



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00227/2014

THE IMMIGRATION ACTS

Heard at Laganside Courts, Belfast
On 30 October 2014

Determination Promulgated
On 5 November 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

ALHAJ AL-FAKIEH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr S McTaggart (of Counsel) instructed by RP Crawford and Company Solicitors

Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. By a decision made on 10 December 2013, the Respondent refused the Appellant's combined claims for refugee status and under Article 8 ECHR. The ensuing appeal to the First-tier Tribunal (the "FtT") was dismissed.

2. Upon the hearing of the appeal to this Tribunal, it was conceded on behalf of the Respondent that the decision of the FtT is vitiated by material errors of law. This concession was based on the contents of paragraphs 16, 20 and 27 of the determination and, specifically, the following matters:
- (a) The unparticularised and unexplained reference to the "*histories and general inconsistencies*" of the Appellant and his partner/spouse, in [16].
 - (b) The unparticularised and unexplained finding in [16] that the aforementioned persons at no time underwent a marriage ceremony.
 - (c) The lack of specificity and definition in the bare finding that these two persons are "*in a relationship*".
 - (d) The egregious failure in [20] to consider the relevant provisions of the Immigration Rules, to make appropriate findings and to supply supporting reasons for such findings, in the context of a bare statement "*I am not satisfied that the Appellant can meet any of the requirements of the Immigration Rules*".
 - (e) The equally egregious error of fact in [27] of the determination, where there is a reference to "*the robust good health*" of the Appellant, the mother "*and her children*". This is confounded by the ample and cogent evidence, uncontested at any time by the Respondent, that the second of the children suffers from Down's Syndrome and related infirmities. This error undermines fatally the Judge's conclusions that the Immigration Rules were not satisfied and that the impugned decision does not infringe Article 8 ECHR rights.
3. To the above I would add the following:
- (a) In [17] of the determination, which is one of the paragraphs arranged under the banner "*Credibility and Findings*", the Judge rehearses various pieces of evidence, without making any findings.
 - (b) The omnibus, but unparticularised and unreasoned, conclusion in [21] that the Appellant "*... has not provided any credible basis for challenging the assertions, analyses and conclusions in the Respondent's of refusal letters [sic]*".
 - (c) In [22], the Judge repeats the "*inconsistencies and implausibility in his story*" assessment – again, unparticularised and unreasoned. The same analysis applies to the ensuing conclusionary statements in the same paragraph.

DECISION AND DIRECTIONS

4. I decide and direct as follows:
- (a) The decision of the FtT is set aside.

- (b) The case is remitted to a differently constituted FtT for the purpose of remaking the decision.
- (c) The Appellant's solicitors will file and serve a comprehensive appeal bundle and skeleton argument by 31 January 2015 at latest.
- (d) The case will be relisted on the first available date thereafter.
- (e) The findings rehearsed in [14] and [15] of the FtT determination are preserved, viz:
 - (i) The Appellant is the biological father of the two children of the family unit..
 - (ii) The Appellant, Mrs O and the two children constitute a family unit.

I record, in passing, that the first of these findings was formally conceded on behalf of the Respondent at the hearing.

5. A CMR is unlikely to be required. A time allocation of 1 ½ hours should be adequate.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 30 October 2014