



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07658/2017

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 9 January 2018**

**Decision & Reasons Promulgated  
On 30 January 2018**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**L C R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Jowett instructed by UK Migration

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

## **Introduction**

2. The appellant is a citizen of Jamaica who was born on 4 August 1973. He entered the United Kingdom on 17 February 1999 with leave as a visitor. His leave was extended, as a student, until 30 September 2000.
3. On 18 December 2000, he was convicted at the Inner London Crown Court of possessing a class A controlled drug with intent to supply. He was sentenced to five years' imprisonment and recommended for deportation.
4. On 29 August 2000, a deportation order was signed against him. That decision was served on the appellant on 31 October 2002. The appellant did not seek to appeal and on 7 February 2003 he was deported to Jamaica.
5. It would appear that the appellant then entered the United Kingdom sometime in 2004 in breach of the deportation order.
6. On 23 June 2011, the appellant applied for leave to remain on a discretionary basis outside the Rules. Following the further submission of information, the appellant's application was refused on 6 February 2017.
7. On 16 February 2017, the appellant was detained with a view to his deportation from the United Kingdom. On 1 March 2017, the appellant was served with removal directions set for 8 March 2017. However, on that date he refused to leave his cell and the removal directions were deferred.
8. On 15 March 2017, the appellant claimed asylum. Following an asylum interview on 25 April 2017, the Secretary of State on 25 July 2017 refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR. The Secretary of State also certified the appellant's asylum claim under s.72 of the Nationality, Immigration and Asylum Act 2002 (the "NIA Act 2002").

## **The Appeal to the First-tier Tribunal**

9. The appellant appealed to the First-tier Tribunal. In a determination sent on 3 October 2014, Judge M A Khan dismissed the appellant's appeal. The judge made an adverse credibility finding and did not accept that the appellant was at risk on return to Jamaica, as he claimed, on the basis that he had witnessed a gang in Jamaica murdering his brother in October 1998. At the conclusion of his decision, Judge Khan dismissed the appellant's appeal under the Immigration Rules and under Arts 2 and 3 of the ECHR and also the appellant's "human (*sic*) protection appeal".

## **The Appeal to the Upper Tribunal**

10. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds. First, the judge had failed to make any decision on

whether to allow or dismiss the appellant's appeal under Art 8. Secondly, in considering the appellant's Art 8 claim, the judge had failed properly to have regard to the best interests of the appellant's children in the UK. Thirdly, in rejecting the appellant's protection claim and in reaching his adverse credibility finding, the judge had failed to have regard to documentary evidence provided in support of the appellant's claim, namely a copy of a coroner's certificate supporting his claim that his brother had been murdered in October 1998. Fourthly, the judge had erred in law by taking into account as relevant under Art 8, the certification under s.72 of the NIA Act 2002.

11. On 7 November 2017, the First-tier Tribunal (Judge Keane) granted the appellant permission to appeal. The respondent filed a rule 24 notice dated 22 November 2017. In that notice, the respondent accepted that the judge had erred in law by failing to indicate whether the Art 8 appeal was allowed or dismissed and in failing to give proper consideration to the best interests of the appellant's children and the impact upon them of his deportation. However, the respondent sought to uphold the judge's adverse credibility finding and his rejection of the appellant's asylum claim.
12. Before me, Mr Richards, who represented the Secretary of State, conceded in line with the rule 24 notice that the judge had erred in law in his consideration of Art 8 and a fresh decision should be made in respect of Art 8. Relying on the rule 24 notice, however, Mr Richards sought to defend the judge's adverse decision in relation to the appellant's asylum claim.

### **Discussion**

13. Central to the appellant's asylum claim was his case that his brothers had been killed by two gangs in Jamaica. He had been present and had witnessed one of his brothers being shot and killed by a gang member but he had managed to run away. He claimed that, as a result of witnessing his brother's killing, he was at risk on return.
14. The judge made an adverse credibility finding. His reasons are set out at paras 50 - 59 of his determination. He made, as Mr Richards pointed out, a number of adverse conclusions on the appellant's evidence. So, for example, at para 53 the judge, having heard the appellant and his wife give evidence, considered that their evidence was "extremely vague" and that they were "evasive witnesses" such he did not find their evidence "credible or consistent".
15. Then at para 54, the judge turned to the incident which the appellant claimed specifically put him at risk, namely his witnessing of his brother's murder:

"54. The appellant said that he claimed asylum in fear of two gangs in Jamaica, his two brothers had been killed by these gangs. They tried to harm him by attempting to kidnap him. He said when one

of his brother's (*sic*) was killed, he with his brother when gang members shot his brother and killed him, he managed to ran away. His evidence is that they are now trying to kill him because he was a witness when his brother was shot. I do not find the appellant's evidence credible or consistent. If has he claims, he was a witness to his brother's killing, the gang member would have killed him there and then with his brother and not let him escape as he claims."

16. At paras 55 - 58 the judge identified other deficiencies in the evidence. Then, at para 59 he concluded as follows:

"59. On the evidence before, I do not accept the appellant's claim that he has any fear of the claimed criminal gangs in Jamaica. I do not accept the appellant's whole evidence as credible or consistent. I find that he has simply fabricated and made up whole of his evidence in order to make out an asylum claim to stay in the UK."

17. Contained within both the respondent's bundle (at page I25) and the appellant's bundle (at page B1) was a photocopy of a "certificate of coroner" which, on the face of it, related to the appellant's brother whom he claimed had been murdered in October 1998. That stated that the appellant's brother's death had occurred on "3 October, 1998" and that the cause of death was "multiple gunshot wounds to head and chest". It was accepted before me that Judge Khan made no reference to this document, which was relied upon as supporting the appellant's account before him.
18. Mr Jowett, on behalf of the appellant, submitted that this was a material error by the judge. The incident concerning the claimed murder of the appellant's brother was a core aspect of the appellant's claim and this document was, if genuine, potentially of fundamental significance in corroborating the appellant's case. Mr Jowett submitted that if it's authenticity was accepted, there was a real prospect that a different decision would have been reached in respect of the credibility of the appellant's claim despite the other reasons given by the judge for doubting the appellant's account.
19. Mr Richards submitted that there was no material error of law made by the judge simply by failing to make direct reference to this piece of evidence. First, he submitted that the judge had found the appellant to be a thoroughly dishonest witness. Second, he submitted that, in fact, in para 54, the judge had not rejected the appellant's account that his brother had been killed but rather had rejected the appellant's account that he was present and had witnessed his brother's murder. The document was, therefore, not central to the judge's adverse finding.
20. I do not accept this latter submission made by Mr Richards. First, it is not, in my judgment, the proper interpretation of what the judge said at para 54 of his decision. Secondly, in any event, it is plain that the judge rejected the appellant's account overall. In para 59, he said that the appellant's account had been "simply fabricated" and that he had "made

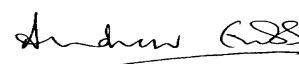
up [the] whole of his evidence in order to make out an asylum claim to stay in the UK". In fabricating and making up the whole of his evidence, the judge can only properly be understood to have rejected not only the appellant's presence at the murder of his brother but also that his brother was murdered at all. Consequently, contrary to Mr Richards' submissions, the coroner's report was relevant to the judge's reasoning and his adverse credibility finding rejecting the whole of the appellant's evidence.

21. Whilst I accept that the judge gave a number of reasons at paras 50 - 59 for his adverse credibility finding, the coroner's report was a potentially corroborative document relating to, perhaps, the core incident that the appellant claimed put him at risk on return. It was clearly relied upon by the appellant's (then) Counsel before the judge and is referred to in para 24 of her skeleton argument. It was plainly an issue before the judge whether the document was reliable. In the refusal decision the respondent had found it not to be reliable (see paras 109 - 110). It was, in my judgment, incumbent upon Judge Khan to grapple with the reliability of this document given its potentially corroborative impact upon a core aspect of the appellant's claim. He simply failed to do so and that was, in my judgment, an error of law.
22. Despite the other reasons given for doubting the appellant's credibility, given the centrality of this document to a core aspect of the appellant's account, I am not persuaded that the judge would necessarily have reached the same adverse credibility finding if he had grappled with (and considered the reliability of) the coroner's record.
23. For that reason, therefore, the judge's adverse credibility finding and his dismissal of the appellant's asylum claim cannot stand. The judge's adverse findings and his decision in respect of the appellant's asylum claim are, as a consequence, set aside.

## **Decision**

24. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision is set aside.
25. Given the nature and extent of the fact-finding required, and having regard to paragraph 7.2 of the Senior President's Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge M A Khan.

Signed



A Grubb  
Judge of the Upper Tribunal

26 January 2018