



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

Appeal Number: PA/04524/2019

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice  
Centre  
On 9 January 2020**

**Decision & Reasons Promulgated  
On 28 January 2020**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**S. H.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge French promulgated on 19 July 2019 in which the Appellant's protection appeal was dismissed.
2. The Appellant is a citizen of Tunisia. He arrived in the United Kingdom clandestinely on 16 July 2018 at which point he was 15 years and 9 months old. An application for asylum was made on 18 October 2018.

3. The core of the Appellant's claim was based on having been conceived/born out of wedlock, and the difficulties he said had arisen in consequence from members of his mother's family. It is appropriate to note that during the course of his asylum interview the Appellant was seemingly unable to give any great detail or particulars of the nature of the difficulties that his mother had experienced by reason of having him out of wedlock. Be that as it may, the Respondent gave consideration to all aspects of the Appellant's claim: the core account was not accepted; however, in circumstances where the Secretary of State felt she could not be satisfied in respect of arrangements for reception upon return, it was decided that the Appellant should be granted a period of discretionary leave in accordance with policy in respect of unaccompanied asylum seeking children.
4. The Appellant appealed the refusal of his protection claim to the IAC.
5. The appeal was dismissed for the reasons set out in the decision of Judge French.
6. The Appellant applied for permission to appeal which was granted on 28 August 2019 by First-tier Tribunal Judge Beach.
7. Before me this morning Mr Mills on behalf of the Respondent does not seek to resist the Appellant's challenge. He concedes that the decision of the First-tier Tribunal is flawed for error of law such that it is required to be set aside and the Appellant be afforded an opportunity of putting his case again to a First-tier Tribunal Judge.
8. The Respondent's concession is essentially made on the basis that there is no clear indication in the decision of the First-tier Tribunal as to the approach to be taken in analysing the evidence of a minor. Necessarily the Appellant was a minor at the time of the events upon which he relies and in those circumstances a degree of caution needs to be taken to the manner in which he is able to recall such events. He was also a minor when he was interviewed and was a minor at the appeal hearing; this should inform any consideration of the manner in which he is able to relate events.
9. Mr Mills identifies in particular one example where the caution and approach to the evidence of a minor does not appear to have been accorded any consideration or due weight. At paragraph 6 of the Decision the First-tier Tribunal Judge refers to the Appellant's failure to claim asylum *en route* to the United Kingdom; Mr Mills acknowledges that reliance upon such a circumstance given the Appellant was only 15 years old during the journey to the United Kingdom was inappropriate.
10. I do not go behind the concession made by the Secretary of State in this regard. The consequence is that the evaluation by the Judge of the Appellant's overall claim is flawed to an extent that it cannot be allowed to stand. It is common ground between the parties, and I agree, that the

appropriate remedy is for the decision in the appeal to be remade before the First-tier Tribunal by a different Judge with all issues at large.

**Notice of Decision**

11. The decision of the First-tier Tribunal contained a material error of law and is set aside.
12. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge French with all issues at large.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: 20 January 2020

**Deputy Upper Tribunal Judge I A Lewis**