



IAC-FH-NL-V1

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

Appeal Number: AA/10648/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 September 2015**

**Decision & Reasons Promulgated
On 18 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**SB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Pipe of Counsel

For the Respondent: Mr. C. Avery, Home Office Presenting Officer

DECISION AND REASONS

1. Given the age of the Appellant, I make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Disclosure or publication of documents or information likely to lead members of the public to identify the Appellant is prohibited.
2. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Steer dated 17 March 2015 who dismissed his appeal on asylum grounds, humanitarian protection grounds, and under Article 8 ECHR. Permission was granted on the following ground: "As the Appellant was 15

when he came to the UK in 2011 and he was granted leave to remain until 3rd March 2013 when he attained the age of 17.5 years, and as the issue was raised in his Grounds of Appeal and the Appellant was not represented at the hearing, it is arguable that the Judge's failure to consider the Appellant's case on the grounds of private life outside of the Immigration Rules amounts to an error of law."

3. Paragraph [37] of the decision states:

"In relation to private life, I find that the Appellant does not satisfy the requirements of paragraph 276BE of Appendix FM. He has social and cultural ties with Morocco. He has spent all but the last 3-4 years in Morocco. He speaks Arabic. He had made friends in Morocco. He supported himself prior to coming to the UK. He was educated in Morocco and has gained qualifications whilst living in the UK. I have found that the Appellant remains in contact with his mother, as he failed to provide any documentary evidence that he had failed in his attempts to trace her. He has also other relatives in Morocco with whom he could establish ties and, on the country evidence, he is able to receive support from organizations in Morocco."

4. Paragraph [37] contains the full extent of the judge's consideration of the Appellant's right to a private life under Article 8. The judge has referred to paragraph 276BE, being the paragraph under which leave to remain is granted, rather than paragraph 276ADE which sets out the requirements to be met in order to be granted leave under paragraph 276BE. The judge has not set out the requirements of paragraph 276ADE. It appears, although it is not clear, that the judge has not applied the correct version of paragraph 276ADE(vi), there being no reference to the "very significant obstacles" to the Appellant's integration into Morocco, but rather a reference to "ties" in Morocco. It was submitted by the Appellant's representative that this failure to address the issue of obstacles was particularly relevant given the Respondent's acceptance of the fact that the Appellant had suffered domestic abuse, had been expelled from the family home, and had been living on the streets in Morocco.
5. Paragraph [37] does not contain any reference to the Appellant's age, or his circumstances in Morocco, including the domestic violence and expulsion from the family home. I found that paragraph [37] did not contain a full assessment and analysis of the Appellant's Article 8 rights such that it could be said that the Appellant's right to a private life had been fully considered under the immigration rules.
6. Article 8 had been raised in the grounds of appeal before the First-tier Tribunal (see IAF1-1, D5).
7. The Appellant was not represented at the hearing in the First-tier Tribunal. He was only aged 19 at the time. Paragraph [22] of the decision states:

"The Appellant had not asked any of his friends in the UK to attend the appeal hearing. He had no prior experience of attending an appeal hearing and had not known that he should ask friends to attend."

It is clear from this paragraph that the Appellant was not aware of the need to provide evidence of his private life for the appeal hearing.

8. The Appellant had been an unrepresented 19 year old whose grounds of appeal before the First-tier Tribunal had raised Article 8. Given that there was only a brief consideration of the Appellant's right to a private life under Article 8 which was undertaken without reference to the correct immigration rule, without analysis of the requirements of the rule, and without a full assessment of the Appellant's circumstances, I found that the failure to consider Article 8 outside the immigration rules was an error of law capable of affecting the outcome of the decision.
9. The Appellant's representative submitted that further evidence, together with a skeleton argument, had been submitted to this Tribunal on 19 May 2015 and 8 June 2015 but there was no copy on file. The Respondent had received a copy. It was not submitted by the Appellant's representative that this was relevant to the issue of the error of law, although it went to the question of materiality. This evidence consisted of letters from friends, and correspondence from the Red Cross, both matters which were raised at the First-tier Tribunal. It was accepted that this evidence had not been put before the First-tier Tribunal. I directed that a full bundle of evidence be served on the Respondent 14 days before the next hearing.
10. The issues of asylum and humanitarian protection were not before this Tribunal, and the decision was not challenged in respect of these issues.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law and is set aside insofar as it relates to consideration of the Appellant's private life under Article 8. The appeal is remitted to the First-tier Tribunal for the decision on the Appellant's right to a private life under Article 8 to be re-made afresh.

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.

Signed

Date 17 September 2015

Deputy Upper Tribunal Judge Chamberlain