Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/13661/2011

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2nd November 2018	**On 30th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

SAMIR ZAOUI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood (Solicitor)
For the Respondent: Mr McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge M Davies, promulgated on 17th July 2018, following a hearing at Manchester on 4th July 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Algeria, and was born on 1st February 1994. He appealed against the decision of the Respondent dated 25th November 2011 refusing his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he left Algeria in October 2010, travelled by boat to Italy, stayed there for six months, and then went on to Belgium, before coming to the UK and claiming asylum. He had initially claimed he was a Libyan national. He did not seek asylum *en route*. He had also claimed to be 17 years old, maintaining that his date of birth was 1st February 1994. He claimed that he lived in Algeria with his parents and his siblings. He said he had never been arrested in Algeria. He had never experienced any problems in Algeria due to his religion or his race. He had also never been involved in any political groups and had never experienced any problems for political reasons. He had no medical problems. However, he maintained during his screening interview that he was running away from Algeria because of terrorism and terrorist threats, given that terrorists have come to his house. He also claimed that he feared military conscription, and that if he returned to Algeria, he would be killed for having avoided it. He said that he received a military call up letter to do military service after he turned 17 but he did not respond. He also referred to fear of the GIA.

The Judge's Findings

4. The judge concluded that the Appellant's claim was a complete fabrication. He had never been targeted by terrorists. He had offered no credible evidence of being at risk from the GIA. He had never undertaken any political activity. His account was wholly implausible (paragraph 59).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge's approach exhibited bias in the determination because he had at various parts of the determination referred to the fact that the Appellant had effectively abused the judicial review system by launching an appeal by way of judicial review, which only prolonged matters. This, in our view, overlooked the fact that the judicial review application had been successful.

7. On 13th August 2018 permission to appeal was granted by the Tribunal.

Submissions

8. At the hearing before me on 2nd November 2018, Mr Wood, appearing on behalf of the Appellant submitted that the determination by Judge Davies was coloured by what he had said at various parts of his determination in relation to the appeal process that the Appellant had engaged in. For example, this began early (at paragraph 10) when the judge observed that, "before proceeding any further with this appeal, I think it is only right that I should express my disappointment at the circumstances leading to the rehearing of this appeal". Judge Davies then went to say that the Respondent had made his decision refusing the Appellant's claim for asylum on 25th November 2011, and the Appellant had then appealed that decision and a hearing took place before a First-tier Tribunal Judge with a decision on 19th January 2012. The Tribunal in question was that of Judge White who had dismissed the appeal on all grounds (paragraph 11).

9. Thereafter, various further applications were made, and Judge Davies used specific language in the manner that, "no plausible explanation has been given for decisions that have been taken at various stages of the appeals process which meant that the rehearing of the Appellant's appeal was heard many years after his original appeal was dismissed" (paragraph 12). I have to say that this does not necessarily amount to a criticism of the Appellant or his legal representatives, in the way in which they launched legal appeals, which was a matter of legal right for them. What the judge is here plainly stating, is clear from his next sentence which is that, this presented the judge with particular difficulties because he had to assess the Appellant's evidence on the basis that the Appellant entered the United Kingdom on 10th October 2011, but as at the date of hearing of 4th July 2018, the country conditions have now undoubtedly changed. One may properly assume that this is the case because what the judge was referring to in this respect was that "the rehearing of the Appellant's appeal was heard many years after his original appeal was dismissed" (paragraph 12). Read in its entirety, therefore, this did not suggest bias on the part of the judge.

10. It is true that the judge then goes on to say in the next paragraph that,

> "I fail to understand why after both permission to appeal was dismissed (as was an application to an Upper Tribunal Judge for permission to submit an application for judicial review), a judicial review application was allowed, and when subsequently heard, the Respondent simply did not oppose the application but just agreed to it being remitted for rehearing" (paragraph 13).

11. Whilst I accept that it would have been altogether better for the judge not to have expressed himself in this way at all, what is clear is that the judge is simply expressing his difficulty as a Tribunal of fact now in relation to what he has to determine. This is clear once again from the next sentence which is that, "I consider the system that operates within the Tribunal system that has caused delays such as in this case is deeply regrettable and should not be allowed to occur".

12. Mr Wood proceeded to then take me to the final part of the determination, (where the judge states at paragraph 63) that the Appellant had:

> "Fabricated his claim for asylum. That fabrication is further compounded by the fact that he stepped up this deception after a period of many years, both in seeking permission to appeal the original decision of First-tier Tribunal Judge White, when seeking permission for judicial review, and when making a judicial review application. In my view, the Appellant has abused the judicial system operating in England and Wales" (paragraph 63).

13. For his part, Mr McVeety submitted that the use of the word "abuse the judicial system" was regrettable and perhaps language that should best have been avoided, but the judge had already made his findings earlier on at paragraph 59 where he had dismissed the essential aspects of the Appellant's claim by reaching clear findings of fact, in a manner that was unrelated to his exasperation with the length of the appeals proceed that had put the judge in a position where he now had to make findings of fact in relation to events that had taken place many years before.

14. In his reply, Mr Wood submitted that what one had here was a High Court decision, a decision by Upper Tribunal Judge Martin, a position adopted by Mr McVeety who had not opposed the application for judicial review, leading to a Consent Order thereafter, and yet the judge was expressing himself in these terms. This was quite unfortunate, and it was bound to have coloured the approach of the judge to his findings of fact.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error of law, such that I should set aside the decision and remake the decision (see Section 12(1) of TCEA 2007). My reasons are as follows.

16. First, whilst I accept that the way in which the judge expresses himself is unfortunate, particularly at paragraph 63, where he states that "the Appellant has abused the judicial system operating in England and Wales", the fact remains that the judge had already earlier made his findings of fact in relation to the Appellant's claim. He had done so at paragraph 59. He had made it clear that the Appellant was never targeted by terrorists. The Appellant had offered no credible evidence as to why he would be targeted now. He was not at risk of the GIA. He had never undertaken any political activity in Algeria. Even if he had initially been targeted in the way he claims, the fact remains that they did not pursue him further, and this "indicates they had no long-standing interest in him."

17. The judge states that:

> "It is clear that the Appellant was able to remain in Algeria without any difficulty after the incident which he claims caused him to fear persecution. That again is a clear indication that he left Algeria for

> reasons not connected with his fear of terrorists or the Algerian authorities" (paragraph 59).

18. It is difficult to see how this conclusion would not in any event have been open to the judge without the overlay of his expressed concern over the delays that had been caused by the appeals process.

19. I accept that it is not for the Judge of the First-tier Tribunal to say whether a judicial review application should have been made, when he states that, "I fail to understand why, after both permission to appeal was dismissed (as was an application to an Upper Tier Tribunal Judge for permission to submit an application for judicial review), a judicial application was allowed …" (paragraph 13). However, the essential question is whether this goes to the materiality of the decision made by the judge.

20. Having considered the matter, I find that it does not.

21. There is no error of law.

Notice of Decision

22. The decision of the First-tier Tribunal did not involve the making of an error of law.

23. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd November 2018