Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03076/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reason Promulgated**
On 3 November 2015	**On 9 November 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AMAZZAL EL-ARBI

Respondent

Representation:
For the Appellant: Mrs S Saddiq, Senior Home Office Presenting Officer
For the Respondent: Mr A MacKay, of McGlashan MacKay, Solicitors

DETERMINATION AND REASONS

1. The parties are as described above, but the rest of this determination refers to them as they were in the First-tier Tribunal.

2. The appellant is a citizen of Morocco, born on 7 September 1983. The respondent refused his asylum claim on 6 February 2015. First-tier Tribunal Judge Farrelly allowed his appeal by determination promulgated on 6 August 2015.

3. The SSHD appeals to the Upper Tribunal on the following grounds:

1 The Judge has inadequately reasoned his findings on the appellant's risk on return by failing to make a clear finding on the veracity of the appellant's claimed detentions.

2 The judge has erred in law by not explaining clearly why the appellant's delay in claiming asylum has adversely affected his credibility (30), particularly in the circumstances where he was clear that he was troubled by his claim, overall (eg 26-29). This amounts to inadequate reasoning.

3 … given the judge's concerns, the assessment of the claim as believable to the low standard is irrational … the construction "… there is a possibility (his account) might be true" (33) misstates the law.

4 The cumulative effect of these errors (or any one taken in isolation) is such that the decision should be set aside and remade.

4. Neither party mentioned the point, but I think ground 2 was intended to read that the judge "… erred in law by not explaining clearly why the appellant's delay in claiming asylum has <u>not</u> adversely affected his credibility.

5. Mrs Saddiq submitted that the determination lacked findings, and that the judge misapprehended the case. The appellant claimed to have founded an organisation known as AMEM, but the only documentary evidence was produced by him and had been doctored. There was no other evidence that the organisation existed. The judge said at paragraphs 17 and 32 that the respondent took a neutral stance on the existence of AMEM, but that was not the line taken in the refusal letter or at the hearing, as recorded at paragraph 7 of the determination. The appellant's claim was challenged, and his entire account was disputed in cross-examination. The determination contradicted itself about the case put by the respondent. The burden of proof had remained with the appellant. The findings in the determination were almost entirely against him, including 6 or 7 key points. No finding was made on whether he had been detained. The overall conclusion which should have followed was that the appeal was dismissed, not allowed. There should be a rehearing.

6. Mr MacKay submitted that the respondent's refusal letter said at paragraphs 24 and 25 that the existence of AMEM could be neither confirmed nor rejected. That was a neutral standpoint. The Secretary of State had not taken the position that AMEM did not exist. The grounds did not amount to more than disagreement with the outcome. The judge had carefully weighed everything on both sides and this was a good example of an appellant benefiting appropriately from the low standard of proof, despite legitimate concerns there might be over his account. The positive elements were at paragraph 19, nothing in the respondent's contention that the appellant's account was implausible or vague; paragraph 20, consistency with background evidence regarding treatment of activists over the Western Sahara; paragraph 21, rejection of the respondent's

criticisms as speculative; paragraph 23, the appellant's mention of his membership of AMEM on his visa application; paragraph 30, the appellant said he wished to take advice before seeking asylum, and not a long delay, so no adverse inference to be draw from it; 31, no real inroads made during assessment or in cross-examination; 32, nothing implausible in the accounts of detention to defeat the claim. Those reasons were sufficient to justify the conclusion. There was no error in saying there was a possibility an account might be true, that was simply one way of stating the low standard of proof.

7. Mrs Saddiq in response submitted that given the several findings against the appellant, it was incorrect to say at paragraph 31 that no real inroads had been made in challenging his account. While paragraph 32 might be an implicit acceptance of the account of detention, it lacked reasoning.

8. I reserved my determination.

9. The refusal letter leaves the existence of AMEM as an open question. It so happened that both representatives were also in the First-tier Tribunal, and they were at odds over whether the respondent's line there had been that the appellant had to prove, but failed to prove, that AMEM existed. They came away with different impressions.

10. The respondent's attack on credibility may well have been broad enough to go beyond neutrality on that particular issue, but I do not think it is necessary, or even possible, to resolve this fine area of dispute any further.

11. Plainly, this was a finely balanced case. If the judge had said that his adverse points added up to the failure of the appeal, it might have been difficult for the appellant to complain. However, I am not satisfied that the grounds amount to more than disagreement, or that they show error of law. It is commonplace for there to be reasonable points in favour of each side. The judge made findings along the way which went against the appellant, and some in his favour, as summarised above.

12. The eventual finding about the detentions is that they are established to the lower standard. That is the effect of the judge's statement at paragraph 32 that he "cannot see anything in relation to those incidents which would defeat the appellant's claim", and at paragraph 33 that it "might be true". In other words, the evidence is probative to the lower standard, if only just. The matter is not left open. The judge was entitled to come down on the side he did, and explained why.

13. To state a possibility that an account might be true is no more than an ordinary representation of the lower standard of proof, which can be and often is stated in various ways.

14. The determination of the First-tier Tribunal shall stand.

15. No anonymity order has been requested or made.

Upper Tribunal Judge Macleman
6 November 2015