IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001691
First-tier Tribunal No:
PA/01458/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 March 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

HDO
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Hussain
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Phoenix House (Bradford) on 30 January 2023

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. By a decision promulgated on 29 December 2022, I found that the First-tier Tribunal had erred in law and I set aside its decision. My reasons were as follows:

> 1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1981 and is a male citizen if Ivory Coast. His claim for international protection was refused by the Secretary of State by a decision dated 30 January 2020. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 4 September 2021, found that the appellant was excluded from protection under the Refugee Convention by reason of Article 1F(a) (a finding which is not challenged by the appellant by way of cross appeal) but allowed the appeal on Article 3 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.
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> 2. In essence, the grounds of appeal assert that the judge has failed to give adequate reasons for concluding that the appellant would be at Article 3 ECHR real risk on return. The grounds [6] complain that the judge 'does not explain why [the appellant] would be at a continued risk now. There is no evidence to demonstrate that he would be recognised or indeed that he still holds political ties which would put him at risk of harm from the main party opponents.'
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> 3. The judge's findings of fact are concise:
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> > 56. It is likely the Appellant knew what was going to happen as he lived in the area, was involved in the community, and the behaviour was widespread and well known. In passing on the instructions and organising individuals to attend, he actively participated in those acts of crimes against humanity.
> >
> > ...
> >
> > 63. In relation to Article 3, I accept it is reasonably likely that as he was involved in communication, information, and mobilisation for an area that covered 250,000 people, he is well known. He was not a low-level activist but had a level of seniority at regional level.
> >
> > 64. I accept it is reasonably likely his father and 2 cousins were killed as claimed given the ongoing civil war, and as the Appellant's activity was the cause of that as I have no real reason to doubt him.
> >
> > 65. He does not have the level of seniority however that the national leaders had and would therefore be reasonably likely to fall below the radar of international scrutiny that Gbambo enjoys.
> >
> > 66. He should not have to lie about his identity or what he did.
> >
> > 67. There is a real risk that it would become known that he had returned and been involved in the commission of the crimes against humanity as found above, and that there are those who would seek revenge. He supported the PFI which is not in power.

> The fact it hold seats in parliament does not mean it has any authority.
>
> 68. There is a real risk that those who were the victims of the crimes against humanity at the roadblocks support the government.

4. Many of these findings are more in the nature of assertions unsupported by evidence. Paragraph [67] is problematic. The judge does not explain why the return of the appellant would 'become known' and why the threshold of real risk would be crossed. We learn that the appellant 'had a level of seniority at regional level' but the judge does not explain why that would expose the appellant to risk in his home area. It is not explained who exactly would be likely to recognise the appellant and why, if they did recognise him, those individuals would now 'seek revenge.' The finding that, although not in power, the PFI has no authority is not supported by reference to expert or background evidence. I do not say that these assertions are necessarily incorrect. However, the reader of the decision should not have to make his or her own research in the evidence in order to understand why the judge came to the conclusions he did. Paragraph [68] ('There is a real risk that those who were the victims of the crimes against humanity at the roadblocks support the government') is somewhat cryptic and requires further explanation.

5. Ms Young submitted that the appellant's past activities had been carried out on a local, regional level only; the judge acknowledges that the appellant does not have a significant national profile in the PFI. Even if the appellant is at risk in his home area, the judge has not considered internal flight. This is puzzling given that the country guidance which the judge cites at [13] (GG (political oppositionists) Ivory Coast CG [2007] UKAIT 00086), albeit dealing with members of a different political party (the RDF), found that activists who may be at risk in their home area in Ivory Coast can relocate. At [63], the judge says that, ' I accept it is reasonably likely that as [the appellant] was involved in communication, information, and mobilisation for an area that covered 250,000 people, he is well known' but he does not identify the parameters of that area or consider the extent of risk beyond it.

6. The Upper Tribunal should hesitate before finding that the First-tier Tribunal, which is required to undertake a robust assessment of the evidence as the judge sought to do here, has provided insufficient reasons to support its findings. However, having quite properly analysed in detail the matter of exclusion under Article 1F, the judge has, in my opinion, provided an inadequate analysis of the Article 3 ECHR risk.

7. I set aside the decision. However, I adopt the judge's unchallenged conclusions as regards asylum and Article 1F. The Upper Tribunal will remake the decision in respect of Article 3 ECHR following a resumed hearing. Both parties may adduce fresh evidence provided any documentary evidence is filed at the Upper Tribunal and served on the other party at least 10 days prior to the resumed hearing.

Notice of Decision

> The Secretary of State appeal is allowed. I set aside the decision of the First-tier Tribunal. The judge's unchallenged conclusions as regards asylum and Article 1F are preserved. The Upper Tribunal will remake the decision in respect of Article 3 ECHR only following a resumed hearing. Both parties may adduce fresh evidence provided any documentary evidence is filed at the Upper Tribunal and served on the other party at least 10 days prior to the resumed hearing.

2. At the resumed hearing at Bradford on 30 January 2023, Mr Diwnycz relied on the Secretary of State's refusal letter. Mr Hussain, for the appellant, did not call the appellant or any other witness nor did he seek to rely on any documentary beyond that which had been before the First-tier Tribunal. He referred only to the two expert reports, namely that of Professor Aguilar (22 May 2021) and Professor John Birchall (23 July 2020). He submitted that the reports showed that the appellant would be at real risk on return to Ivory Coast. As noted in my error of law decision, the appellant is a former supported of the Ivorian Popular Front (IPF) a party which is not in power at the present time and a supporter of the former president, Laurent Gbagbo.

3. Much of Professor Aguilar's report focuses on the exclusion of the appellant from asylum under Article 1F. However, he unequivocally states [25] that there are no cases against the appellant at the International Criminal Court (ICC) and 'his name does not appear on any press information which I have searched via Google Ivory Coast' which indicates that there is not likely to be any official state of community record of the appellant's activities in the civil war. Professor Aguilar records that President Outtara was re-elected in 2020 with 95% of the votes cast. He notes that, since that election, 'the state has pushed for a possible end to amnesty laws [concerning the civil war violence of 2010/11] and the prosecution of Laurent Gbagbo's supporters' There is no other evidence before me which would indicate that the amnesty laws have been repealed or Gbagbo's supported prosecuted. Opposition political parties have not been banned and, whilst the report notes that the current president is able 'to crush any opposition', it does not make it clear exactly how that power might be used against low-profile individuals such as the appellant. Reference is made to a Human Rights Watch report of 2020 which observes that, whilst new laws to promote human rights 'could lead to citizen protection', it could lead 'to further persecution of the opposition to the current president.'

4. In my opinion, Professor Aguilar's report does not strongly his conclusion that the appellant would be at risk on return. He paints a picture of a fragile political situation in which opposition politics remains possible but where new laws are passed which human rights organisations acknowledge may ameliorate the lives of citizens. The former president, whom the appellant supported, remains political active. The overall impression from the report is of a tense but essentially calm political environment where the current regime is able, but has so far refrained from acting, to repress political opposition. Against that background, I do not find that the appellant, who left Ivory Coast more than 10 years ago and is no longer politically active can be said to be a real risk from government forces or third parties should he return now.

5. That view is reinforced by the report of Professor John Birchall. His report consists for the most part of a general account of the civil war in Ivory Coast with comments regarding the appellant's individual circumstances interposed in the text. Many of these comments are rather cryptic ('to be know *(sic)* to those who

have gained power and resources is not a safe position to be in'). Professor Birchall notes that 'to some, [the appellant] would have *(sic)* someone, all be it *(sic)* at quite low level, who played a part in ending communal and other forms of violence. To others, he betrayed what they had wanted and as such let them and his country down'. He says that 'stories do exist that people [like the appellant] have been badly treated if held in secure conditions' and '… revenge may take place. This could be physical, mental or done in ways which reduces his chances of settling back into society…' he concludes by saying that 'just how they might treat someone like [the appellant] is very difficult to say.'

6. Professor Birchall's report does not strongly support the appellant contention that he is at real risk in Ivory Coast. The conclusions are conjectural. Even when he offers the opinion that the appellant would be at risk, some of the forms of harm he describes (eg. hindering the appellant's reintegration) do not cross the Article 3 ECHR threshold whilst he seems to believe that serious harm would only occur if the application is 'held in secure conditions' (presumably state detention). What does emerge is an opinion that, even assuming that anyone in Ivory Coast remembers the appellant after more than 10 years' absence, he will either be welcomed or face hostility depending upon which community he may be in. That view engages the current country guidance (*GG (political oppositionists) Ivory Coast* CG [2007] UKAIT 00086), which I acknowledge pre-dates the events in which the appellant was involved and deals with different political groupings, but which found that internal flight is available in the country [87]. As a general proposition, I consider that that remains an accurate assessment. I am aware that Professor Aguilar writes of the considerable centralised power of the current president's party (which may exceed that in office at the time of *GG*) but (i) Ivory Coast is a moderately large country with a population of more than 26 million (by contrast, according the First-tier Tribunal, the appellant claimed to have been 'responsible for information, communication, and mobilisation across five districts covering some 250,000 people) and (ii) as Professor Birchall shows, the appellant would not be universally at risk; risk would depend on the ethnic and political make-up of the particular community in which the appellant may find himself.

7. In conclusion, therefore, I find that returning to the politically fragile, yet stable, state of Ivory Coast at the present time after 10 years' absence, it is not reasonably likely that (i) the current government would identify the appellant as a political threat or seek to harm him (ii) individual Ivorians would recognise the appellant or remember his role in events more than 10 years ago (iii) even if there are groups or individuals who do remember the appellant and would seek to harm him, then he could reasonably relocate elsewhere within the country where he would not be at risk.

8. In the circumstances, I am not satisfied that the appellant is a real risk of Article 3 ECHR harm should he now return to Ivory Coast. I remake the decision dismissing the appeal.

Notice of Decision

I have remade the decision. The appellant's appeal against the decision of Secretary of State dated 30 January 2020 is dismissed.

Case No: UI-2021-001691
First-tier Tribunal No: PA/01458/2020

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 31 January 2023