



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

Appeal Number: HU/10316/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
9th September 2020**

**Decision & Reasons Promulgated
On 14th September 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

ABDURRAHIM AHMED MUSA ZINTANI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. FtT Judge Manyarara dismissed Mr Zintani's appeal against the refusal of his human rights claim for reasons set out in a decision promulgated on 18th September 2019. Permission to appeal was granted by FtT judge Appleyard on 28th February 2020. I made directions for the further conduct of the appeal which were sent on 28th April 2020 and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.
2. Both parties complied with the directions; the appellant stated that he had nothing to add to the grounds of appeal. He did not state he objected to the issue of error of law being determined on the papers. The respondent did not

state whether she objected to the issue of an error of law being determined on the papers.

3. I am satisfied that the grounds of appeal relied upon by the appellant and the respondent's submissions together with the papers before me¹ are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

Background

4. The appellant, a Libyan national date of birth 11 July 1996, first entered the UK on 2nd August 2003 (age 7) as a dependant on his parent's visa, valid until 24th August 2003. On 26th August 2003 (2 days after his visa expired) he sought an extension of leave to remain as a dependant, such application subsequently varied to another application for leave to remain on 9th September 2003; he was granted leave to remain on 2nd October 2003 until 24th February 2004. The appellant was an overstayer between 25th February 2003 and 2nd October 2003, although he was only a child.
5. On 20th February 2004 the appellant applied for leave to remain as a dependant and was granted leave until 31st December 2007. On 21st December 2007 he applied for further leave to remain as a dependant and was granted leave to remain until 30 November 2008. Further periods of leave were granted, following 'in-time' applications until 28th June 2011. He left the UK in July 2010 and re-entered the UK on 15 May 2014 as an unaccompanied minor with a visa valid until 28 October 2018. He left in September 2014 and applied for entry clearance as a Tier 4 student on 24th September 2014. That application was refused.
6. On 12th January 2015, the appellant re-entered the UK as a Tier 4 student valid until 26th October 2015. He was granted further leave to remain, following an 'in time' application until 30th September 2018.
7. On 29th September 2018, the appellant applied, through solicitors, for indefinite leave to remain. The solicitors acknowledged the appellant could not meet the requirements of the Immigration Rules with regard to 'continuous residence' but asked that discretion be exercised, given the circumstances in which he had been absent from the UK, the compassionate circumstances during his childhood and that he returned to the UK as soon as practically possible for him; he, it was submitted he had spent more than half his life in the UK and was, at the date of application 22 years old.
8. That application, identified as a human rights claim, was refused for reasons set out in a letter dated 30th May 2019 and it was his appeal against that decision that led to the FtT decision.

¹ (a) the respondent's bundle; (b) the bundle filed on behalf of the appellant and received by the Tribunal on 28 August 2019 and the skeleton argument; (c) the decision of FtT judge Manyarara; (d) The application for permission to appeal with grounds; and (e) the grant of permission to appeal.

FtT decision

9. The FtT judge correctly set out the framework within which she was required to reach her decision. She summarised the appellant's case and that of the respondent. She refers to the appellant having made an application for ILR on the basis of 10 years lawful residence, refers to the policy guidance, how documents and expert reports should be assessed and sets out very lengthy extracts of caselaw.
10. The judge concludes that she cannot rely on the documents produced in relation to the claimed kidnapping or his mental health. She concludes the appellant has only been in the UK most recently since 2015 and has spent significant amounts of his life in Libya where he has his parents and that he is not suffering from active health problems that require medical intervention or are likely to impair his ability to meet the needs of day-to-day living. She does not accept that he was kidnapped. She concluded that he would not meet with very significant obstacles to reintegration in Libya. She considered whether there were compelling circumstances such as to render his removal to Libya disproportionate and concluded there were none.

Error of law

11. The appellant relied upon 4 grounds of appeal.

Ground 1

12. The appellant submitted that although the judge had provided 'breathtakingly wide' extracts from caselaw, she had either failed to apply the principles to his case or they were not relevant.
13. It is correct that the judge has provided extensive case extracts and it is unclear why she considered this necessary given the principles to be derived from the cases are well established and do not need to be supported by such extracts. Such reliance on such extracts in the body of the decision makes the decision difficult to follow and over lengthy. Nevertheless the consideration by her of the documentary evidence relied upon by the appellant was a consideration and assessment that was open to her. That there was a mistranslation of a part of a document was a matter that she was entitled to have regard to. That the medical report had not been prepared in accordance with established principles was a matter upon which she was entitled to place weight.
14. Her consideration of the evidence was conducted holistically. She did not reach a decision on the documents in the absence of consideration of the evidence as a whole, including the appellant's oral evidence and the lack of other evidence that could have been available to him and she was entitled to reach the conclusions she reached.

15. The judge has not erred in law in her application of the necessary jurisprudential principles.

Ground 2

16. The appellant submits the judge made a mistake of fact on the evidence he relied upon in support of his claim that he had been kidnapped. He referred to her reference to him having provided "only one document" being incorrect because he had provided a medical report, background material, his witness statement and that an error of translation of a small part of the document was not relevant because it was the main content that was relevant.
17. The judge considered and refers to the evidence before her. She notes there is no other independent documentary evidence that refers specifically to the appellant having been kidnapped. She is entitled to consider the reliability of a document that has a mistranslation, even though it is not the whole document. She is entitled to take account of the fact that the appellant was sent to the UK as an unaccompanied child.
18. On the basis of the evidence before her, it was open to the judge to reach the decision she did that the appellant had not been kidnapped as he claimed.

Ground 3

19. The appellant submits the judge erred in her conclusions regarding insurmountable obstacles to his return to Libya in the context of his personal circumstances, education and the situation in Libya. He refers particularly to the fact that he had not been a financial burden to the UK, he had been sponsored by the Libyan government, that he still needed to complete his current course, which was not available in Libya, there were no flights to Libya.
20. The judge did not fetter her discretion. She considered all relevant elements of the appellant's private life in reaching her conclusion that there were no insurmountable obstacles to his return to Libya. The decision was a decision that was open to her; this ground of appeal is arguing for a different outcome and does not identify an error of law. The lack of flights as at the date of the decision was not an insurmountable obstacle or significant obstacle to the appellant's reintegration. The lack of flights is a matter that is considered by the SSHD on arranging actual removal; it is not personal to the appellant in the context of the proportionality of the decision to refuse his human rights claim. The lack of reference to this by the judge is not an error of law.

Ground 4

21. The appellant submits that had the judge considered the appeal in the context of an application for further leave to remain -which is what he had sought - as oppose to indefinite leave to remain, the outcome would have been different.

22. The applicant however, through his solicitors sought indefinite leave to remain. There is no error of law by the judge in considering the appeal in that context.

Conclusion

23. The judge considered the whole of the evidence before her in the context of the appeal as it was argued before her. She reached conclusions that were rationally and lawfully open to her on that evidence. There is no error of law by the judge in dismissing the appeal.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal is dismissed.

Jane Coker
Upper Tribunal Judge Coker

Date: 9 September 2020