



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12090/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 11th July 2019

On 16th July 2019

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

P R T Y

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D H Hodson, instructed by Elder Brahim solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant seeks, with permission, to challenge the determination of First Tier Tribunal Judge Howard ('the judge'), promulgated on 20th May 2019 which dismissed the appellant's appeal against the refusal of a protection, humanitarian protection and human rights claim.
2. The appellant is a national of Cameroon and claimed protection on the basis of his support for the Southern Cameroon National Council ('the SCNC') and his risk of persecution by the Cameroon authorities owing to his imputed political opinion.

3. There were four grounds of challenge to the determination of the First-tier Tribunal:
 - (i) the judge recorded at the commencement of the hearing that the appellant's legal representative sought to submit a number of important documents corroborating parts of the core of the appellant's claim which had only recently come into the possession of the appellant. The appellant's legal representative applied for an adjournment on the basis that these documents had not been viewed or assessed by the respondent. The respondent was not at the hearing.

The judge 'very remarkably' referred in his determination at [6] to a conversation with the Secretary of State's legal representative, Ms Hall, as to whether the representative would make enquiries of the authenticity of the documents and recorded 'she said not'. The judge proceeded to refer to a purported exchange with the "phantom" representative in order to justify refusing an adjournment application which was made by the appellant's legal representative. There was no cross-examination, as recorded, because the representative was not present at all. These fundamental errors regarding what occurred at the hearing brought into serious question the reliability of the determination as a record of evidence more generally.
 - (ii) There were a number of documents produced at the hearing on which the judge was confused, in particular the date of receipt by the appellant of the 'convocation summons' and 'notice of research' (arrest warrant). The judge confused the receipt of these with the documents the appellant referred to in his asylum interview.
 - (iii) The judge failed to consider or make any findings on other documents which the appellant had already provided such as the membership card for the SCNC and the brother's death certificate.
 - (iv) The judge failed to have the ambiguity of the date of the father's death (2011 or 2012) resolved and this could have been undertaken by cross examination if this was in issue.
4. Permission to appeal was granted by First-tier Tribunal Judge Grant Hutchison on the basis that if there was no Home Office presenting Officer present, no cross examination and no submissions, the record that there were, seriously undermined the reliability of the Determination.

5. At the hearing before me Mr Clarke, rightly in my view, conceded that the reliability of the record of the proceedings and the determination were seriously called into question and the perception of fairness was important. Mr Clarke confirmed that the Secretary of State had no record of any presenting officer being present at the hearing on 21 March 2019.
6. Mr Hodson who was present at the First-tier tribunal submitted that his concern in relation to the late admission of the documentation which corroborated the appellant's claim, without inspection by the Home Office, would lend the determination open to appeal and hence the application for an adjournment.

Analysis

7. It is clear from the record of proceedings that, although the 'front sheet' records a Ms S Hall as being present on behalf of the Secretary of State, there is no reference in the hand written record by the judge, to any exchange with the Home Office presenting Officer in relation to an adjournment application, there was no cross-examination and no submissions made by a representative on behalf of the Secretary of State.
8. The time delay between the hearing and promulgation of the determination was 2 months. It is possible that owing to the record of the front sheet the judge became confused as to whether a Home Office presenting officer was present some 2 months after the hearing but to rely on a phantom exchange with a non-existent legal representative in order to refuse an application for an adjournment (because the documents would not be assessed by the Home Office) was a procedural irregularity at the very least and a material error of law because it calls into question the reliability of the evidence recorded, and thus its assessment in relation to the credibility of the appellant.
9. At paragraph 11 the judge refers to the appellant being 'cross-examined' and at paragraph 12

"thereafter I heard submissions from Ms Hall and Mr Hodson. I do not propose to rehearse those submissions here they are set out in the record of proceedings. I reserved my decision".
10. There were no submissions set out in the record of proceedings from the representative of the Secretary of State.

11. I do not proceed to consider the remaining grounds in detail but note that the grounds assert that the judge also became confused in relation to the evidence and although not specifically identified in the grounds, for example at paragraph 27, the judge states
'His screening interview took place on 26 October 2017 and he is recorded as saying an arrest warrant had been issued. He states that he did not say that'.
12. An examination of the screening interview shows that the appellant specifically stated there was no arrest warrant.
13. Essentially the record of the hearing and the findings of the judge are unreliable and cannot stand.
14. There was clearly no representative for the Secretary of State present at the hearing and the judge, in so recording, fundamentally undermines the reliability of his later assessment of the evidence. On the basis of the requirement for the perception of procedural fairness and the just disposal of this appeal, owing to the material errors of law as found the matter should be re-heard de novo. None of the findings will stand.
15. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington
Upper Tribunal Judge Rimington

Date 11th July 2019