



IAC-FH-AR-V2

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00273/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 January 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

[A A]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Kiai, instructed by Coram Children's Legal Centre

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Morocco. He appealed to a Judge of the First-tier Tribunal against the respondent's decision of 19 December 2013 refusing his application for asylum and deciding to remove him pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The appellant was detained in the United Kingdom on 12 March 2011. He is from Morocco and had travelled to the United Kingdom via Spain and France. When interviewed on 5 September 2011 he said he could not return to Morocco because he would be in danger as he was a young boy and that he had left there because he felt he had no future there and was living in extreme poverty. He was asked if anything had happened in

Morocco to make him leave and he replied “no.” When asked what made him leave Morocco he replied “Poverty. Life was difficult.”

3. At an appeal hearing in February 2014 the appellant made amendments to his previous statement including stating that he had witnessed domestic violence between his father and mother and had been the victim of violence by his father and that while living on the streets in Morocco he had been stabbed on two separate occasions and injured in a fight when someone threw a stone or rock at his head and he had witnessed a rape and subsequent death of a woman and her daughter and saw his friend killed by a lorry.
4. The appeal before the First-tier Judge on 4 March 2015 was a re-hearing as a consequence of errors of law being found in the determination of the judge who heard the appeal of the appellant in February 2014. The judge found the appellant’s evidence to be inconsistent, contradictory, not credible and unpersuasive. She referred to the fact that the appellant’s claim had changed over the years and he said that he had given information to his previous representatives such as sniffing glue whilst living on the streets in Morocco and that he had been in danger in Morocco but he had been told that that did not amount to an asylum claim and therefore he did not say any more and did not tell the solicitor about the police in Morocco who he said had arrested him for attempting to gain entry onto a boat or lorry in order to leave the country. The judge noted that before being told by his solicitor that his story did not amount to an asylum claim he had consistently said that he came for financial and educational betterment, and the judge found such matters to undermine the credibility of his asylum claim. The appellant had also subsequently in his February 2014 witness statement amended his November 2013 statement to say it was not correct that he only met his father once and that his father was violent towards his mother and himself. He did not say anything about that or talk about it again until that time because he did not want to remember it and it made him too upset. Again the judge found this to undermine his credibility. In general terms the judge found damage to the appellant’s credibility in the changes and developments to his story since the original interview.
5. The judge also did not accept that the appellant was vulnerable as had been asserted on his behalf, in particular by his foster carer Mrs Ayesha Saeed. She gave oral evidence before the judge and referred to such matters as she thought that the appellant’s emotional age remained at about 15 years and that he continued to maintain a high level of dependency upon her. The judge did not accept that the appellant was vulnerable as asserted on his behalf, the matter having been raised during the course of evidence. She noted the fact that at the date of the hearing the appellant was 18 years and 11 months old and decided that he wished to marry and spend the rest of his life with his girlfriend. Mrs Saeed had not given evidence to the effect that he was not mature enough to make such decisions. Her evidence was that the appellant and his girlfriend would marry but for practical reasons they could not live together. The

practical reasons were that he was undertaking a course of study and was not in a financial position to be able to support himself and his wife. It was clear from the report of Dr Walsh, a clinical psychologist that the appellant did not meet the diagnostic criteria for PTSD and nor did he present with or report additional difficulties warranting further diagnostic assessment. He did not report symptoms indicating the presence of a depressive disorder or other mental health problems. The judge went on to say that he had considered the country expert report of Dr Seddon and his comments as to the plausibility of the appellant's account. She commented that it was not surprising that Dr Seddon would find the claim now made by the appellant to be plausible since the appellant had had a number of years in which to formulate it but said that as she had set out above she did not accept the appellant's account. Accordingly she did not accept the claim that he had made to be at risk on return to Morocco. Nor did she find that the appeal could succeed on the basis of Article 8 of the European Convention on Human Rights.

6. The appellant sought and was granted permission to appeal against the judge's decision initially on the basis of grounds 1, 2 and 4 but not on the basis of ground 3 though subsequently when the application was renewed permission was granted in relation to that matter also. The essence of the grounds was that the judge had not taken proper consideration of the fact that the appellant was a child at the time of the incidents to which he referred at the time of the asylum interview, that she had failed to take into account the need to consider the best interests of the appellant's foster siblings in considering Article 8, that she had adopted the wrong approach to Dr Seddon's report in coming to conclusions on credibility before making findings on that report and that she had erred in not attaching weight to the fact that the current solicitors had written to the previous solicitors alerting them to the allegation that they had failed to take proper instructions and giving them an opportunity to respond which they had not done.
7. Ms Kiai relied on and developed the matters raised in the grounds. She addressed the issues that were set out in the three Rule 24 responses that the respondent had put in. There had not even been a passing reference to the appellant's age when the judge assessed credibility. He had only been 14 at the time of the interview. Also, his age was relevant to whether a more liberal approach should be adopted with regard to giving the benefit of the doubt and the need to attach greater weight to the background evidence with regard to risk. The failure to take into account the best interests of the foster siblings and evidence in that regard had been provided to the judge as to the impact on them of the appellant's removal. There had been no response from the previous representatives to the matters put to them and therefore it was improper for the judge to conclude at least by implication that the previous representatives were not at fault.
8. In his submissions Mr Tarlow relied on all the Rule 24 responses and argued that there was no material error of law in the decision. It was clear

from paragraph 44 that the judge had taken into account the appellant's age and the reference to the purpose of a visit being to learn and study. She had made her own findings on the evidence and considered Dr Seddon's report and came to conclusions which she could reasonably come to. The findings were not perverse in the R (Iran) sense. Taken as a whole the determination was entirely sustainable.

9. By way of reply Ms Kiai argued that it was not enough to address the expert report after making credibility findings. At paragraph 44 there was no indication of taking the appellant's age into account with regard to reliability and plausibility.
10. I reserved my determination.
11. I am satisfied that the points made in the grounds are made out. The appellant was only 14 at the time of the asylum interview although it may well be that the discrepancies in the account as developed are open to criticism, that can only be done on the basis of taking into account his age at that time and also of his age at the time when the experiences which he related would have taken place. This is clearly relevant to a proper assessment of credibility. In addition the judge materially erred in the findings in respect of the expert report. There are elements of that report which are irrelevant to the credibility of the claim and although clearly credibility is a matter for the judge, on the other hand credibility findings are required to be reached as a consequence of an assessment of the evidence as a whole, and it is clear from paragraph 51 of the judge's determination that she had reached her conclusions on credibility before going on to address Dr Seddon's evidence. The other two matters are not without weight though they are of lesser weight. The judge should have considered section 5 in the context of the impact of the appellant's removal on his foster siblings, and the absence of a response from the previous solicitors to the matters put to them was clearly a relevant matter to be addressed when assessing the credibility of the appellant's claim that in effect evidence he had given to them had not been put forward or had been discounted.
12. Both representatives asked me, if I were to find material errors of law in the determination, to send the matter back for re-hearing in the First-tier Tribunal. I agree with this joint submission. There has to be a complete re-visiting of the facts in this case and findings on those facts by a judge and it is appropriate therefore in accordance with paragraph 17 of the Practice Statement, for the matter to be heard de novo by a Judge of the First-tier Tribunal sitting at Taylor House, other than Judge B A Morris, who heard the appeal on this occasion, and Judge N M Paul who heard the appeal previously.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Allen