



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000055

First-tier Tribunal No: PA/52586/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GT

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Diwnycz, a Senior Home Office Presenting Officer.

For the Respondent: Mr G Brown instructed by Batley Law.

Heard at Phoenix House (Bradford) on 26 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Atkinson ('the Judge'), promulgated following a hearing at Bradford on 15 November 2023, in which the Judge allowed GT's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom and any other basis.
2. The Judge notes the agreed issues requiring determination as being (a) whether the appellant had established, to the lower standard, his relationship with a named woman and subsequent problems he faced from her family and (b)

whether the appellant would face the risk of persecution on return on account of the problems he faced [20].

3. Having analysed the evidence the Judge sets out findings of fact from [32] of the decision under challenge. The Secretary of State in the refusal letter and only raised issues of the credibility of the claim. It was accepted if the appellant was credible there was no internal flight option, but no other issues were addressed in the refusal notice.
4. The Judge found the appellant had established that he had a relationship with the named woman which gave rise to subsequent problems from her family, as claimed, and that the appellant will face a real risk of persecution on return as a result of those events [47].
5. The Judge finds the appellant has a well-founded fear of persecution for a Convention reason appeal based on membership of a particular social group [49].
6. The Secretary of State sought permission to appeal asserting the Judge failed to identify the Convention reason into which the appellant falls and had failed to assess why the appellant could not seek protection from the authorities in Chad or could not move to another area away from the woman's family.
7. Permission to appeal was granted on a limited basis by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:
 3. Ground (a) is not arguable because the Respondent accepted in the reasons for refusal that the Appellant was a member of the Wadai tribe and he claimed a threat from the Zaghawa tribe. The issue was not in dispute.
 4. Turning to (b), paragraph 28 of the decision shows that the Presenting Officer accepted that if the Appellant were found to be credible, he would have no viable internal relocation option. The only remaining issue is therefore sufficiency of protection. This was clearly raised in the Respondent's review. The Judge did mention that the Zaghawa dominated Chad at paragraph 21. However there are arguably insufficient reasons for the implicit finding that the Appellant would not have sufficiency of protection. That is an arguable error of law so permission is granted in relation to failure to assess why the Appellant cannot seek protection from the authorities.
8. Before the Upper Tribunal Mr Brown argued that the issue of sufficiency of protection was not a matter raised in the refusal letter and had not been raised before the Judge at the appeal or identified as an issue that the Judge needed to deal with. As such it was submitted that it was not appropriate for the matter that was not previously raised to be pursued now. Mr Brown expresses surprise at seeing the basis of the challenge to the Judge's decision for this reason. Sufficiency of protection had never been a live issue.
9. Mr Diwnycz on behalf of the Secretary of State was unable to advance any argument to counter this submission.
10. It is correct if one looks at the reasons for refusal letter that the issue sufficiency of protection was not raised. The refusal letter is clearly written in terms of a challenge to the credibility of the claim only. Mr Brown is correct in his submission that no legal error is made out in relation to a matter that was not raised in the pleadings or at the appeal. Mr Brown was the advocate on that occasion too.
11. If there was reference to this matter in the review it is arguably that is not sufficient in light of the later hearing.
12. This is an experienced judge who, if the matter had been at large, would have dealt with it in the determination. It does not appear in the determination because it was not raised as a live issue that he was required to determine.
13. I find the Secretary of State has failed to establish arguable legal error material to the decision to allow the appeal.

Notice of Decision

14. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 February 2024