



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/38797/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On April 23, 2015**

**Determination
Promulgated
On April 27, 2015**

Before

**HIS HONOUR LORD BANNATYNE
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

Between

**MR N A A L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Smith, Counsel, instructed by IR
Immigration Law

For the Respondent: Mr Nath (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Cameroon. On September 23, 2012 he entered the United Kingdom with a valid entry clearance as an

accompanied child. This enabled him to remain in the United Kingdom until February 22, 2013. On February 21, 2013 he applied for indefinite leave to remain as a child under the age of eighteen whose relative was settled here. The respondent refused this application on September 4, 2013 and at the same time took a decision to remove him by way of directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. On September 23, 2013 the Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended. Contained within those grounds of appeal was a reference to 1951 Refugee Convention.
3. The matter was originally listed before Judge of the First-tier Tribunal Pacey on April 25, 2014 and following representations he agreed to adjourn the hearing but issued directions to enable the respondent to process the appellant's asylum claim. The matter came before the Tribunal on July 9, 2014 and was adjourned because the appellant has a pending asylum interview on July 16, 2014.
4. The matter finally came before Judge of the First-tier Tribunal PJM Hollingsworth (hereinafter called "the FtTJ") on October 15, 2014 and he refused the appeal in a determination promulgated on November 14, 2014.
5. The appellant lodged grounds of appeal on November 28, 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Scott Baker on January 13, 2015.
6. The matter came before us on the date set out above. The appellant was in attendance and represented by his counsel.


PRELIMINARY ISSUE

7. We indicated to Mr Nath that there were a number of matters that concerned us. At paragraph [51] of his determination the FtTJ made a finding that it was implausible that the appellant's father would have responded by stating that homosexuality did not exist in Cameroon. We indicated that the FtTJ appeared to be applying western views as against views commonly held in Cameroon and other African nations. This finding contradicted the father's letter which was set out at paragraph [98] of the FtTJ's determination. The FtTJ applied a western approach as against an African approach where people reject homosexuality as a concept. We suggested to Mr Nath that the FtTJ's finding on the concept of homosexuality in Cameroon infected his whole decision.

8. We also referred Mr Nath to paragraph [57] of the determination and suggested that the FtTJ had erred by making a plausibility finding despite being aware of the appellant's father's position that homosexuality did not exist in Cameroon. The FtTJ further erred when he found at paragraph [64] of his determination it was "highly implausible" that he would have felt unable to tell his sister-a person he treated as a mother especially even though he accepted she was shocked when she discovered his secret (see paragraph [80]).
9. We suggested to Mr Nath that these issues went to the core of the appellant's asylum claim and we did not believe they were sustainable as they clearly would have affected the FtTJ's assessment on credibility. Whilst some of his findings were open to him we were of the opinion that the numerous "plausibility" findings undermined other valid findings on credibility.
10. We also indicated we had difficulty following aspects of the determination and referred by way of example to paragraph [108] of the determination. We were unclear who or what was being criticised. The Judge who gave permission to appeal also found difficulties with the determination and we further noted there had been no consideration of the country/objective evidence which would be relevant to any issue of internal relocation.
11. Mr Nath indicated that he had spoken to Ms Smith prior to the hearing and acknowledged Ground Four of the grounds of appeal highlighted matters that could lead us to conclude there had been an error in law. He indicated that he had no submissions to make on this ground of appeal and would leave the matter to ourselves but in the event we were satisfied there was an error in law then he suggested the matter be remitted back to the First-tier Tribunal.
12. Ms Smith submitted that Ground four was her strongest ground but the other grounds when taken with Ground Four also evidenced an error in law. She invited us to find there had been an error in law and to remit the matter back to the first-tier Tribunal albeit she requested the matter be heard at Taylor House as this was more convenient for the appellant.
13. In light of the concerns expressed above we were satisfied there had been an error in law. The Court of Appeal have made it clear on a number of occasions that findings on plausibility are to be avoided. The FtTJ in this appeal made numerous findings on plausibility but in doing so he considered the appellant's claim from a Western prospective as against an African prospective. Some of his findings made no sense and although some of the findings were open to him we were satisfied that the matters highlighted above meant there was an error in law.

14. Having considered Part 3, Section 7.1 to 7.3 of the Practice Statement we agreed to remit the appeal back to the First-tier Tribunal for a fresh hearing with no findings preserved.
15. The matters that will need to be considered are the appellant's asylum, humanitarian protection and articles 2, 3 and 8 claims. There is no need for any future Tribunal to hear any appeal under the Immigration Rules because the appellant's former representative conceded before the FtTJ that the appellant cannot meet the Immigration Rules.
16. The parties should ensure compliance with any subsequent directions issued in light of the fact the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 will apply to this appeal from hereon.

DECISION

17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. We have set aside the decision.
18. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.
19.  Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was made in the First-tier Tribunal and we saw no reason to amend that order.

DEPUTY UPPER TRIBUNAL JUDGE ALIS
IMMIGRATION AND ASYLUM CHAMBER