



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

Appeal Number: PA/11633/2019

THE IMMIGRATION ACTS

**Heard at Field House
by Skype for Business
On 5 February 2021**

**Decision sent to parties
on:**

On 24 February 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**S N (NEPAL)
[ANONYMITY ORDER MADE]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation:

For the appellant: Mr Sharaz A Ahmed of Counsel, appearing by Direct Access

For the respondent: Mr Andy McVeety, a Senior Home Office Presenting Officer

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S N who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 2 June 2019 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.
2. The appellant has claimed to be both a citizen of Nepal, and a citizen of Tibet, which now forms part of the People's Republic of China. The respondent intends to return him to Nepal, not to the Chinese province of Tibet. It is the risk on return to Nepal which is relevant in these proceedings.
3. The First-tier Judge found the appellant to be a citizen of Nepal.

Background

4. The appellant was born on 23 October 1977. He is a Buddhist. When giving evidence in the First-tier Tribunal, he was more comfortable speaking in Nepalese. His current case is that he is a single man, with no dependants, and that he is Tibetan, not Nepalese.
5. The appellant entered the United Kingdom on 24 April 2014, age 37, travelling via Mumbai, India, on a Nepalese passport, issued to him by the Nepalese authorities, on a visit visa which expired on 18 September 2014. The respondent was able to access a copy of his visit visa application, in which he stated that he was a Nepalese national, that his parents were Nepalese (he provided their names on the application) and gave a travel history including a visit to Thailand and two visits to China. He said he was married, with two children. He entered the United Kingdom on a Nepalese passport, having provided passport details, including his passport number, on the visit visa application.
6. In his asylum interview, the appellant said that an agent obtained the documents for him and that in fact he was a single Tibetan man with no family, and did not know his parents' nationality as they died when he was small. The appellant claims no longer to have the Nepalese passport mentioned in his visit visa application, and has given various explanations for its loss. However, he has not attended the Nepalese embassy to seek to replace his missing passport. He accepts that one was issued to him and the passport number appears on his visit visa application.
7. When his visit visa expired, the appellant did not embark for Nepal or Tibet. On 12 May 2018, he was served with form RED.0001 as an overstayer, notifying him that he was subject to administrative removal. The appellant claimed asylum the same day. In his screening interview, the appellant told the interviewer that on May 31 (the year is not

specified), he had become a Nepalese citizen 'according to my identity card'. He said he had never been to Tibet.

8. The appellant's case is that he was orphaned very young and grew up in Nepal with a foster family. The appellant thought he was Tibetan: friends told him that he looked Tibetan, but he himself had no knowledge about this as he was orphaned too young to remember. He is not certain whether he was born in Tibet or Nepal and has given varying accounts on that point. From about 1989 or 1990, he spent time in India, travelling back and forth to Nepal, with the older son related to a family member of his foster family.
9. On 2 June 2019, the respondent refused his asylum claim and all other claims within and outwith the Immigration Rules HC 395 (as amended).
10. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

11. The First-tier Judge noted that at the appellant's request, a Tibetan interpreter was provided for the hearing. At the interpreter check stage, there were difficulties. The appellant said that although he spoke Tibetan (and Hindi), he was more comfortable in Nepalese.
12. The First-tier Judge then established with the interpreter that he had the ability to interpret in Nepalese: the interpreter said that he had interpreted in Gurkha cases in Nepalese, and Counsel (Mr Ahmed, who appears today), said that he had heard the interpreter interpreting in Nepalese in cases where he was the representative and had no objection to the change of language by the same interpreter. The interpreter then checked the Nepalese language with the appellant, who said that was much more comfortable for him. The appellant proceeded to give evidence in the Nepalese language. Mr Ahmed, who also appears today, accepted in the First-tier Tribunal hearing that the appeal under Articles 2 and 3 ECHR would stand or fall with the protection appeal.
13. The First-tier Judge set out his credibility concerns at [28]-[31]. His identity and passport number were on his application form and the judge considered that this could be used to obtain appropriate travel documentation for Nepal, if the appellant really did not have a passport still. At [30], he identified additional concerns which were not put at the hearing: discrepancies as to where the appellant was born, what happened to his Nepalese passport, and where he was living from the age of 17 onwards.
14. The First-tier Judge found the appellant's protection account to be fabricated in a bid to establish a right to refugee status and remain in the United Kingdom. He found the appellant's account to lack credibility and to be inconsistent, even making allowance for his youth when he lost his parents.

15. The judge found that Article 8 ECHR was not engaged. The appellant had not learned to speak English in the 6 years he had spent in the United Kingdom, although he had learned to be a chef and had met many British people who were kind to him. There were no supporting witnesses to establish his culinary prowess or his United Kingdom friendships. Nor was there any evidence to establish his financial independence.
16. If there were any relevant Article 8 ECHR rights, they were outweighed by the public interest in immigration control.
17. The appellant applied for permission to appeal to the Upper Tribunal.

Permission to appeal

18. First-tier Judge Scott Baker granted permission to appeal, for the following reasons:

“2. The grounds assert that the First-tier Judge had failed to follow the guidance in *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223 in failing to exercise caution in credibility and plausibility; that credibility was the key issue and the judge had failed correctly to apply the jurisprudence.

3. The issue in the appeal was one of nationality – the appellant claimed that he was Tibetan; incorrectly referenced by the respondent and judge as a Tibetan national and had previously lived in Nepal.

4. At [25] there is a self-direction as to the applicability of *Y* and the judge reminded himself of the need to consider the evidence in the round including the background material, which was not evidenced or thereafter considered. He reminded himself at [27] that the appellant was uneducated, but not unintelligent. At [28] he stated that the issue was whether the appellant was Nepalese or Tibetan.

5. The judge notes at [29.1] that the appellant initially claimed that he was Nepalese, and subsequently varied his account to say that he was Tibetan. One of the key components was the appellant’s evidence given at the screening interview that his main language and dialect was Tibetan. At [29.3] the judge finds that the appellant had made no mention of being Tibetan at the screening interview, which is arguably factually incorrect, and at [30] and [31], makes adverse findings on evidence whilst acknowledging that the matters had not been put to the appellant.

6. Arguably the judge has erred in law in his approach to credibility, *Y* at [25] applied and arguably has made inadequate findings of fact. ”

Rule 24 Reply

19. No Rule 24 Reply was received from the respondent.
20. That is the basis on which this appeal came before the Upper Tribunal today.

Submissions

21. Mr Ahmed relied on his grounds of appeal and on the guidance as to caution in negative credibility findings given by the Court of Appeal in *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223.
22. He accepted that even if credible, the allegations the appellant had made about his treatment in Nepal, as a person of apparent Tibetan heritage, would fall short of the standard required to establish persecution or serious harm.
23. Mr Ahmed maintained that Article 8 ECHR was applicable and that there would be significant obstacles to the appellant's reintegration in Nepal after 6 years away.
24. It was not necessary to call on Mr McVeety.

Analysis

25. The appellant relies on the observations at [25] in the judgment of Lord Justice Keene, with whom Lord Justice Carnwath (as he then was) and Lord Justice Ward agreed. Those observations must be seen in the context of the subsequent paragraphs:

"25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. ...

26. None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the *Awala* case by Lord Brodie at paragraph 24 when he said this:

"... the tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole".

He then added a little later:

"... while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible".

27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. ..."

26. That passage is of less assistance to the appellant than Mr Ahmed suggests. The conflict in the appellant's account here is nothing to do with perception or westernised assumptions, but rather that he has given several mutually contradictory accounts of his birth, his family circumstances, his past travel and his ethnic or national origins.
27. The grounds of appeal are an attempt to reargue the factual conclusions reached by the First-tier Judge, in particular at [29] and [30]. The points made at [29] arise out of the appellant's oral evidence and his previous accounts in his screening interview and asylum interview. It is not suggested that they were not put to the appellant during the hearing.
28. To the extent that the points in [30] were identified by the judge when writing his decision, if they were the only discrepancies relied upon in his decision, that might have been a proper reason to interfere with the judge's findings of fact and credibility, but such is not the case. The appellant's accounts are riddled with contradictions and discrepancies.
29. I remind myself of the guidance recently given in *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at [41] that it is impermissible to interfere with the findings of fact and credibility by a First-tier Judge who has heard and seen the appellant give evidence, 'merely on the grounds that [the Upper Tribunal Judge] would themselves have reached a different conclusion'.
30. In this case, the First-tier Judge has given cogent, intelligible and sufficient reasons for reaching the conclusions which he did on credibility. It was unarguably open to him, on the evidence summarised in his decision, to conclude that, whatever the appellant's nationality at birth, he is a Nepalese citizen with a Nepalese passport now, and that this claim has been fabricated to enable him to stay in the United Kingdom.
31. I uphold the decision of the First-tier Judge and dismiss the appellant's appeal.

DECISION

32. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 9 February 2021