



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal number: PA/09666/2019 (P)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC

Decision & Reasons Promulgated

On 21 July 2020

On 31 July 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MA

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

For the appellant: Mr James Howard, of Counsel

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of XX pages, the contents of which I have noted and taken full account of. The order made is described at the end of these reasons.

1. The appellant, who claims to be a Syrian national born on 3.4.96, has appealed to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 12.11.19, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 1.10.19, to refuse his claim for international protection.
2. The appeal was originally listed to be heard at Manchester Civil Justice Centre on 31.3.20, a date which had to be vacated because of the COVID-19 pandemic. Prior to that date, on 28.2.20, the appellant made an application under Rule 15(2A) to admit documentary evidence of his Syrian identity, which he claimed to have recently received from Syria.
3. The Upper Tribunal issued directions on 28.4.20, proposing that the appeal should be held remotely, directing the appellant to prepare and lodge an agreed consolidated bundle.
4. Pursuant to these directions, on 11.5.20 the appellant made further written submissions, enclosing the further evidence relied on in the Rule 15(2A) application.
5. The respondent has also responded to the directions with written submissions, dated 13.5.20. Objection is taken to the Rule 15(2A) application, on the basis that no permission was granted in relation to this issue and the evidence was not before the First-tier Tribunal. In response to the article 8 issue, it is accepted that the impugned decision contains no substantive article 8 consideration. However, it is submitted that the omission is not material as there was no evidence before the Tribunal as to any private life in the UK.
6. On 26.5.20, the appellant made further written submissions, arguing that the evidence of identity should be admitted.
7. On 4.6.20, the Upper Tribunal issued further directions for the listing of the appeal as a remote hearing.

Preliminary Issue

8. At the remote hearing I dealt as a preliminary issue with the Rule 15(2A) application. Mr McVeety explained that he had not seen this material, though it may have been seen by someone from the respondent's side as there are submissions opposing the application. I summarised the nature of the evidence and Mr Howard showed through the video call that he had what were described

as the originals of the Syrian identity documents. Mr Howard also submitted that the material was relevant to the article 8 issue including 276ADE very significant obstacles.

9. However, permission was not granted on this ground and this evidence was not before the First-tier Tribunal. The hearing before the Upper Tribunal was only concerned with whether there was a material error of law in the making of the decision of the First-tier Tribunal. The material has not been considered by the respondent. In the circumstances, I did not admit the further evidence. It is, however, open to the appellant to make further representations or a fresh claim to the respondent, pursuant to paragraph 353 of the Immigration Rules.

The Article 8 Issue

10. I have carefully considered the decision of the First-tier Tribunal, dismissing the appeal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.
11. It was common ground at the First-tier Tribunal hearing that if the appellant was a national of Syria, as claimed, he would succeed on that basis alone, pursuant to the Country Guidance of KB (Failed asylum seekers and forced returnees) Syria CG [2012] UKUT 00426 (IAC). However, for the cogent reasons set out from [31] onwards, the Tribunal concluded that the appellant had failed to establish to the lower standard of proof that he was a Syrian national, so that his claim for international protection (asylum and humanitarian protection) must fail.
12. Permission to appeal was granted by Designated First-tier Tribunal Judge Woodcraft on 23.12.19, on ground 4 only, on the basis that it was arguable that although article 8 ECHR was raised in the oral submissions at the hearing (see [27.d]), and at [13] the judge made a correct self-direction, the decision failed to address article 8 at all. I also note that article 8 was raised in the grounds of appeal to the First-tier Tribunal.
13. At [40] of the decision, Judge Buckley stated that the appeal must fail on all grounds. The statement under the heading of 'Decision' also makes clear that "the asylum claim, humanitarian protection claim and human rights claim are all refused."
14. The appellant claimed no partner or dependent child in the UK. It is obvious that the only potential human rights claim was on private life grounds, as Mr Howard conceded.
15. At [27.d] the judge recorded the appellant's representative submission that in relation to article 8 removal would be a disproportionate interference and there would be significant obstacles to return. This submission appears to allude to paragraph 276ADE of the Immigration Rules, which require the appellant to demonstrate that there are very significant obstacles to his integration in Syria.

The submission depended on the appellant's claims in relation to events in Syria and on the Country Guidance. However, as the unimpeachable finding was that the appellant is not a Syrian national and not from Syria, he cannot succeed on the basis of very significant obstacles to integration on return to Syria. Mr Howard also accepted this point, on the basis of the evidence that was before the First-tier Tribunal.

16. It is clear that the First-tier Tribunal omitted to address the article 8 claim at all, either within or without the Rules. There was no assessment of the claimed private life and no proportionality assessment. To that extent, there was an error in the decision-making process; the claim having been raised, the judge should have addressed it, however briefly, given the circumstances.
17. Whilst there can be no appeal on an Immigration Rule basis in relation to human rights and article 8 ECHR, whether, or the extent to which, an appellant qualifies under the Rules is relevant to any article 8 proportionality assessment. If the Rules cannot be met the appellant can in reality only succeed on article 8 grounds outside the Rules if there are such compelling circumstances sufficient, exceptionally, to justify granting leave to remain on the basis that to do otherwise would be unjustifiably harsh.
18. As he claims to have arrived in the UK on 18.12.17, the appellant has only been in the UK for a little over two and a half years. Any private life he has developed in the UK during that time must necessarily be limited. His immigration history reveals that between 2012 and 2018 he encountered the authorities in the Netherlands, Norway, and Sweden, in each of which countries he was fingerprinted. He also claims to have travelled through Turkey, Greece, Italy and France before reaching the UK. He claims to have lived in Greece for five months, Italy for twelve months, and France for six months. It is not clear from which country he emanates but it is not necessary for the Tribunal to determine that issue. The fact remains that over the years he has spent a considerable period living or travelling through various European countries and comparatively little time in the UK. He has lived outside of the UK for most of his life and in other European countries for collectively longer than he has been in the UK.
19. It is unclear on what basis he claims any significant private life in the UK. His grounds of appeal to the First-tier Tribunal do no more than raise article 8, providing no detail of the claim. It is not clear that the submissions made on his behalf at the First-tier Tribunal gave anything more than lip service to the article 8 claim; certainly, the judge recorded no particulars of his claim and the respondent's submissions point out that there was no evidence of private life in the UK before the First-tier Tribunal. I accept that the appellant may well have developed friendships and acquaintances and in part become used to the culture and society of the UK. However, there does not appear to have been any evidence to that effect before the First-tier Tribunal and it necessarily follows,

there could have been no lawful basis on which the appeal could have succeeded on article 8 grounds. It is surprising that permission was granted on that ground at all.

20. In the circumstances and for the reasons set out above, whilst there was an error of law in the sense that the judge should have addressed article 8, the error is not material as the appeal could never have succeeded on human rights grounds on the evidence before the Tribunal.

Decision

There is no material error of law in the decision of the First-tier Tribunal;

The appellant's appeal to the Upper Tribunal is dismissed;

It follows that the decision of the First-tier Tribunal dismissing the appellant's appeal must stand as made.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 21 July 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 21 July 2020

