



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

Appeal Number: AA/08096/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 13 April 2015**

**Determination issued
on 17 April 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

H'CENE BELGROUNE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S F Winter, Advocate, instructed by Maguire, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by a panel of the First-tier Tribunal comprising Designated Judge Murray and Judge Hosie, promulgated on 15 December 2014, which dismissed his appeal against refusal of recognition as a refugee from Algeria.
2. The grounds in summary are as follows:
 - (1) A "section 8" issue about the timing of the claim was wrongly taken as a starting point.

- (2) At paragraph 49 the FtT said “*There is a problem with the summons ... in that it is not an original document ... because of the other credibility issues we believe that the summons may well not be genuine.*” This reaches a conclusion before surveying all the evidence - *Mibanga* [2005] INLR 377 - and the fact that the document is a copy does not compel the conclusion that it is unreliable - *(O) (Turkey)* [2003] UKIAT 00006.
 - (3) The appellant was not given the opportunity to explain perceived implausibilities - his twin coming to Glasgow to look for him; his brother waiting 2 months to tell him that he is also homosexual; and how his brother obtained a copy of the summons (paragraphs 45 and 49).
 - (4) The adverse finding about the appellant’s brother waiting 2 months to tell him that he was also homosexual failed to consider the reticence brought about by the cultural context and taboo against homosexuality in Algeria.
 - (5) The panel founded on an inconsistency over whether photographs were taken from a corridor or from inside a bedroom, there being in truth no such inconsistency in the evidence.
 - (6) There was error in founding on failure to claim asylum in France, in light of authority that statements should not be found to lack credibility because an appellant does not rely on his declared sexual orientation on the first occasion of setting out grounds for fear of persecution.
3. These grounds are clearly of varying strength. It is doubtful whether some of them reveal any error. Judges have to deal with matters in some order. Ground 6 turns an apparently valid point about failure to claim asylum at the first reasonable opportunity into a separate issue about reticence in declaring sexual orientation.
 4. However, the respondent conceded that the grounds together do disclose material error in the determination, in particular in the way in which conclusions were reached surrounding the summons. It was not accepted that the appellant’s account is credible, even to the lower standard, but it was acknowledged that the panel’s assessment could not stand and a fresh hearing was required.
 5. In those circumstances, the determination of the First-tier Tribunal is **set aside** in its entirety. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The members of the First-tier Tribunal chosen to reconsider the case are not to include Judges Murray and Hosie.



Upper Tribunal Judge Macleman
15 April 2015

