



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09425/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 5 December 2020

Decision & Reasons Promulgated  
On 27 January 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

K O  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr B Lams, Counsel instructed by TNA Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker. There is invariably a risk in such cases that publicity could create a risk of harm to the Appellant.

2. This is an appeal by a citizen of Algeria against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State refusing him international protection.
3. The determination is fundamentally wrong. The judge has disbelieved the Appellant. It may be that the Appellant ought to be disbelieved but he has been disbelieved for unlawful reasons.
4. The essential problem is that the judge, at the very least, has written the decision as if she has not determined the credibility issue in the round after looking at all the evidence but has determined the credibility issue first and then looked at other strands of evidence to see if that makes her change her mind. If that is what she has done and it is what she says she has done, then it is, with respect about as wrong as it is possible to be.
5. Ms Isherwood for the Secretary of State properly and fairly drew to my attention paragraph 37 of the Decision and Reasons. It begins "I have already made an adverse assessment of the Appellant's credibility". That is a worrying thing to read in the middle of a decision. Of course judges have to start somewhere but there should, at least, be an assurance that the decision was made after considering everything as a whole.
6. It rather looks at paragraph 37 as though that is precisely what the judge did not do. It gets worse.
7. At paragraph 41 the judge deals with evidence of the Appellant having fractured his elbow. The judge says that she did not accept that the fall was caused fleeing from terrorists. Then there is the alarming explanation: "I find this first of all because I have not found the Appellant credible in his account". The judge ought, first of all, to have considered the fact that the Appellant had produced medical evidence supporting his claimed injuries before deciding whether or not to believe the Appellant's explanation.
8. A similar point lurks in paragraph 42 where the judge considers evidence of cigarette burns, an injury allegedly from a gun. The judge rejected the account because the doctor had said it could have been for other possible reasons and then says crucially "when I put this alongside my assessment of his credibility ...". The assessment of credibility should have followed a consideration of the fact that the medical evidence gave some support to his claim to have been injured.
9. Again, in paragraph 43, there is reference to the Appellant having PTSD and there is a criticism of the medical practitioner. The main reason for criticising the medical practitioner is the judge's view that the doctor just accepted the account. I would be very surprised if that is right. It is not the nature of medical practitioners to accept these things uncritically even if not much is said about that in their explanation but the concluding sentence at paragraph 43 repeats the error. The judge said: "I have already found the Appellant's account not credible and I find I can attach no weight to the diagnosis of PTSD". Again I make the point that the finding that the Appellant was not credible, if that was the finding that was going to be made, should have been made after consideration of the diagnosis of PTSD.

10. There is a similar point lurking as well with regard to the CPIN which provides some support for the Appellant's case because, at the material time, the conduct alleged by the Appellant is the kind of conduct that was known to occur. The report ought to have influenced the judge's decision about whether or not to believe the Appellant, but the judge said: "I found the whole account not credible and in general the CPIN does not support the Appellant's account that he would be a target". The criticism that the adverse credibility finding is flawed is not made out as clearly here and in the other examples but it all tends to support Mr Lams' main submission which is that the whole approach to credibility was wrong.
11. Ms Isherwood had time to consider the case and offered no opposition to Mr Lams' argument because he is right.
12. I also agree with Mr Lams that this is such a fundamental error that the case needs to go back to the First-tier Tribunal. This Appellant's case has not been determined properly because inadequate and unlawful reasons have been given for the adverse credibility finding and I give weight to the Appellant's wish to preserve the possibility of further appeals by going back to the First-tier Tribunal.
13. Nothing here is tended to indicate that the Appellant ought to be believed but he is entitled to a proper decision on his evidence with a proper explanation and for the reasons given he has not had one.
14. I set aside the decision of the First-tier Tribunal and I direct that the case be heard again in the First-tier Tribunal.

**Notice of Decision**

15. This appeal allowed. The First-tier Tribunal erred in law and I direct that the appeal be determined again in the First-tier Tribunal.

*Jonathan Perkins*

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

Dated 15 January 2021