



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02236/2015

THE IMMIGRATION ACTS

Heard at Field House, London  
On the 4<sup>th</sup> November 2015

Decision & Reasons Promulgated  
On the 23<sup>rd</sup> November 2015

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MR YU GUAN  
(Anonymity Direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Legal Representative present

For the Respondent: Mr Walker (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Wellesley-Cole promulgated on the 14<sup>th</sup> July 2015, dismissing the Appellant's appeal against the Respondent's decision to refuse his application for asylum or humanitarian protection.
2. The Appellant sought to appeal that decision to the Upper Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Cox on the 7<sup>th</sup> August 2015 who found that all of the grounds of appeal listed within the Grounds of Appeal were arguable and that it was arguable that the

Judge failed to have proper regard to aspects of the evidence and submissions and failed to give adequate or rational reasons for a number of findings, in particular on account of the Appellant's age and ability and that there were concerns as to the proper interpretation in any event.

3. No one attended at the appeal on behalf of the Appellant. However, a letter had been received by the Upper Tribunal on 26<sup>th</sup> October 2015, sent by Messrs Devonshires dated the 23<sup>rd</sup> October 2015 stating that the Solicitors Regulation Authority had intervened in respect of Messrs Blavo & Co Solicitors on the 14<sup>th</sup> October 2015 and that therefore as at that date the legal practice of Blavo & Co, the Appellant's representatives, ceased to exist. It was stated that Devonshires Solicitors had been appointed as Intervention Agents by the SRA, but had not been instructed to act on behalf of any of the former clients of Blavo & Co. They had only been authorised to respond to the notice of hearing that had been sent out on the 16<sup>th</sup> October 2015 listing the appeal before the Upper Tribunal at 2 p.m. on Wednesday 4<sup>th</sup> November 2015 at Field House, 15 Breams Buildings, London EC4A 1DZ. This letter suggested that the Tribunal contacted the Appellant directly in relation to the matter. There was no evidence of the Tribunal having contacted the Appellant directly following receipt of this letter.
4. Mr Walker acting on behalf of the Secretary of State properly conceded that in light of this letter it appeared that there was a good explanation as to why no representative had appeared on behalf of the Appellant. The notice of hearing had been sent to Blavo & Co on the 16<sup>th</sup> October 2015, after the date of the intervention, so that there was a good explanation for the failure of anyone to attend on behalf of the Appellant.
5. However, although Mr Walker conceded that ordinarily this in itself would be a sufficient ground for simply adjourning the case, Mr Walker on behalf of the Respondent conceded that in fact the original decision of First-tier Tribunal Judge Wellesley-Cole did contain a material error of law in respect of his consideration of the submissions and analysis of the evidence regarding problems with the interpreter at the asylum interview. Mr Walker conceded that when reading the asylum interview, it appeared as though the interpreter was speaking pigeon English or possibly giving a literal interpretation of every word into English, but that there were problems with interpretation at the interview, such that it was recorded on the asylum interview by the interviewing officer that several of the questions had to be re-asked for the benefit of the interpreter, and as was stated at question 108 some of the words the Appellant did not understand. I also noted that it was also apparent having considered the answer at question 188 that it was stated that "the question about logo and Jesus, not sure that words used lead to proper understanding".
6. Mr Walker also properly conceded that within the comments sent by

Messrs Blavo & Co following the substantive interview on the 9<sup>th</sup> December 2014 regarding the Appellant's comments about the asylum interview which was sent on the 15<sup>th</sup> December 2014, that it had been stated within those comments that "It was raised during the interview that even though our client understood the Home Office interpreter (interpreters number 7024) it was pointed out that she struggled translating some words from Mandarin into English. We have suggested that the interview should stop and be rescheduled for another day with a different interpreter. However, the Immigration Officer suggested we carry on and she would make her questions easier to understand", such that the First-tier Tribunal Judge's rejection of the further submissions at [14] on the basis that they substantially rewrote the interview when the proper course would have been to raise concerns at the interview, was clearly wrong. I further accept that as was conceded by Mr Walker there was a problem with the interpretation at the interview, given that rather than simply trying to rewrite the interview as was asserted by First-tier Tribunal Judge Wellesley-Cole, the Appellant's comments upon interview were in the majority complaints that the interpreter had misunderstood or not properly interpreted what he had said.

7. However, given the concession by Mr Walker on behalf of the Respondent that there was a material error in the way that the First-tier Tribunal Judge dealt with the question of interpretation and his failure to take account of what appeared to be substantial problems with interpretation during the actual interview itself, does amount to a material error of law, I do find that there was a material error of law in respect of First-tier Tribunal Judge Wellesley-Cole finding that the interview could be relied upon as an accurate account of his fear of persecution. The First-tier Tribunal Judge has erred in not properly considering the concerns raised regarding the interpreter's ability to translate into and from English. Interpretation is a two-way street. Not only does it involve the Appellant's ability to understand what the interpreter is saying in Mandarin, it also involve the interpreter's ability to properly understand the questions that are put to them in English and the interpreter's ability to translate the Appellant's answers from Mandarin into English. The First-tier Tribunal Judge has not properly taken that into account and the submissions made regarding the problems the interpreter had with English, when formulating his decision.
8. I agree with Mr Walker on behalf of the Secretary of State, that this was a material error of law in that it clearly influenced the Judge's findings in respect of the Appellant's case on credibility. In such circumstances, even though no one appeared on behalf of the Appellant, given the intervention by the SRA into Blavo & Co, as the Respondent does not seek to challenge the appeal and agrees that there was a material error of law such that the decision should be set aside, I do set aside the decision of First-tier Tribunal Judge Wellesley-Cole.
9. Given that the error of law in this case does go to the Judge's

assessment of credibility in respect of the whole of the Appellant's account, it is appropriate for the case to be remitted back to the First-tier Tribunal for rehearing, as otherwise the Upper Tribunal would have to effectively rehear the entirety of the asylum claim and make fresh findings in respect of credibility. The matter is therefore to be remitted back to the First-tier Tribunal to be reheard by any judge other than First-tier Tribunal Judge Wellesley-Cole.

10. Clearly, given the contents of the letter from Devonshires Solicitors, the Appellant may wish to obtain new representation prior to the hearing before the First-tier Tribunal, given that Blavo & Co have seemingly ceased to exist. However, that is a matter for the Appellant, but he should not simply presume that his previous solicitors will represent him at the new hearing before the First-tier Tribunal, given the intervention by the Solicitors Regulation Authority and the contents of the letter from Devonshires Solicitors.

### Notice of Decision

The decision of First-tier Tribunal Judge Wellesley-Cole does contain a material error of law and is set aside;

The matter is to be remitted back to the First-tier Tribunal to be reheard by any Judge other than First-tier Tribunal Judge Wellesley-Cole.

The First-tier Tribunal did not make any order in respect of anonymity, no such order was sought before me. No such order is made.

Signed

Dated 4<sup>th</sup> November 2015

A handwritten signature in black ink, appearing to read 'RF McGinty' with a stylized flourish at the end.

Deputy Upper Tribunal Judge McGinty