



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00320/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 15 September 2014

Determination Sent
15 October 2014

Before

Deputy Upper Tribunal Judge Pickup
Between

Nicole Estelle Kpokou
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Nicholson, instructed by GM Immigration Aid Unit
For the respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Nicole Estelle Kpokou, date of birth 11.3.73, is a citizen of Cote D'Ivoire.
2. This is her appeal against the determination of First-tier Tribunal Judge Birrell, who dismissed her appeal against the decision of the respondent, dated 23.12.13, to refuse her asylum, humanitarian protection, and human rights claims, and the decision on

24.12.13 to remove her from the UK, pursuant to section 10 of the Immigration and Asylum Act 1999.

3. The Judge heard the appeal on 16.5.14.
4. First-tier Tribunal Judge Grant granted permission to appeal on 19.6.14.
5. Thus the matter came before me on 15.9.14 as an appeal in the Upper Tribunal.

Error of Law

6. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Birrell should be set aside.
7. In granting permission to appeal, Judge Grant agreed that in making her credibility findings the First-tier Tribunal Judge “failed to give any reasons for rejecting the evidence given by the appellant’s brother Achille Kpokou and that she has thereby arguably erred in law. All other grounds are arguable.”
8. The Secretary of State’s Rule 24 response, dated 1.7.14, accepts that the First-tier Tribunal did not make a finding in respect of the appellant’s brother’s evidence in relation to Paul N’Dre. “However, the First-tier Tribunal Judge found that the appellant did not mention him in her screening interview and neither did her brothers in their claim. This finding is at paragraph 28 of the determination. The First-tier Tribunal Judge clearly does not believe that aspect of her claim and this is further set out at paragraphs 29-31 of the determination. The First-tier Tribunal Judge has made adequate findings of fact at paragraph 36 in respect of 276ADE(vi).”
9. In his oral submissions, Mr Nicholson relied on three main grounds. First, that the judge failed to deal with the evidence of the appellant’s brother; second, that in error the judge sought or required corroboration of the appellant’s account; and third, that the judge erred in finding that the appellant has ties to Cote D’Ivoire.
10. At §24 the judge stated that she was going to summarise “some of the main reasons for my finding that the appellant has failed to prove the truth of her history and thus has failed to demonstrate that she is entitled to be treated as a credible witness. However my summary should not be seen as an exhaustive list for my reasons for reaching my decision. I would re-state that I have taken into account the totality of the appellant’s evidence before reaching my findings.”
11. In relation to the first and second grounds. At §29 the judge found that there was no evidence to support the appellant’s claim that she is related to Mr N’Dre. As a bare statement that was inaccurate, as the appellant’s brother Achille Kpokou (AK) confirmed the appellant’s account and the relationship with Mr Dre. The grounds complain that the judge gave no reason why she did not accept this evidence.

12. However, it is clear that the Judge had considered the evidence of AK, both his witness statement and his oral evidence, which is summarised at §16 of the determination, to the effect that he had met Mr N'Dre on two occasions; once when he was 10/11 years of age, and once when he was about 17. She also referenced the other brother's statement at §28. However, the judge also noted at §28 that there was no reference to Mr N'Dre, in the screening interview. It was also pointed out that it was not a reason given by her mother for leaving Cote D'Ivoire in her own asylum claim. In fact, as the judge pointed out at §26, in the screening interview the basis of the appellant's claim was in relation to her father's family. I note that there has been no challenge by the appellant to the finding at §27 of the determination rejecting the appellant's claim of fear of her father's family and being poisoned by them. The claim in relation to Mr N'Dre was in essence a claim first made at a later stage, in her asylum interview.
13. It is in that context that the judge arrives at the finding at §29 that there is "no evidence to support the appellant's claim that she is related as claimed to N'Dre." In the light of the foregoing, the finding has to be understood as there being no independent or satisfactory evidence to support the appellant's claim of relationship. As the judge went on to explain, whilst it had been raised by the appellant in her witness statement, and such information was important because is not in public domain, "it is of course only helpful to her if it can be proved that the information is accurate which has not been demonstrated. In fact the only detail that can be confirmed is his ethnicity which is information that is in the public domain." I find in the circumstances that the judge was entitled to reject the claimed relationship.
14. This was not the judge requiring corroboration of the claim, but a detailed evaluation of the evidence, pointing out that it was unsupported by any independent or objective evidence in the public domain. By this stage the judge had already found the appellant's story inherently implausible and internally inconsistent. The claimed depended in large part on the family's close links with Mr N'Dre, but at §28 the judge rightly points out the virtual absence of reference to Mr N'Dre in other evidence. When evaluating the appellant's claim on this issue the judge had to assess the credibility of the appellant's evidence. Clearly, some independent or objective confirmation of the relationship would have gone to assist the strength of the appellant's claim. It was not wrong for the judge to point out the absence of such independent supporting evidence.
15. The statement of AK, dated 16.5.14, does make reference to Mr N'Dre, but on a reading of the statement as a whole, it is clear that this is not independent evidence of the matters complained of by the appellant. AK came to the UK in October 2001. His witness statement does not directly explain the relationship, but at §9 a family relationship is inferred. He thought he had met Mr N'Dre twice, when as a child he accompanied his mother to his office. The statement does not clearly state the nature of the relationship, but in his oral evidence as recorded at §16, it is stated that he was happy to see his sister, AK's mother. There is no evidence that he has ever mentioned this before and thus it is entirely self-serving of the appellant's claim for it to be produced now. Such an assertion can carry little evidential weight as it is no more

than an assertion raised in support of the appellant's own unsupported claim. The witness statement of the other brother, who did not give evidence at the Tribunal, does not mention Mr N'Dre at all. Thus the evidence of the brothers is limited and could at best carry little evidential weight. It remains the case, as relied on by the respondent, that there is no independent evidence that the appellant is related as claimed to Mr N'Dre. No other family member has been arrested or detained as a result of the claimed association. Neither of her brothers nor her mother made mention of Mr N'Dre in their various claims.

16. At §31 the judge reached the conclusion that the appellant's claim in relation to Mr N'Dre was made in part to explain her very significant delay in claiming asylum, made only when her husband's leave expired and her claim as EEA dependant of her brother failed.
17. In the circumstances, I am not satisfied that there is any error of law in this regard. I find that the judge was fully aware of and took into account all of the evidence and reached a fair and balanced assessment of that evidence in relation to the claimed relationship with Mr N'Dre and gave appropriate weight to the evidence on the issue. Even if the judge had specifically referred to the evidence of AK in §29, I am not satisfied, given the very limited weight such a statement can carry, that it would or could have changed the outcome of the appeal or the finding of fact in relation to this part of the appellant's claim. I reject the assertion that the judge was requiring corroboration of the appellant's assertion as to the relationship. The evidence was a matter of weight to be attached to it as assessed by the Tribunal judge, in the light of the judge's assessment of the appellant's evidence generally and her credibility. The appellant has not shown that the judge's assessment of that evidence is perverse or irrational. The appellant has failed to demonstrate that the way in which the judge dealt with the evidence amounted to a material error in the making of the decision of the First-tier Tribunal.
18. In relation to ground 3, it is submitted that the judge erred in finding that the appellant retained ties to Cote D'Ivoire. Reliance is made on *Ogundimu* (article 8 - new rules) Nigeria [2013] UKUT 60 (IAC), where ties is defined as a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. "It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances."
19. The Rule 24 response submits that the judge made adequate findings at §36 in respect of paragraph 276ADE(vi). The judge considered the submissions of the appellant's representative at the First-tier Tribunal appeal hearing, stated that she did not accept those submissions, and went on to give her reasons. In light of the credibility findings the judge rejected the appellant's attempts to distance herself from Cote D'Ivoire. The appellant lived most of her life in Cote D'Ivoire, she retains the language and has regular contact with her sister-in-law in Cote D'Ivoire. She has been in the UK 12 years and has children here. These are all matters of weight for the

judge to consider. I find that the appellant has failed to demonstrate that the conclusion on paragraph 276ADE is perverse, irrational or otherwise flawed. In essence, the grounds on this issue are no more than an attempt to re-argue the case.

20. I note that at §37 to §39, pursuant to Gulshan, the judge found no arguably compelling circumstances for considering article 8 ECHR outside the Immigration Rules, even taking into account the mental health concerns of the appellant. The grounds did not submit that the judge was wrong to apply Gulshan.
21. In the alternative, the judge also found the decision was proportionate. In undertaking that balancing exercise, the judge took account of the appellant's current circumstances, including that as a student she could have had no legitimate expectation to remain beyond leave and compliance with the Immigration Rules. The circumstances of the children and their best interests were also considered, but ultimately those circumstances did not outweigh the public interest in removal.
22. In the circumstances, I find no material error of law in the determination of judge Birrell and the appeal must stand as dismissed.

Conclusions:

23. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed:

Date: 9 October 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case.



Signed:

Date: 9 October 2014

Deputy Upper Tribunal Judge Pickup