



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

Appeal Number: AA/09243/2013

THE IMMIGRATION ACTS

Heard at Field House

On 27th June 2014

**Determination
Promulgated**

On 8 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR ALI BARA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Khalique, Counsel, instructed by Kesar & Co
Solicitors (Tonbridge)

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of the Ivory Coast. Though his date of birth is recorded as 19th February 1996 that is in fact in dispute. The background to his claim is that in 2006 his family home was burnt down by members of the Muslim community because he and his family were Christian. In

other words, the Appellant bases his case on conflict between the Muslim and Christian populations in his home country.

2. The Appellant arrived in the United Kingdom on or before 2nd March 2013; that is the date when he was arrested by Kent Police after being spotted coming from under a freight vehicle. He was referred to Kent Social Services and he made application to be recognised as a refugee.
3. On 28th June 2012 a decision was made to refuse the application but he was granted discretionary leave to remain in the United Kingdom until 19th August 2013 on the basis of his minority. On 15th August 2013, however, he made application for further leave to remain but on 9th October 2013 a decision was made to refuse the application and the Appellant appealed.
4. On 5th November 2013 his appeal was heard by First-tier Tribunal Judge Hussain sitting at Hatton Cross. He rejected the factual matrix upon which the claim was based. He did not accept that the Appellant was Christian.
5. He then went on at paragraph 29 to consider the Appellant's case, despite his finding, as if the Appellant had established that he were Christian but dismissed the appeal on the basis that the Appellant had not established even to the lower standard sufficient background material to justify a finding that he would be at risk of persecution were he to be returned to the Ivory Coast. In those circumstances the question of internal relocation did not arise.
6. Not content with that decision by Notice dated 2nd May 2014 the Appellant made application for permission to appeal to the Upper Tribunal. There were four grounds. The first three relate to the age of the Appellant and the fourth suggests an incorrect application of the standard of proof.
7. On 12th May 2014 Judge Saffer granted permission though it is of note that he focused entirely on the issue of the failure of the judge to take account of the Appellant's minority when assessing the evidence.
8. Ms Khalique sought to persuade me that the failure on the part of the judge to make a finding as to the Appellant's age was material not only to the legality of whether or not the Appellant might be returned but also went to the reliability of the findings made by the judge with respect to the core issue in the claim, namely his faith.
9. Mr Duffy fairly and properly conceded at the outset that the judge had made no finding on the age of the Appellant when it was the Appellant's case that he would not be 18 until 19th February 2015. Clearly the failure of the judge to make a finding on that point is material because it goes to the lawfulness of the decision of the Secretary of State to remove the Appellant both in the asylum claim and on human rights grounds, given her policies in relation to minors.
10. In the circumstances it becomes necessary to set aside the decision of the First-tier Tribunal in order that it can be remade.

11. The defect can, however, be rectified. The age of the Appellant forming part of a claim for refugee status must be established against the lower standard of proof. There was an age assessment conducted in this case which was not produced by the Secretary of State for the purpose of the remaking of the appeal. The Appellant's evidence on the other hand is that his date of birth is such that he will not be 18 until 19th February 2015. I asked Mr Duffy if he could provide me with a copy of the age assessment but he was not able to do so. It may be in any event that not much turns on the age of the Appellant now because as Mr Duffy told me it was unlikely that the Appellant would be removed before 19th February 2015 in any event but in the absence of the age assessment, the evidence of the Appellant received before the First-tier Tribunal, adopting the approach of the Judge to consider and deal with the appeal on the alternative basis of the claim, leads me to finding that the Appellant will not be 18 until 19th February 2015.
12. That, however, does not mean that the Appellant is a refugee. The grounds go, as I have already indicated, to the failure on the part of the Secretary of State to make the appropriate enquiries with respect to the Appellant and the judge failing therefore to recognise the error in that but there was no suggestion before me that any enquiries would have made any material difference and I am told now that the Appellant has made enquiries through the Red Cross. As I say, the Appellant now would not be removed in any event before he is 18 on the basis of my finding, which accords with his own contention.
13. The issue as to whether or not the Appellant is Christian or Muslim is not material to the eventual decision, though of course I accept that it is material to him, because as I have already indicated the judge approached the case in the alternative saying at paragraph 29:

"I am far from satisfied that the Appellant was a Christian when in the Ivory Coast. If I am wrong about that and he in fact is a Christian the question that I have to decide is whether if returned to his home country now he would face persecution on account of his faith."

The judge was right to pose himself that question, and I have to remake the case on the basis of the evidence that was available. No application has been made under Rule 15 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce additional evidence and so I look to the determination of the judge and ask myself whether there is any basis to interfere with the findings. I find no basis for doing so. It was open to the judge to say that there was no sufficient background material adduced to demonstrate that the Appellant as a Christian would be persecuted. In those circumstances, as I have indicated, there is no basis for examining whether or not it would be unduly harsh for the Appellant to relocate.

14. Ms Khalique suggested to me that she and those instructing her had identified problems with the age assessment form. As I have said, I have not seen that form, it has not been produced. She did not produce it. She

would not have relied upon it in any event. If indeed there are matters which arise or have arisen since the determination of this matter in the First-tier Tribunal then it would be a matter for Ms Khaliq and those who instruct her to consider the basis upon which if at all it is appropriate to approach the Secretary of State again but that is a matter for them, not for me.

15. As to any argument in relation to the standard and burden of proof, given what appears at paragraph 18 of the determination, I find no substance in the contention. It is clear that the Judge was aware of the correct standard and I find no sufficient basis for saying that it was not applied.
16. The appeal to the Upper Tribunal is allowed. The determination of the First-tier Tribunal is set aside and remade such that the appeal brought on asylum grounds is dismissed but the appeal on human rights grounds is allowed because it would be unlawful having regard to the third test in **Razgar** to remove the Appellant and in any event it would be unlawful as contrary to the Secretary of State's own policy to remove the Appellant prior to his 18th birthday, which is I find 19th February 2015.

Decision

For the avoidance of doubt therefore the appeal is dismissed on asylum grounds but allowed on human rights grounds. It is a matter for the Secretary of State as to what length of time is granted to the Appellant but consistent with my finding would be leave granted until 19th February 2015 at the least.

Signed

Date

Deputy Upper Tribunal Judge Zucker