



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006216

First-tier Tribunal No: PA/56063/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25 August 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MAJ
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Mohzam for CB Solicitors
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 8 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Dieu, (the "Judge"), promulgated on 7 October 2022, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum. The Appellant is a national of Chad.
2. Permission to appeal was granted by First-tier Tribunal Judge Dempster on 9 December 2022 as follows:

"There are a number of grounds. The third ground asserts that the judge failed to have regard to a positive conclusive grounds decision when assessing credibility which was critical to this case. The judge did not find the appellant credible to the lower standard without factoring in the decision of the Competent Authority which applies the higher standard. This ground has merit and is an arguable error of law.

For the avoidance of doubt, this grant is not limited to the ground above. The other grounds may be advanced at the oral hearing."

The hearing

3. The Appellant attended the hearing. I heard oral submissions from both representatives. I reserved my decision.

Error of law

Ground 1

4. This asserts that the Judge failed to put material matters to the Appellant on which he made adverse findings, in particular at [20] where he did not put an alleged conflict in the evidence to the Appellant. At [20] the Judge states:

"In oral evidence, the Appellant said that he feared the government for two reasons - first because he does not have ID docs and second because they suspect him of being part of Boko Haram. But it was also part of the Appellant's case that they had wanted to recruit him to fight in Yemen. I find that those reasons conflict. It makes no sense that they would suspect the Appellant of being part of a terrorist group but yet also to trust in him, and to presumably arm him, to fight. This is particularly so if as the Appellant asserts they were seeking to do him harm because he had no ID."

5. It was submitted by Mr. Mohzam that it was not put to the Appellant that there was a conflict in his evidence, and that on the one hand he had been accused of fighting for Boko Haram but on the other the government wanted him to fight for them. Mr. Lawson submitted that the Judge was not an advocate, and it was not up to him to correct the failure of the Appellant's representative to put matters to the Appellant.
6. I find that the Judge was entitled to point out that he considered there to be a discrepancy in the Appellant's claim. However, for reasons set out below, I find that the Judge failed properly to consider the core of the Appellant's claim.

Ground 2

7. It is submitted in Ground 2 that the Judge gave weight to immaterial matters, with reference to the findings from [20] to [28]. It was further submitted that in coming to his conclusions he had “failed to consider that the Appellant was a minor at the time he left Chad and that his evidence has to be considered within that context.” Mr. Mohzam submitted that in giving weight to immaterial matters the Judge had failed to consider the core issues of the Appellant’s claim.
8. I find that [20] to [28] do not contain any findings on the core of the Appellant’s account, rather the Judge has focused on apparent inconsistencies which do not form part of the core of the Appellant’s claim. I further find that, given that there is no consideration of the core of the Appellant’s account, there is no consideration of the age of the Appellant when these events occurred.
9. At [21] the Judge considered in detail the Appellant’s date of birth. He states:

“In his screening interview (SCR) his date of birth is recorded as the 1st May 1997. The Appellant says that that is incorrect and that his real date of birth is the 5th March 2000. He told me in evidence that it was the interviewer whom had suggested to him the 1997 date. The Appellant said that the interviewer did not believe him when he gave the 2000 date and so made up the 1997 date. This correction was first identified by way of a solicitors letter of the 2nd December 2019. Nowhere within that letter does it state that it was the interviewer whom had made up this date. It is an incredibly serious allegation and one which if known to the solicitors would have been mentioned. Furthermore, at his witness statement para. 9 the Appellant says that he was not advised about what he had said in his screening interview until after the asylum interview. His screening took place on the 31st March 2019, the corrections are dated the 2nd December 2019, and the asylum interview happened on the 4th December 2019. In oral evidence he repeated that he had not seen the screening interview or made revisions to it until after the substantive asylum interview. His own evidence is inconsistent to his own documentary evidence therefore. In addition, I note that his date of birth recorded on the face of the substantive interview is the 5th March 2000 which is consistent with the correction letter. I am satisfied that the Respondent did have the correction letter before the substantive interview. That letter states ‘we have now had the opportunity to go through our client’s screening interview record and our client has instructed us of errors within the answers recorded...’. I note also from the footer that Burton & Burton Solicitors are regulated by the SRA and registered number is given. I find that it is so serious an allegation that either the Appellant or those who now represent him would have identified it from the outset, rather than it being brought up only during cross examination, and a complaint made to the SRA. In the absence of a complaint and an opportunity for Burton & Burton Solicitors to comment I treat with caution this aspect of the Appellant’s claim (BT (Former solicitors’ alleged misconduct) Nepal [2004] UKIAT 00311).”
10. It was submitted that the Respondent had not disputed the Appellant’s date of birth, and it was therefore irrelevant as to how the original mistake in the screening interview had arisen. I find that the Judge has considered in detail the discrepancy between the screening interview and the asylum interview, but the Respondent had accepted the Appellant’s date of birth and had not taken issue with it. She had accepted his explanation.
11. Mr. Lawson submitted that it was clear from this paragraph that the Judge was aware of the Appellant’s date of birth, and his age when leaving Chad, and had taken it into account. I find that this is not made out. This paragraph is concerned entirely with the discrepancy between the different dates of birth. At no point does the Judge make any finding as to the age that the Appellant would have been when he left Chad. There is no recognition within this paragraph that

the events in Chad happened when the Appellant was a minor. I find that it cannot be said that this paragraph indicates that the Judge bore in mind that the Appellant was a minor when considering his account of events in Chad.

12. At [22] the Judge states:

“The Appellant had mentioned religion in his SCR but says not. Correction letter makes no amendment to this. He does not seek to engage grounds of religion today.”

13. The Judge finds this to be an inconsistency. It was submitted in the grounds that this went to the Appellant’s credibility as he was not seeking to embellish his case by raising other grounds. The Appellant had addressed this in his witness statement, but the Judge has not referred to his explanation. I find that this alleged inconsistency has nothing to do with the core of the Appellant’s claim. The Judge has failed to explain why this damages the credibility of the Appellant’s account of events in Chad.

14. At [23] the Judge states that there is a further inconsistency as the Appellant had not identified himself as a herder at his asylum interview. It was submitted that the Appellant had provided an explanation for this at the hearing. Further it was submitted that the Judge had failed to explain what difference this would have made to the outcome of the appeal. The Judge states at [23]:

“The Appellant was asked in his SCR if he had an occupation and he said ‘unemployed’. It was put to him today why he did not say ‘herder’ since he was herding sheep before leaving Chad. He said that he only did it for a year and was not a lifetime job. He did however accept that he was employed and paid for this. I find that there is no good explanation as to why the Appellant did not identify that he was a herder at this point.”

15. While there is an inconsistency between what was said at the screening interview and what was later claimed, the Judge has not explained why this goes to the core of the Appellant’s claim and why it is such a significant inconsistency. The same is the case for the Judge’s findings on the Appellant’s extended family.

16. I find that Ground 2 is made out. The Judge has given weight to immaterial matters and in so doing has not considered the core of the Appellant’s claim. He has failed to explain why these inconsistencies affect the core of the Appellant’s account. He has failed to factor in the fact that the Appellant was a minor when the events in Chad took place. I find that this is a material error of law.

Ground 3

17. This asserts that when assessing the Appellant’s credibility the Judge failed to consider that the NRM had made a Positive Conclusive Grounds Decision that the Appellant was a victim of modern slavery. It was submitted that this was relevant as it was an “assessment of credibility using a higher standard”.

18. Mr. Lawson submitted that the Appellant had been found credible in relation to the treatment he received in Libya, not to the risk on return to Chad. He accepted that this should be part of the credibility assessment in the round, but submitted that the Judge had found major credibility points going against the Appellant, and so therefore the NRM decision should not outweigh the findings in relation to the Appellant’s account of events in Chad.

19. The problem with this submission is that the Judge has not made findings in relation to the Appellant's account of events in Chad. Mr. Lawson submitted that the Judge had made lengthy findings as to inconsistencies in the Appellant's account. However, I have found above that the Judge has not made findings on the core of the Appellant's account, has not factored in the age of the Appellant when the events in Chad took place, and has attached weight to immaterial matters which do not go to the core of the Appellant's case.
20. The Appellant had been found to be a victim of trafficking on account of treatment he received in Libya after he had left Chad. Even though this account does not go to the core of the Appellant's account of events in Chad, the Appellant had been accepted to be a credible witness to the higher standard of the balance of probabilities. The Judge has nowhere taken this into account. I find that the Judge made a material error of law in failing to consider the NRM Positive Conclusive Grounds Decision when making an assessment of the Appellant's credibility.
21. I find that the decision involves the making of material errors of law. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”
22. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the decision involves the making of material errors of law which go to the credibility of the Appellant's account and the core of his claim. These findings therefore cannot stand. Given the extent of fact finding necessary, I consider that it is appropriate to remit the appeal to the First-tier Tribunal to be reheard.

Notice of Decision

23. The decision of the First-tier Tribunal involves the making of material errors of law.
24. I set the decision aside. No findings are preserved.
25. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
26. The appeal is not to be listed before Judge Dieu.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 August
2023