



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05140/2018

THE IMMIGRATION ACTS

Heard at Field House
On 7 September 2018

Decision & Reasons Promulgated
On 18 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

AA (ANGOLA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Burrett, Counsel instructed by Wick & Co Solicitors
For the Respondent: Mr Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Both the appellant and the respondent appeal from the decision of the Judge Devittie, sitting at Taylor House on 22 May 2018, whereby he dismissed the appellant's appeal on asylum grounds, but simultaneously allowed and dismissed his appeal on human rights grounds.

2. The background to this case is that the appellant arrived in the United Kingdom by air on 24 August 2014, supposedly in transit to the USA. His flight itinerary showed that he was scheduled to fly on from Heathrow Airport to Houston in Texas. He was travelling as an unaccompanied minor and was to be provided with assistance. When he was directed to his flight to America, his passport could not be found. He was questioned at the airport and subsequently placed in foster care in the UK. He subsequently claimed asylum.
3. His claim was that he had left his family home in Angola in March 2014 as his mother was given to alcohol abuse and on occasion she would assault him. He slept on the streets and made money washing cars. His income varied but he had money for food and sufficient money to attend school.
4. He washed a car for a Mr Da Gama. He told Mr Da Gama that he wanted to study to become an Engineer. A week later Mr Da Gama asked him if he had thought about studying abroad and encouraged him to do so. A few weeks later a woman came to where he was sleeping, and told him that in three days he would fly to America. The next day she came with a suitcase and gave him clothes which she had packed, and stated that she would pick him up the same day. The same night, he went to see his mother. She was no longer at home, and no one knew where she had gone. The next day the woman returned and took him to the airport and told him that someone would pick him up in America. At the airport he was given a passport and other papers.
5. At Heathrow Airport, two women collected him from the plane and gave his passport to another person. This person apparently disappeared with his passport, and hence he did not have a passport in order to board his onward flight to the USA.
6. He said that if he was returned to Angola, he would be killed by the street gangs who had previously sought to extort from his earnings from washing cars, and who on one occasion had beaten him up, and taken money from him. He had reported this to the police, but they did not help him. On another occasion, the gang had beaten him with a bottle. He was taken to a hospital where he received stitches. He had carried on washing cars because he was in need of the money.
7. At the hearing of his appeal, the appellant was legally represented and he gave oral evidence. In his subsequent decision, Judge Devittie found that his account of his past experiences in Angola was not truthful. He found that he was not entitled to international protection and that he had a family to return to in Angola. As he was a minor, the respondent would no doubt not take further steps in the removal process until his family members in the receiving country had been notified and adequate reception arrangements made by them.
8. On 27 July 2018 First-tier Tribunal Judge Grant-Hutchison granted the appellant permission to appeal for the following reasons:

It is arguable that the Judge has erred in law for the following reasons: (a) by placing undue weight on a letter dated 24 September 2015 written by the respondent's case worker to the Director of Information Programs in Washington, where the letter was

asking for confirmation of the facts and arguably should not have been considered as the facts; (b) by failing to take into account the appellant's vulnerability status when considering his evidence, given that he was only 12 or 13 years old with a history of domestic abuse at the time he made his protection claim when considering his credibility and his lack of knowledge in certain aspects of his account; (c) by attaching little or no weight to the evidence of the foster parent and the social worker in relation to the appellant's lack of family in the United Kingdom and ... in Angola, considering that both had known the appellant for almost 4 years. No effort has been made to trace the appellant's family; (d) by failing to apply the lower standard of proof; (e) by failing to give proper consideration to the appellant's account of historic domestic violence and risk to life on the streets of Angola; (f) by failing to make proper findings on reception facilities in Angola when the respondent had acknowledged that there are no safe reception facilities available; (g) by failing to consider section 55 of the Borders, Citizenship and Immigration Act 2009; and (h) by failing to consider Articles 2, 3 and 8.

The Hearing in the Upper Tribunal

9. At the hearing before me to determine whether an error of law was made out, Mr Wilding conceded that the Judge had not given adequate reasons for dismissing the appellant's protection and human rights claims, and that he was in agreement with Mr Burrett that the decision should be set aside and the appeal remitted to the First-tier Tribunal for a fresh hearing, with none of the findings of fact made by the previous Tribunal being preserved.

Discussion

10. In his decision, the Judge referred to documentary evidence apparently obtained from the US authorities relating to a visa application made in 2012 by the appellant's mother on behalf of her herself and her two sons, one of whom was the appellant, and the other of whom was "RDC". In addition, the US authorities apparently had records of the mother being issued with a US Tourist visa valid until 20 September 2014. The appellant's brother, RDC, was due to fly on from the UK to the USA on 1 February 2014, but did not board his flight and claimed asylum in the UK.
11. It was open to the Judge to attach weight to this evidence as casting doubt on the core claim. It is not the case that the purpose of the letter of 4 September 2015 was to get the US authorities to confirm a series of suppositions, as distinct from facts. The problem was that the information which had been garnered from the US authorities was confidential, and the Home Office required their authorisation to release the information in a disclosable format so that it could be used in an English court. In addition, it was a fact known to the Home Office that RDC had claimed asylum in the UK in apparently identical circumstances to that of the appellant, namely when purportedly in transit to the USA.
12. The problem is not that the Judge placed undue weight on the above evidence, but that he did not make clear findings on its import. When he came to give his reasons for disbelieving the core claim, he did not refer to it at all. He simply expressed incredulity that a stranger would have offered the appellant "*free travel abroad*". He also did not

make clear whether he accepted or rejected the appellant's account that, while he knew RDC, they were not related to each other.

13. The Judge also did not engage with the evidence of a Senior Social Worker cited by him at paragraph [8] of his decision, which was that their records did not show any evidence of the appellant having any family or relations in Angola who could support him were he to return.
14. Consequentially the Judge did not give adequate reasons for holding, at paragraph [11], that the appellant had family to return to Angola and hence that he would not be at risk of persecution as a child, following **LQ (Age: Immutable characteristics) Afghanistan -v- Secretary of State for the Home Department [2008] UKAIT 0005**.
15. Accordingly, I was satisfied that Ms Wilding's concession was appropriate, and that an error of law is made out in the grounds of inadequate reasoning. The upshot is that the decision of the First-tier Tribunal is unsafe, and it must be set aside in its entirety. This also disposes of the respondent's cross-appeal.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision must be set aside and remade.

Directions

This appeal is remitted to the First-tier Tribunal at Taylor House for a fresh hearing (Judge Devittie not compatible), with none of the findings of fact made by the previous Tribunal being preserved.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their family. This direction applies both to the appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 15 September 2018

Deputy Upper Tribunal Judge Monson