



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000316
First-tier Tribunal No:
PA/54198/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 June 2024

Before

**UPPER TRIBUNAL JUDGE MACLEMAN &
DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

Between

D
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Murphy of Katani & Co, solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh, on 6 June 2024

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

Introduction

1. We make an anonymity direction because this appeal arises from the appellant's protection claim.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Sorrell, promulgated on 17/12/2023, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 14/02/1982 and is a citizen of China. He was granted leave to enter the UK as a visitor and arrived in the UK on 8 March 2016. On 27 January 2021 he claimed asylum. On 4 May 2021 a referral was made to the National Referral Mechanism and on 9 May 2021 a negative conclusive grounds decision was reached. On 4 August 2022 the respondent refused his claim for international protection.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Sorrell ("the Judge") dismissed the appeal on all grounds.

5. The Appellant lodged grounds of appeal, and, on 12/02/2024, Upper Tribunal Judge Norton-Taylor gave permission to appeal stating

Ground 1 is arguable. The points set out in the grounds have arguable merit in relation to the judge's expectation that medical evidence could reasonably have been expected "in the claimed circumstances".

2. Ground 2 is also arguable, although I bear in mind the danger of "island-hopping" and the need to read the judge's decision in the round. However, it might be that in combination with first ground (if it is made out), some or all of the alleged errors within ground 2 might ultimately tip the balance in the appellant's favour.

The Hearing

6. For the appellant, Mr Murphy moved the grounds of appeal. He took us to [15] of the decision, where the Judge accepts that the appellant was detained, but not that he was beaten in detention. He said the Judge's findings are unsafe because they proceed on assumptions that (a) the appellant had visible injuries, (b) that he had spoken to his family, (c) that a record of detention existed, and, if it did, (d) that the appellant could obtain a copy of that record. He said that the Judge was unnecessarily looking for corroboration which was unlikely to exist.

8. Mr Murphy took us to [18] to [21] of the decision to move the second ground of appeal. He told us that, there, the Judge's findings were difficult to reconcile with the evidence. He compared answers given by the appellant in the asylum interview with the appellant's witness statement and said that the Judge was wrong to find inconsistency. The Judge relies on a finding of implausibility but does not explain why. He said that that the Judge's findings are inadequately reasoned.

9. Mr Murphy asked us to set the decision aside and remit the appeal to the First-tier Tribunal to be determined of new.

10. Mr Mullen, for the respondent, tried hard, initially, to resist the appeal. He said that [18] of the decision does not contain inconsistency, but when he moved to [20] of the decision, he accepted that it is difficult to see what the Judge was trying to say. He described [20] of the decision as “*opaque*”, and, after a moment’s hesitation, conceded that the decision is tainted by material errors of law and a new hearing in the First-tier Tribunal is necessary.

Analysis

11. At [15] of the decision the Judge accepts that the appellant was arrested in 2015 and detained for two months, but does not accept the appellant’s account of assault in detention. The only reason given for refusing to accept the appellant’s account is the absence of medical evidence of injuries sustained. The appellant says the assault happened in 2015. The appellant says he was left with a scar. The Judge does not explain why medical evidence is necessary, nor why that medical evidence “*could reasonably be expected*”. The Judge does not properly explain why she rejects part of the appellant’s account.

12. At [18] of the decision the Judge rejects the appellant’s account of release on bail conditions, because she says there is an inconsistency in the evidence. We looked at the record of asylum interview referred to by the Judge but could not find the inconsistency the Judge sees. In the final sentence of [18] the Judge finds a passage of the appellant’s oral evidence implausible, but does not explain why.

13. [20] of the decision is difficult to read and understand. Mr Mullen’s description of [20] (“*opaque*”) is apt. It is difficult to see how the Judge reached her conclusions.

14. The Judge found that the appellant was not a credible witness. The Judge thought the appellant was not credible because the Judge thought his account was implausible. The error of law is that the Judge did not set out adequate evidence-based reasons for finding that aspects of the appellant’s case were implausible, nor did the Judge set out adequate evidence-based reasons for finding that the damage done to the appellant’s credibility was fatal to the appeal.

15. Parties agents are correct to agree that the decision is tainted by material errors of law.

16. Because the decision is tainted by material errors of law we set it aside. It is a matter of agreement that a fresh hearing is necessary before the First-tier Tribunal.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. We have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

19. We remit the matter to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Sorrell. A Mandarin interpreter will be required.

Decision

The decision of the First-tier Tribunal is tainted by a material error of law.

The Judge's decision promulgated on 17 December 2023 is set aside.

The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed **Paul Doyle**
10 June 2024
Deputy Upper Tribunal Judge Doyle

Date