



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01867/2015

THE IMMIGRATION ACTS

Heard at North Shields
On March 10, 2016

Decision Promulgated
On March 30, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR DIDIER EMOMO MAKILI NGBOKO
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Eteko (Legal Representative)
For the Respondent: Mr Dewison (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of the Democratic Republic of Congo (DRC). The appellant claimed to have left the DRC on December 17, 2013 and entered the United Kingdom on December 24, 2013. He claimed asylum on February 12, 2014. The respondent refused his asylum claim on January 21, 2015 under paragraph 336 HC 395 and a decision was taken to remove him by way of directions under paragraphs 8-10 of Schedule 2 to the Immigration Act 1971.
2. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 4, 2015.

3. The appeal came before Judges of the First-tier Tribunal Griffiths and Fisher on May 28, 2015 and in a decision promulgated on July 6, 2015 they refused the appellant's appeal on all grounds.
4. The appellant lodged grounds of appeal on July 17, 2015 submitting the First-tier Judges had erred in their approach to the assessment of the appellant's claim and the effect of the country evidence. Permission to appeal was refused by Judge of the First-tier Tribunal Page on July 29, 2015. The appellant renewed his grounds of appeal to the the Upper Tribunal August 21, 2015 and Upper Tribunal Judge Finch gave permission on September 18, 2015.
5. In a Rule 24 letter dated October 9, 2015 the respondent opposed the appeal.
6. The matter came before me on the above date and I heard submissions from both representatives.
7. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order.

SUBMISSIONS

8. Mr Eteko argues the First-tier Judges had erred in two respects. Firstly, he submitted that having accepted the appellant was a member of the Union for Democracy and Social Progress (UDPS) they had erred by failing to consider the evidence that had been submitted that should have led to them departing from the country guidance case of MM (UDPS members, Risk on return) DRC CG [2007] UKIAT 0023. He referred me the appellant's bundle and in particular page 119 of that bundle that dealt with how UDPS members were dealt with. His second submission was that by rejecting the medical evidence based on earlier adverse credibility findings amounted to an error in law.
9. Mr Dewison adopted the content of the Rule 24 response in so far as it addressed the first ground of appeal. He submitted the Judges had demonstrated an engagement with his account and the evidence. With regard to the second ground of appeal he submitted the report was based on an acceptance of the appellant's claim and the author of the report had not shown that she had considered the appellant's account alongside the respondent's refusal letter or given any weight to the suggestion that the appellant's medical condition could be due to the situation he was facing.
10. I reserved my decision.

DISCUSSION AND FINDINGS

11. This was an extremely detailed decision and as indicated to Mr Eteko this was not a decision in which the Judges had failed to engage with the written and oral evidence.

12. In MA v UT 2014 CSIH 111 it was said that a proper approach to credibility required an assessment of the evidence and of the general claim. In asylum claims, relevant factors were, first the internal consistency of the claim; secondly the inherent plausibility of the claim; and thirdly the consistency of the claim with external factors of the sort typically found in country guidance.
13. The Judges in this current case clearly engaged with the appellant's claim. They set out in some detail not only his claim but also the oral evidence he gave at the hearing. Mr Eteko submitted that the Judges accepted the appellant was a member of UDPS and this can be found at paragraph [86] of their decision. However, he submitted they should have departed from the country guidance decision of MM.
14. The Tribunal in MM considered the threat to UDPS members and concluded, "the UDPS is perceived as less of a threat than previously, the guidance given in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118 and confirmed in MK DRC CG [2006] UKAIT 00001 remains correct." At paragraph [250] they stated-

"Mindful of the risk categories as identified in AB and DM, confirmed in MK and now re-affirmed by us, we recognise that had we found the Appellant to be credible, we would have concluded that as a person who had a role in the UDPS and who was known to the authorities and who had been detained and ill-treated by them for his political opinion and who had escaped from detention, he would arguably, not least to the lower standard of proof, be at risk on return to the DRC. Conversely, he would not be at real risk on return, if we found the Appellant to be no more than a mere member of the UDPS."
15. The Judges considered his claims and they noted inconsistencies of particular significance that led them to conclude he was not a truthful witness. However, before rejecting his claim they considered the evidence submitted (see paragraphs [83] - [84]). They made it clear that the mere fact every document was not referred to did not mean no regard had been paid to it. They considered his membership of the group "Equality for All" but concluded in paragraph [85] that he had fabricated parts of his evidence and importantly had not come to the attention of the authorities. They then considered from paragraph [86] his involvement with UDPS and they set out his written and oral evidence-highlighting further inconsistencies. Whilst accepting his role as a youth co-ordinator and the role he played in organising football matches they rejected his claim to be a high profile member. They gave detailed reasons and rejected his claim to have been arrested, detained or ill-treated as a result of his membership. They engaged with the documents and whilst not setting out every document they looked at it is clear, on any reading of the decision, they engaged with the issues in this appeal.
16. They then considered the medical evidence and this was the second ground of appeal. It was submitted that in assessing his credibility the Judges erred by considering the report after making findings.

17. I have considered this argument and whilst that submission can be persuasive I find in this case it has no merit. The Judges made findings about the conclusions of the report and having read the report myself I am not satisfied that the psychological therapist was sent any evidence to consider. Her assessment was based on speaking to the appellant and listening to his complaints. The therapist did not consider other possibilities including the possibility that his problems were linked to uncertain status. Her opinion was based solely on what she had been told and in those circumstances the Judges were entitled to find little weight should be attached to the report itself especially as they had considered the evidence and rejected his claims.
18. Two grounds of appeal were advanced and there is nothing in either ground that persuades me the Judges erred in law. With regard to Ground One the Judges considered the internal consistency of the claim and rejected it. They then considered the inherent plausibility of the claim and gave reasons for rejecting it. They then had regard to the country guidance case and found there was nothing that would lead them to depart from that decision. Detailed reasons were given and I find no error on the first ground. As regards the second ground I find no error and refer back to my reasons set out in paragraph [17] above.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:



Deputy Upper Tribunal Judge Alis