



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

Appeal Number: PA/00797/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 26th September 2017**

**Decision & Reasons Promulgated
On 02nd October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**[M S]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Megha, Solicitor

For the Respondent: Mr P Nath, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Adio dismissing his appeal on the basis of his application for asylum, or humanitarian protection or protection of his human rights.
2. The Appellant was granted permission to appeal by First-tier Tribunal Judge Osborne. The grounds upon which permission was granted may be summarised as follows:

“In an otherwise careful and focused decision and reasons it is nonetheless at least arguable that the judge has failed to adequately

consider the Appellant's appeal under Article 8 ECHR outside the Immigration Rules. It is at least arguable that the judge failed to conduct an adequate proportionality assessment. This arguable error of law having been identified, all the issues raised in the grounds are arguable."

3. I was provided with a Rule 24 reply from the Respondent before the hearing commenced, which the Appellant's representative also had a chance to read.

Error of Law

4. At the close of the hearing I indicated that I would reserve my decision, which I shall now give. I do find that there was an error of law in the determination such that it should be set aside. My reasons for so finding are as follows.
5. In relation to the first complaint, that the judge failed to consider the press cards and letters of reference adequately, which gave support to the contention that the Appellant was a journalist in Nepal, looking at the determination in its relevant part from paragraphs 18 to 25, it is clear that the judge has noted the evidence of press articles which were present in the Appellant's bundle before the First-tier Tribunal at pages 99 to 111 which were not given weight by the First-tier Judge, largely because the original Nepalese articles were not produced in the bundle alongside the certified translations and thus were not in accordance with the Practice Directions for producing evidence in a foreign language.
6. However, aside from that the judge's determination does not reveal that the press identification of the Appellant from pages 65 to 68 nor the character references for the Appellant from pages 85 to 99 were taken into consideration by the judge before reaching his conclusion that the Appellant was not a journalist. As such I do find that there was an error of law given that it is feasible that these documents could have given rise to a different finding by the First-tier Tribunal in relation to whether the Appellant was, or was not, a journalist. I put it no higher than that.
7. I do pause to note that I enquired with the Appellant's solicitor whether any investigations had been made to corroborate the press identifications that were present in the Appellant's bundle, such as with the issuing bodies or whether there was any evidence from the various authors or the referees at pages 85 to 99 which consisted of various journalistic bodies confirming the Appellant as a journalist (although none of those references commented on his asylum claim at all), however, I was told that such evidence had not been sought or acquired. As shall become clear, the appeal is to be ultimately remitted to the First-tier Tribunal, consequently, if such evidence does arise it of course should be taken into consideration alongside the other documentation that the Tribunal has yet to consider, but I do not understand for my part why such investigations have not already been made.

8. In relation to the second issue raised in the grounds, namely that the judge failed to note the Appellant's answer at question 3 of the Asylum Interview Record that he was arrested both in 2004 and 2009, I do not see any force in this argument which would give rise to an error given that the judge noted subsequent answers to questions at paragraph 21 of his determination, namely question 37, which do give rise to a conflict between questions 3 and 37 which requires a resolution, at a future date I imagine.
9. In relation to the objective evidence in the form of an article concerning the situation of the Nepalese press, there is not great force in this argument, however, it does add to the cumulative effect of the first complaint raised regarding the press documentation if it is established on further hearing that the Appellant is in fact a journalist when taking all of the evidence into consideration.
10. In relation to the fourth issue raised, namely the consideration of paragraph 276ADE and the lack of consideration of very significant obstacles, whilst I do note that the judge has considered some of those factors in part at paragraph 25 I was told that there was further evidence that the judge should have considered, namely the Appellant's lawful leave to remain from his entry in 2009 until 25 August 2015 for some seven years, and that his studying for a masters degree in the past and that his application for asylum was made shortly after his application for further leave to remain as a student was refused. These are indeed omissions which the First-tier Tribunal should have considered whilst considering paragraph 276ADE and again add somewhat modestly to the cumulative materiality of error in the determination.
11. The Appellant's representative mentioned that the Appellant's wife was expecting a child and was pregnant. However, I indicated that that was a matter that was not before me as I was only hearing the error of law application. Again, this is a matter which can be the subject of further evidence when the appeal is remitted.
12. Finally, in relation to the fifth complaint, the Appellant complained that the five stage approach and proportionality assessment adumbrated in *Razgar* had not been applied by the First-tier Tribunal. In my view that is a complaint that is correct in its observation. However, it does not appear that there would have been much outside of the Immigration Rules on this particular occasion which the First-tier Tribunal should have considered. I did raise with the parties my view that the First-tier Tribunal erred in noting that there were no compelling circumstances to consider Article 8 outside the Immigration Rules and it was agreed that this was an erroneous statement in light of the recent Supreme Court authorities handed down in February of this year, however, nothing turned on this error given that there was not much more that should have been considered outside of the Rules other than that explored above at paragraph 10.

13. Thus, taking all of these matters as a whole, in my view the first, third and fourth complaints do raise sufficient merit such that a material error of law is identifiable in the determination with the result that it should be set aside. I should indicate I have reached this decision after some pause, however ultimately I have decided to set aside the decision of the First-tier Tribunal.

Notice of Decision

14. The appeal to the Upper Tribunal is allowed.
15. The decision of the First-tier Tribunal is hereby set aside and the matter is remitted to be heard by the First-tier Tribunal by a differently constituted bench.
16. No anonymity direction was requested and I do not see that one should be made at present.

Signed

Date

Deputy Upper Tribunal Judge Saini