Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02062/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 August 2019	**On 03 September 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

K.B.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Bisson, Counsel instructed by PN Legal Services
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Courtney ('the Judge') issued on 2 May 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed.

2. In granting permission to appeal Upper Tribunal Judge Storey granted permission on all grounds.

Anonymity

3. The Judge did not issue an anonymity order. This is a matter in which the appellant has sought asylum. I am mindful of Guidance Note 2013, No 1 concerned with anonymity orders and I observe that the starting point for consideration of anonymity orders in this chamber of the Upper Tribunal, as in all courts and Tribunals, is open justice. However, I note paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity order is made in all appeals raising asylum or other international protection claims.

4. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the publication of the contents of his protection claim.

Background

5. The appellant is accepted by the respondent to be aged 20. He asserts that he is a Syrian citizen, though the respondent believes him to be a national of Egypt. The appellant asserts that he left Syria when aged either 12 or 13 and lived in Egypt for approximately one year before relocating to Greece where he stayed for two years. He entered this country clandestinely on 18 October 2015 and claimed asylum the following day. The respondent refused the appellant's asylum claim by way of a decision dated 8 April 2016 but granted him discretionary leave to remain as an unaccompanied asylum-seeking child until 5 May 2016.

6. The appellant made a further asylum application on 3 May 2016 which was refused by the respondent by way of a decision dated 5 October 2016. The decision letter was wrongly addressed, and effective service was only achieved on 21 February 2019.

7. In refusing the application for international protection, the respondent relied upon a language analysis test report dated 29 March 2016 which concluded that the linguistic behaviour displayed by the appellant was not consistent with an Arabic linguistic community that is represented in Aleppo, Syria. The results were identified as being consistent with the linguistic community situated in the Nile Delta, Egypt.

Hearing before the First-tier Tribunal

8. The appeal came before the Judge at Hatton Cross on 17 April 2019. In dismissing the appeal, the Judge made a number of adverse credibility findings. Of relevance to this appeal are paragraphs 25, 29 and 30 of the decision.

> *"25. If the Appellant left Aleppo at the age of 13 this would fix his departure date as some time after November 2011. In his first witness statement (dated 12 January 2016) the Appellant makes no mention of the war as a reason for leaving Syria. He alludes to it in a somewhat throwaway and distanced reference in the penultimate paragraph: "I also know about the war going on in Syria, it is not a safe place to live, bombs are being thrown from planes the situation is bad and therefore returning back will be very difficult" [WS1 §5]. During his Screening interview on 29 December 2015 he was asked if he was afraid something bad would happen to him if he returned home and he replied: "I will expect anything. ISIS teaching children weapons" [para 4.2]. At interview on 2 March 2016 he said that the reason he went to Egypt was because "The education [in Syria] is compulsory education. I couldn't stay remaining on the street" (AIR Q13). In his second witness statement the Appellant says: "I believe my life is still at risk in Syria. I believe that I would be arrested, tortured and possibly killed either by the government or the opposing forces. I left Syria when I was very young and I do not want to witness what I witnessed there again" [WS2 §12]. Quite what it was that he witnessed he does not say.*
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> *…*
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> *29. In his witness statement the Appellant says: "The Home Office asked me about the Syrian independence day. I answered correctly that Syria got independence from France. However, it is true I was not aware of the exact date. I do not think this is unusual. As stated above, I was still a child and such things were not important to me at the time. I was only aware of the main events such as Eid. The situation in Syria was too chaotic for us to be even thinking about such things" [WS §11]. It was not just the date that he failed to mention but the very fact that there was such an even, saying "We didn't celebrate the independence day" (AIR Q52). Asked what public holidays were celebrated in Syria, other than Ramadan and EID, the Appellant replied: "There is nothing else we celebrate in Syria. Syria doesn't have celebration, it has blood" (AIR Q53). I take judicial notice of the fact that Independence Day on 17 April is one of Syria's most important national holidays, which is marked with firework displays and celebrations across the country. As previously noted, it was not until early 2012 that security forces in Aleppo began to be targeted with bombings, and it was late July 2012 before the conflict reached Aleppo in earnest. For the first 12 or 13 years of his life there would have been no inhibitions on marking Independence Day.*
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> *30. Asked at interview to name some towns or villages near Aleppo the Appellant gave the examples of Al Raqqa, Dara'a and El Bab (AIR Q22). When it was put to him that Dara'a and Raqqah were a considerable*

distance away from Aleppo (they are 460km and 210km away respectively) the Appellant said: "This is the ones I know that are close to Aleppo. I didn't leave this small place. I never been and didn't go there" (AIR Q58). In his skeleton argument Mr Bisson submits that "The Respondent has failed to take into consideration the Appellant's young age and lack of education when questioning him on the geography of cities that he has never visited. Weight should be given to the fact that the Appellant was able to name other cities outside Aleppo. The Respondent also conveniently fails to give the example of El Bab that the Appellant provides as a city near Aleppo" [§ 11]. I take judicial notice of the fact that Al-Bab is located 40 kilometres northeast of Aleppo."

Grounds of Appeal

9. In granting permission to appeal, Upper Tribunal Judge Storey observed,

> *"Given that the appellant was a minor when he arrived in the UK and was still a minor when the respondent refused his asylum appeal, it is arguable that the judge failed to assess the appellant's credibility regarding his nationality (which the appellant said was Syrian and the respondent said was Egyptian) and his adverse experiences in Syria in the context that the appellant was a minor at the time and that some allowances had to be made for discrepancies and more emphasis placed on objective evidence. The grounds disclose an arguable error of law and all (including those relating to the linguistic report) are arguable."*

10. No Rule 24 response was filed by the respondent.

Decision on Error of Law

11. Both representatives at the hearing informed me that they were in agreement that the Judge's decision was flawed by legal error and should be set aside. The Judge criticised evidence presented by the appellant whilst he was a child both during the course of his asylum interview and also in a witness statement prepared in 2016. When considering such evidence both representatives before me accepted that the Judge was required to remind herself as to the Joint Presidential Guidance Note No 2 of 2010, concerned with children, vulnerable adults and sensitive appellants. The guidance details at paragraph 10.3(i) that when assessing evidence provided by a child, a Judge is to be aware that children often do not provide as much detail as adults in recording experiences and may often manifest their fears differently from adults.

12. I observe at paragraph 25 of the decision that the Judge is critical of the appellant for not mentioning issues in his statement of January 2016. At this time, he was aged 17 and was a minor. There is also criticism in that paragraph as to his failure to explain matters during his screening interview in 2015, a time again when he was a child. At

paragraph 29 the Judge was critical as to the appellant's lack of knowledge in interview as to Independence Day in Syria. Again, no consideration is given to the fact that this evidence was presented whilst the appellant was a child. I find that it is clearly apparent from reading the decision and reasons that the Judge did not have the Presidential Guidance firmly in mind when making adverse criticisms as to the recollection of a child witness. I accept the representatives' submissions that the failure to consider the Presidential Guidance is a material error of law because the adverse findings flowed into the rest of the Judge's decision.

13. Having found that the Judge materially erred in law as to ground 1, I do not proceed to consider grounds 2 – 6.

Remittal

14. As to remaking the decision, given the nature of the errors, I accept the submissions made by both Ms Jones and Mr Bisson that clear findings of fact have to be made and evidence provided. Both advocates submit that the appeal should be remitted to the First-tier Tribunal. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal that reads as follows at paragraph 7.2 and I quote:

> *"7.2 The Upper Tribunal is likely on each occasion to proceed to remake the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:*
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> *(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or rather opportunity for that party's case to be put and considered by the First-tier Tribunal; or*
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> *(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal."*

15. I have reached the conclusion that it is appropriate to remit this matter to the First-tier Tribunal for a fresh decision on all matters. The Appellant has enjoyed no adequate consideration of his asylum claim to date and has not yet had a fair hearing.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 2 May 2019 pursuant to Section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.

17. This matter is remitted to the First-tier Tribunal for a fresh hearing before any Judge other than Judge of the First-tier Tribunal Courtney.

18. No findings of fact are preserved.

Signed: D O'Callaghan

Upper Tribunal Judge O'Callaghan

Date: 19 August 2019