



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004839

First-tier Tribunal No: PA/55938/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of May 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

FAMY
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Joseph of Counsel, instructed by NLS Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard remotely at Field House on 3 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Dainty) dated 13.11.23, the appellant has been granted permission to appeal to the Upper Tribunal against

the decision of the First-tier Tribunal (Judge Lester) promulgated 22.9.23 dismissing her appeal against the respondent's decision of 5.12.22 to refuse her claim for international protection made on 15.7.22.

2. Following the helpful submissions of the legal representatives, I reserved my decision to be provided in writing, which I now do.
3. The appellant claims to be a citizen of Sudan but the respondent considered that she is from Chad. It followed that the burden of proving this issue was on the respondent on the balance of probabilities. The appellant only had to show that she is from Sudan to the lower standard of proof.
4. In summary, the grounds assert that the First-tier Tribunal failed to make necessary findings under the Nationality and Borders Act 2022 (NABA), failed to assess the appellant's evidence and analysed the documentation incorrectly, made a material error of law in failing to appreciate that there was a document from the University of Khartoum, gave too little weight to letters from the Sudanese community, Womankind, and the Waging Peace Report, failed to make findings on the birth certificate, failed to provide adequate reasoning, failed to make a proper s8 credibility assessment, failed to make any assessment as to whether the objective evidence supported the appellant's case, and provided inadequate reasoning on the burden of proof and the inconsistencies noted.
5. In granting permission, Judge Dainty considered it arguable that the decision fails to provide adequate reasons, failed to make express findings as to the weight accorded to the birth certificate and other documentation in the overall assessment. Judge Dainty also considered it arguable that the treatment of s8 was too short to be understood and arguably misinterpreted the credibility assessment, and that if there was a certificate from the University of Khartoum it was overlooked, amounting to an error of law.
6. In considering the decision of the First-tier Tribunal, I bear in mind that in Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed, set out the following guidance:

“(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

7. Unarguably, the judge was not required to set out or precis all of the evidence. As explained in Budhatkoki [2014] UKUT 00041 (IAC), *"it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."* The decision and reasons document is but a summary of the findings and reasons and not the actual process of making the findings. At [9] of the decision, the judge made clear that all evidence and the submissions had been taken into account in the round before any findings of fact were made. In relation to the documentary evidence, at [33] the judge stated, *"I have not considered the documentation provided in support of the appeal in a vacuum but in the context of my consideration of the evidence as a whole."* The judge must be taken at their word, unless the contrary is shown.
8. In relation to the first ground, it is not arguable that the judge failed to make necessary findings under NABA, the principles of which are set out at [26] and [27] of the decision.
9. Mr Walker accepted that at [35] of the decision, the judge apparently overlooked the letter from the University at 164 of the appellant's bundle, so that there was an error of fact which undermined the credibility assessment.
10. However, the principal point made in the grounds and the primary basis upon which permission was granted is that necessary reasoning is either absent or far too brief and inadequate to enable the appellant to understand why the findings in question were made.
11. I accept that some of the necessary reasoning can be gleaned the decision. For example, at [31] the judge finds that the appellant was party to misleading information to obtain a visa and that this behaviour comes within s8, but the complaint made is that the judge failed to state why that conclusion is made. However, [31] cannot be read in isolation. At [34] the judge found that Chad passport with her correct name and details was provided in a visa application. The appellant unsuccessfully applied for a visa using this Chad passport but arrived in the UK on a Sudanese passport. At [12] and [17] it is noted that the appellant admitted using false information, including a Chad passport, to obtain a visa to enter the UK, blaming her uncle for arranging the "papers". However, she claimed to have arrived in the UK on her genuine Sudanese passport. Those are sufficient reasons for the finding that s8 applies.
12. Nevertheless, I find that the complaint of insufficient reasoning is made out in relation to several other aspects of the decision. For example, at [41] the judge notes the appellant's claim that the country evidence is consistent with her narrative but fails to make a finding either way or to support a finding by reasoning. Similarly, Mr Joseph's first point in submissions was that the judge

made no findings as to whether the Chad passport was genuine, which is surprising given that it held her correct name and date of birth.

13. More significantly, at [43] the judge finds that the appellant has not established to the lower standard that she is from Sudan and that on the balance of probabilities the respondent has established that she is from Chad. However, the very brief reasoning provided for reaching those key conclusions is inadequate. At [44] the judge refers only to conflicting answers in her factual account and deficiencies in the evidence to find the appellant not credible. Whilst it is clear that the judge has considered the evidence on both sides, the reasoning is insufficient to support the findings. There is a missing ingredient - the reasoning why those findings were made. In essence, the decision is an analysis of the evidence, some of which discloses errors of fact, such as the letter from the university, followed by statements of findings but unsupported by adequate reasoning. On behalf of the respondent, Mr Walker did not resist the submission of inadequate reasoning and, therefore, did not resist the appeal.
14. In the circumstances, for the reasons set out above, I am satisfied that the decision of the First-tier Tribunal is flawed, principally for want of adequate reasoning, and cannot stand but must be set aside to be remade *de novo*.
15. Both representatives submitted that this matter should be remitted to the First-tier Tribunal and I am satisfied that to do so is consistent with paragraph 7.2 of the Practice Statement.

Notice of Decision

The appellant's appeal to the Upper Tribunal is allowed.

I set aside the decision of the First-tier Tribunal with no findings preserved.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal to be made *de novo*.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 May 2024