



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002063
First-tier Tribunal No:
PA/00326/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 September 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

SJ
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr B Hawkin, counsel instructed by Catherine Solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 31 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant any member of his family, and witnesses are granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, his family or witnesses, likely to lead members of the public to identify the appellant, his family or witnesses.

DECISION AND REASONS

Introduction

1. The appellant appealed against the decision of First-tier Tribunal Judge Davey following a hearing which took place on 15 February 2021.
2. Permission to appeal was granted by First-tier Tribunal Judge Austin on 13 April 2022.

Anonymity

3. No direction has been made previously; however, I consider it necessary to make such a direction because this appeal includes a protection claim.

Background

4. The appellant is a national of Jamaica, now aged 48, who first entered the United Kingdom, during 1996 following a grant of leave to enter as a visitor. He was granted further leave to remain as a student which expired on 28 February 1998. The appellant left the United Kingdom on 16 December 1997. He unsuccessfully applied for entry clearance as a student on 27 April 1999. On 28 May 2000, the appellant attempted to enter the United Kingdom in another identity and absconded from the airport. On 29 July 2003 the appellant was granted entry clearance as a visitor, valid between 29 July 2003 until 29 July 2008 and arrived in the United Kingdom on 10 February 2007. He returned to Jamaica and applied unsuccessfully for entry clearance as a visitor on 9 October 2008. Ultimately, the appellant was granted entry clearance after successfully challenging that decision. The appellant entered the United Kingdom on 15 July 2010 and left on an unknown date. He arrived in the United Kingdom on 29 January 2011 and was arrested on suspicion of theft.
5. The appellant made a human rights application on 31 August 2011. He was also identified as having obtained leave by deception, for which he was later convicted, receiving a suspended sentence of imprisonment on 21 October 2011. On 4 March 2014, the appellant made a further human rights' claim which was refused on 8 July 2014 with no right of appeal. The previous application was treated as void. Following a judicial review challenge, the respondent agreed to reconsider the refusal of the human rights claim. This reconsideration resulted in the refusal of the application on 29 January 2016. The appellant's appeal against that decision was allowed and he was granted leave to remain until 13 December 2019. On 4 January 2019, the appellant was convicted of offences relating to possession with intent of illicit drugs, possession of proceeds of crime and money laundering for which he was sentenced to a total of 54 months' imprisonment, following which a decision was made to deport him on 17 January 2019. The appellant made further representations on protection and human rights grounds which were refused in a decision dated 27 September 2019. This is the decision under appeal.

6. The decision letter stated that the appellant's protection claim had been refused under Section 72 of the Nationality, Immigration and Asylum 2002 because he had been convicted of a particularly serious crime.
7. Further, the Secretary of State did not accept that the appellant's fear of organised criminal gangs (OCGs) in Jamaica was for a Refugee Convention reason. The credibility of the appellant's claim was doubted owing to his delay in seeking asylum. It was also considered that he could avoid issues by relocating to another part of Jamaica and that the appellant could obtain effective protection from the Jamaican authorities. The appellant was also excluded from a grant of Humanitarian Protection owing to the index offence. There were said to be no very compelling circumstances to outweigh the public interest in his deportation.

The decision of the First-tier Tribunal

8. At the hearing before the First-tier Tribunal, an adjournment was unsuccessfully sought to await evidence from Jamaica to support the appellant's case. The appeal proceeded and was dismissed on all bases, with the section 72 certificate being upheld.

The grounds of appeal

9. There were eleven grounds of appeal which, in brief, raised the following concerns.
 - a four-month delay in promulgation of the First-tier Tribunal decision.
 - no consideration of the Police Threats to Life Warning Notices.
 - No consideration of the medical evidence relating to the appellant being shot.
 - No consideration of the witness statement of the appellant's mother.
 - The judge's rejection of social media evidence of risk was difficult to justify.
 - There was no consideration of any background evidence.
 - No findings were made on the section 72 certificate.
 - No consideration of psychiatric evidence.
 - No consideration of probation evidence.
 - No consideration of the appellant's length of residence in the UK.
 - The evidence regarding Article 8 was not properly considered.
10. Permission to appeal was granted with the following comment made on the grounds.

It is noted that the Decision and Reasons is marked as having been prepared on 17th January 2021, but is signed and dated 15th June 2021. The first ground discloses an arguable error of law. There was a considerable delay in the promulgation of the decision (four months) where there were issues of credibility in question and adverse findings were made.

11. The appeal was opposed in the respondent's Rule 24 response, dated 19 May 2022.

12. This matter was originally listed for a hearing on 19 January 2023. Ultimately, the hearing was adjourned for reasons set out in the adjournment notice issued on 15 February 2023. Following that adjournment, the appellant's solicitors wrote to the Upper Tribunal on more than one occasion to explain the non-attendance of a representative.

The error of law hearing

13. Ms Lecointe had not seen the Rule 24 response and I therefore enabled her to peruse a copy I had printed. Thereafter, I heard succinct submissions from both representatives. Mr Hawkin relied on a skeleton argument dated 22 March 2023 which highlighted the material to which the judge made no reference in his decision. For her part, Ms Lecointe did not disagree that there was a failure to refer to key pieces of evidence. Her overarching submission was that as the judge said that he considered all the evidence and he found the appellant's claim to lack credibility, any errors were immaterial.
14. At the end of the hearing, I informed the representatives that I was satisfied that grounds 2-8, in particular, were made out and that the decision of the judge contained such material errors of law that it was rendered unsafe. I set aside the decision, with no preserved findings. I set out my reasons below.

Decision on error of law

15. I found there to be no error in relation to the delay between the hearing and the promulgation of the decision. The judge stated on the face of the decision that it was prepared two days after the hearing, and there is no reason not to accept that.
16. There is a common theme running through most of the remaining grounds, particularly 2,3,4,6,8 and 9, that of a failure to assess the evidence submitted by the appellant in support of his claims. I will therefore address these grounds together. There was agreement between the parties before me that the judge did not refer to any of the following items, two Metropolitan Police 'Threats To Life Warning Notices' naming the appellant, medical evidence supporting the appellant's claim that he was shot and seriously injured in Jamaica, evidence indicating that there was an attempt to kidnap the appellant's mother and younger brother, any country material, a psychiatric report or the recent report of a Probation Officer.
17. It is of course well established that a judge does not necessarily have to refer to every piece of evidence considered, but as the Court of Appeal made clear in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, a judge is required to deal with apparently compelling evidence, where it exists, which is contrary to the conclusion he or she proposes to reach and explain why he does not accept it.

18. I have taken into consideration Ms Lecointe's submission that the judge said he considered all the evidence, and it would have made no difference had these items been referred to but find this argument to be without substance. The appellant is entitled to know why the judge rejected his evidence; in the event it was considered at all. It is trite law that a finding of credibility should only be arrived at after an assessment of all the evidence. The evidence referred to above went to the core of the appellant's claim that his life was at risk in Jamaica from an OCG, his ability to internally relocate in Jamaica as well as to obstacles to his reintegration and it was deserving of careful consideration.
19. In addition, the report of the Probation Officer was relevant to the judge's assessment of the section 72 certificate. The judge's treatment of the said certificate is rightly criticised in ground 7 owing to a lack of findings. Elsewhere in the decision, the judge referred to the OASys report and relied on aspects of this report to the appellant's detriment. Yet there was no reference to, let alone consideration, of the Probation Officer's more recent evidence.
20. In conclusion, I find that the appellant's evidence was not considered by the judge and the resulting decision was unbalanced and unfair. It follows that the decision was vitiated by material errors of law.
21. I canvassed the views of the parties as to the venue of any remaking. Mr Hawkin was of the view that the matter ought to be remitted if there were no preserved findings of fact. Ms Lecointe did not disagree. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of a fair consideration of his protection and human rights appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House by any judge except First-tier Tribunal Judge Davey

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 September 2023