017] EWCA Civ 1123** were raised. I was also shown a letter dated May 2018 which had not been before the judge in relation to the Appellant's mental health. It was submitted the judge had made findings of inconsistency within the credibility findings and had made no reference to the Appellant's age or vulnerability when assessing credibility. It was submitted therefore that he had not adopted the proper approach to dealing with vulnerable witnesses and the issue of credibility also went to the consideration of internal relocation.

Submissions on Behalf of the Respondent

4. Mr Bramble submitted that the judge was fully aware of the Appellant's vulnerability in terms of age and mental health and had dealt with all of those issues. It was also said that in terms of credibility at paragraph 25 he had made reference to the Appellant's mental situation. I was referred to the skeleton argument that was before the judge where it was said that even in the skeleton argument, in terms of submissions raised on credibility, there was no reference to the Appellant's mental health or vulnerability. It was submitted that in the skeleton argument the point made was that the Appellant had provided a consistent account throughout. There were submissions in respect of paragraph 43 of the refusal letter as to whether or not the Respondent had conceded an issue of credibility in relation to Section 8 dealing with the Appellant's failure to claim asylum in other countries.
5. In conclusion Mr Mukherjee submitted that the judge may have not made an error of law simply if he had put in an extra sentence in his consideration of credibility, in particular in paragraph 25.
6. At the conclusion I reserved my decision to consider the submissions and evidence in this case. I now provide that decision with my reasons.
7. The Appellant in this case was born on 17th February 2000 and therefore at the time when he claimed asylum he was already 17 years of age and at the date of hearing he was one day short of his 18th birthday. He was therefore still a minor albeit by one day only at the date of hearing and by some months only when he provided evidence in the UK following his claim for asylum. There was also some evidence in the documents to suggest the Appellant may have some mental health concerns.
8. It is clear the judge was well-aware of the Appellant's age and indeed at paragraph 6 noted that the Appellant was accompanied by an appropriate adult. In that same paragraph the judge stated "the Appellant was treated as a vulnerable person". There is no indication within the judge's decision nor is it suggested in the Grounds of

Appeal that because of his age and/or mental health the Appellant had difficulties in either providing evidence at the appeal hearing or understanding the manner in which that hearing was conducted. The judge began his findings of credibility and fact at paragraph 16 of his decision. He made reference to three standard features that he was bound to consider. Firstly, he made reference to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 but noted that Section 8 was not the starting point for his assessment of credibility but simply a factor to take into account in the overall assessment. That is correct.

9. Secondly, he reminded himself of the need to take account of Section 55 of the Borders Act in respect of the best interests of the child. He went further and stated, I have taken into account the Appellant's degree of mental development and his maturity, being just a day short of 18 years at the date of hearing. I take into account his vulnerabilities, namely his age and his mental health. It is clear therefore that at the very start of his consideration of credibility, the judge clearly had in mind the issue of the Appellant's age and mental health and the need to assess credibility in terms of that vulnerability.
10. Finally, he made reference to the consideration of documents under the familiar case of **Tanveer Ahmed**. Thereafter, the first matter the judge looked at in terms of this case was in fact the Appellant's mental health and at paragraphs 20 to 23 the judge assessed the evidence in respect of the Appellant's mental health so that at the outset the judge had clearly in his mind the degree of mental health that may or may not be suffered by the Appellant. In summary, he noted reports of the Appellant claiming to be thinking of harming or killing himself but also noted that there was no evidence of thought disorder or current suicidal or homicidal ideas. He further noted that although assessed as suffering from depression, without psychotic symptoms, he did not appear to meet the criteria for posttraumatic stress disorder and finally he noted the letter from a specialist clinician dated 2nd February 2018 that there was no evidence of self-harm. In summary therefore at paragraph 23 the judge stated "the Appellant has a diagnosis of depression and anxiety but not posttraumatic stress disorder. There is a history of suicidal attempt and ideation but no current plan, intent or any evidence of self-harm". That was a precise summary of the medical evidence before him and at the outset provided the judge with a clear template of the Appellant's mental health and therefore level of vulnerability or potential problems arising in terms of the production of evidence.
11. It is against that clear background and knowledge of the Appellant's age, mental health and level of alleged vulnerability from either or both factors that the judge assessed the evidence relating to the Appellant's account. Having already noted that he was taking into account the Appellant's degree of mental development and maturity and his vulnerabilities because of age and mental health. In those circumstances, it is unnecessary for the judge to keep repeating himself, nor is it necessary for the judge to adopt some form of mantra in order to demonstrate compliance with the dealing of evidence provided by a vulnerable witness. Mr Mukherjee himself in his final submissions, seemed to suggest that the judge could have redeemed matters by simply adding a sentence. Those are submissions that I reject. The judge is not bound to write a decision in a particular way or adopting a

formulaic approach or using cut and paste paragraphs that may appear to give the impression of dealing with something properly, whereas in reality they are no more than cut and paste paragraphs. Those type of letters or decisions are familiar in all walks of modern life. It is abundantly clear that the judge in this case had clear in his mind the issues of vulnerability, the level of vulnerability and the need to assess the evidence with those factors in mind. The inconsistencies that were found by the judge were sufficiently dramatic in themselves. He gave clear and cogent reasons why he found the Appellant's credibility damaged by the evidence provided.

12. In terms of Section 8 the Respondent's refusal letter was less than clear. At paragraph 42 of that letter, having looked at the Appellant's journey through a number of safe countries and the fact that he was fingerprinted in one of those countries, the Respondent then said:

"It is considered that you failed to take advantage of a reasonable opportunity to make an asylum or human rights claim while in a safe country. Your failure to do so has damaged your credibility under Section 8(4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004."

That is clear and in accordance with a requirement of statute. At paragraph 43 however the Respondent had said "however taking your claim in the round the above credibility issue has not affected your claim for asylum". That is less than clear and can be read in a number of ways. Certainly, it seems sufficiently clear that the Respondent did not hang the decision of credibility solely upon the findings under Section 8. The judge at paragraph 27 had made a finding under Section 8 as he was bound to do so. He found the Appellant's credibility was damaged, which is self-evident from that which the Appellant had done.

13. The judge had also noted at the hearing the Presenting Officer conceded the contents of paragraph 43 of the refusal letter. The judge concluded by stating:

"When considering this evidence, I find the Appellant's credibility is damaged under Section 8(4) because he clearly did have the opportunity to make a claim before he got to the UK. However, this is only one factor I take into account when considering the issue of the Appellant's credibility."

The judge's finding that the Appellant's credibility was damaged is consistent with the finding made by the Respondent at paragraph 42 of the refusal letter and also entirely consistent with the state of the evidence. It is also clear that the judge, perhaps in similar way to the Respondent, did not regard this adverse finding of credibility as either the sole matter to decide the issue or indeed no more than simply a factor to take into account, as he had already noted at paragraph 17 of his decision. Finally, as the matter was raised in submissions, it is the case that the skeleton argument, drafted by Counsel before the First-tier Tribunal Judge, who was the same Counsel who appeared before me, had made no reference to the Appellant's alleged vulnerability and the need to consider that when examining the evidence. Indeed, the thrust of the skeleton argument in terms of submissions on credibility, was that the Appellant had provided a consistent account throughout his asylum claim with no material discrepancies

identified by the Respondent. Even before the hearing that was a rather optimistic submission.

14. In summary, the judge provided a detailed and well-written decision. He dealt with the necessary issues that arose. He clearly had, at the forefront of his mind, the question of vulnerability in terms of the Appellant's age and his mental health. He had carefully examined those factors so that he knew the level of vulnerability in terms of both age and mental health. There is no indication that at the hearing the Appellant displayed any difficulties in understanding or providing evidence. The inconsistencies and improbabilities referred to by the judge in his assessment of the evidence were clear and relatively dramatic. He provided clear and cogent reasons for making his findings on credibility and it is clear that that was against the background of knowledge and taking into account, as he said, the Appellant's vulnerability. He was entitled and indeed bound to make an adverse credibility finding under Section 8. The weight that he attached to that was a matter for him to decide but it seems clear that he merely regarded it as a factor to take into account and did not place undue weight upon it. That was a judgment call he was entitled to make.

Notice of Decision

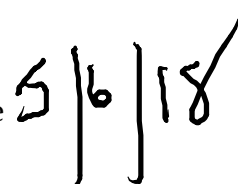
15. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed



Date



Deputy Upper Tribunal Judge Lever