



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/05508/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)  
On 17 September 2020**

**Decision & Reasons  
Promulgated  
On 21 September 2020**

**Before  
UPPER TRIBUNAL JUDGE KEKIĆ**

**Between  
KR  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation (by way of written submissions)**

**For the appellant: Katani & Co Solicitors  
For the respondent: Mr M Clark, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

**Background**

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Norton-Taylor on 6

November 2019 against the determination of First-tier Tribunal Judge Rea, promulgated on 15 August 2019 following a hearing at Glasgow on 23 July 2019.

2. The appellant is a Moroccan national born on 18 November 1975. He entered the UK with a visit visa in December 2013 having stated he would be staying for two weeks. He overstayed and was encountered in January 2019. He claimed asylum on 4 February 2019 on the basis of his political opinion. He claimed that he was one of the leaders of demonstrations calling for improvements in his village. He claimed that after his departure a summons had been sent to his home and that a friend of his had been arrested. He then decided not to return and worked illegally as a gardener.
3. The appeal was heard by Judge Rea who found that there was a lack of detail in the account. He found that there was no evidence of any document, article, correspondence, poster or social media content written by the appellant in the course of the protest, that he had given no details of how the infrastructure in the village could be improved and no information on how his village compared to others had been provided. He found that since his arrival, the appellant had shown no interest in the conditions of his village and that the description of his political activities was vague and lacking in detail. He noted that the appellant had made no mention of the summons until his substantive asylum interview. The judge also considered the appellant's account of travelling to the UK to buy clothing for his children to be implausible, finding that it would be cheaper to remain in Morocco and buy clothes and he considered that the appellant's trip to Dublin to replace his allegedly lost ID card suggested a fear that the Moroccan authorities in the UK might report him to the immigration authorities. Regard was also had to the circumstances and timing of the asylum claim. Accordingly the appeal was dismissed.
4. The appellant sought permission to appeal. It was argued that the judge had erred by failing to resolve the interaction of positive and negative findings made and also by failing to give the appellant an opportunity to provide further information when such was seemingly required. Permission was granted because Judge Norton-Taylor considered that it was arguable that the judge had held an apparent lack of detail against the appellant without relevant concerns having been raised in advance of or at the hearing.

### **Covid-19 crisis : preliminary matters**

5. The appeal would then have normally been listed for hearing but due to the pandemic this could not be done and instead directions were issued on 10 June 2020 inviting the parties to make submissions on the manner of disposal and on the error of law issue.

6. The appellant replied on 23 June 2020 and the respondent replied on 30 June 2020. Neither party raised any objection to the matter being determined without an oral hearing. I now consider whether that is appropriate.
7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
8. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellant have been clearly set out and that the issues to be decided are straightforward. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. Neither party has objected to a paper determination and I am satisfied that I am able to fairly and justly deal with this matter in that way.

### **Submissions**

9. The appellant submits that the judge failed to properly consider the evidence as a whole after having considered the individual factors. The judge considered whether there was a sufficiency of detail in the appellant's account but acted unfairly by raising the apparent lack of detail without giving him an opportunity to respond directly. The respondent did not raise the issue of vagueness or apparent lack of detail in the decision letter or in cross examination. Although it is accepted that it is for the appellant to make out his case, it is pointed out that at no point throughout the asylum interview was the appellant asked to give a more detailed description of his political activities or to give details of the kind the judge was looking for. The appellant points to section 5.6 of the Home Office Instructions which states that an absence of detail cannot be held against a claimant if little or no opportunity was given at interview to provide it or to clarify information which goes to the core of the claim. It is submitted that the judge held the absence of detail against the appellant where no opportunity was given to him to

provide it. It is submitted that the judge could have put those concerns directly to the appellant at the time but did not do so and to hold it against him after the hearing had ended was a material error of law. It is pointed out that the judge did not find the appellant credible because it was considered that there was a lack of detail in his account. The first time the appellant was aware of such concerns was when he read the determination. Due to this, the error was material. The submissions point out that favourable findings were also made by the judge but that these were not balanced against those that were considered to be potentially damaging. The judge also failed to consider the plausibility of the account insofar of what happened in Morocco. It is submitted that if an error of law were to be established then a *de novo* hearing is required.

10. The respondent, very fairly, in submissions of 30 June accepts the criticisms regarding the lack of detail not being specifically put to the appellant so as to give him the opportunity to provide more detail. Notwithstanding that he had ample opportunity to make his case by providing any detail considered relevant, it was accepted that the appellant could not have anticipated the specific criticisms made in the determination and that therefore he had not been afforded a fair opportunity to comment. As credibility was at the core of his claim, it is accepted that the error is material to the outcome of the appeal. The respondent therefore accepts that the decision should be set aside.

### **Discussion and conclusions**

11. I have considered all the evidence, the grounds for permission and the submissions made by both parties.
12. I am grateful to the parties for their succinct and helpful submissions and to the respondent for fairly and properly conceding what is a plain error of law in the judge's determination. Whilst it is the case that it is for an appellant to make out his claim, if matters which had never been raised and which could not be foreseen are to be used to dismiss an appeal, then fairness demands that these be put to an appellant so that he has an opportunity to respond. This did not happen here.
13. Further, it is clear from the determination that the judge did make positive findings and that he did not hold several matters raised by the respondent against the appellant. The potentially damaging factors should, therefore, have been better balanced against the positive aspects of the claim.
14. For these reasons, I find that the judge's decision contains errors of law and cannot stand. It is set aside in its entirety. Neither party has sought to preserve any findings and indeed the appellant seeks a *de novo* hearing.

**Decision**

15. The decision of the First-tier Tribunal contains errors of law and it is set aside. A fresh decision shall be made by another judge of the First-tier Tribunal.

**Anonymity**

16. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, and unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. This is because of his claim to be in need of international protection. 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 the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**Directions**

17. Further directions for the hearing shall be issued by the relevant Tribunal in due course.

Signed

R. Kekić

Upper Tribunal Judge

Date: 17 September 2020