



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/08885/2013**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Manchester
On December 11, 2014**

**Determination Promulgated
On December 15, 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MAMADOU SALIOU BAH
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chaudhury (Legal Representative)

For the Respondent: Mr McVeety (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born April 25, 1993, is a citizen of Guinea. The appellant claimed to have entered the United Kingdom on June 2, 2013 on a flight from Guinea with the assistance of an agent. He claimed asylum on June 4, 2013. His application was refused by the respondent on July 5, 2013 and on September 9, 2013 a decision was taken to remove him as an illegal entrant from the

United Kingdom by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.

2. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 23, 2013 and on March 3, 2014 Judge of the First Tier Tribunal Chambers (hereinafter referred to as the "FtTJ") heard his appeal and in determination promulgated on March 7, 2014 he refused his claims for asylum and associated claims.
3. The appellant lodged grounds of appeal on March 22, 2014 and on April 11, 2014 Judge of the First-tier Tribunal Cox extended time and gave permission to appeal finding there were arguable grounds that the FtTJ may have erred in the way he dealt with material evidence.
4. The matter came before me on the above date and on that date the appellant was in attendance.

PRELIMINARY FINDING

5. Mr McVeety accepted that the FtTJ erred in paragraph [33] with the date of the newspaper as it appeared he considered the claim on the basis the report was dated May 2014 when in fact it was 2013. However, he indicated he would be submitting this did not amount to a material error.

ERROR OF LAW SUBMISSIONS

6. Mr Chaudhury adopted the grounds of appeal and submitted:
 - a. In paragraph [33] the FtTJ had the wrong date for the newspaper. The FtTJ thought the paper was dated May 2014 when in fact it is May 2013. The FtTJ made adverse findings against the appellant and this amounted to an error in law.
 - b. The appellant made clear in his witness statement at paragraphs [3] to [5] that he was with an agent and did exactly what the agent said. He did not speak to the immigration officer. The FtTJ failed to have regard to this in paragraphs [36] and [37] where he made adverse findings against the appellant and made no reference to his account. This amounted to a material error as it went to the assessment of credibility.
 - c. The FtTJ's approach to the expert report of Mr Ticky Monekosso contained a material error. The FtTJ wrongly found that the expert had stated that his opinion on the whole of the appellant's claim was "non-conclusive" whereas it was

confined to the appellant's business. The FtTJ failed to have regard to the expert's findings at pages 10, 26, 33 and 34 of the report.

7. Mr McVeety submitted there was no material error because:
 - a. Whilst the FtTJ had the wrong date in paragraph [33] his actual finding about the photograph was still a valid point and in any event the erroneous finding on the date did not infect the remaining findings in the determination as he had already made findings undermining the claim.
 - b. There was no factual inaccuracy in what he said in paragraph [37]. He was entitled to find the immigration officer would have made enquiries when the appellant presented his passport.
 - c. The FtTJ was entitled to make the findings he did on the expert report. The expert claimed to know about Guinea but despite his research he found nothing about his father despite the appellant's claim his father was high profile. The expert provided a report on the basis the appellant's account was credible whereas the FtTJ started from the premise nothing was known about the appellant's father because the expert found nothing conclusive about him. The expert's findings are based on an assumption by him the appellant was telling the truth and as the FtTJ rejected his claims he was entitled to reject the conclusions. In addition, the expert accepts there was no evidence that failed asylum seekers had been ill treated or would be at risk.
8. I reserved my decision.

ERROR OF LAW ASSESSMENT

9. In any application concerning an error in law the party that is applying has to show not only that the FtTJ has made an error but that the error was material. Mr McVeety's submission to me is two fold namely that whilst the FtTJ erred with regard to the date of publication of the newspaper that did not detract from the overall negative findings on credibility. Mr Chaudhury has highlighted three areas where he submits the FtTJ materially erred.
10. Mr Chaudhury submitted the FtTJ had erred in his approach to the expert's evidence. The FtTJ considered this report at paragraphs [24] to [29] and noted the expert was particularly well versed in the Guinean situation through twenty-seven years work as a journalist and researcher. Key to the appellant's claim was the role of his father. He claimed his father was a close friend and

associate of the UFDG leader and he provided finances for the party and in return he received political favours. The expert, Mr Monekosso, provided a forty-four page report although his consideration of the appellant's claim only commences at page 9. He made clear his brief was to consider the recent changes in the context of Guinea and to comment on whether the appellant would be at risk from his family's involvement with the UDFG, his Fullani ethnicity and the fact he claimed asylum in the United Kingdom after travelling with a false document.

11. The FtTJ summarised what he had to consider in paragraph [28] of his determination when he stated, "... Much therefore turns upon what I make of the appellant's account concerning what happened to his family members and importantly, his documents."
12. On page [10] of his report he wrote, "I tried to investigate on Mr Mamadou Saliou Bah's father and his business in Guinea however my investigations on his father's name are therefore non-conclusive as his name is a common name in Guinea". The expert could not confirm anything the appellant claimed about his father and the FtTJ further noted he had not been provided with either the newspaper article or the arrest warrant despite having an expertise in documents.
13. The expert concluded that his account of entering on a "red passport" was plausible but the FtTJ was unimpressed with the expert's evidence as he concluded in paragraph [32], "the appellant's immigration history does not suggest he is telling the truth about his circumstances both at the time of the applications to visit and at the time he came to the UK and was 'received' at least as an asylum seeker".
14. The FtTJ noted the expert accepted he had not found any recent case of a failed asylum seeker who had been ill treated due to that fact. The expert found this appellant would suffer problems because of his father's activities and it therefore follows that if the FtTJ rejected this claim then the appellant's appeal would have no foundation.
15. It is clear from the FtTJ's determination he did reject the claim and he gave his reasons for doing so. The expert's report would therefore carry little weight and of course he had not been asked to comment on two important pieces of evidence namely the newspaper and the arrest warrant. He clearly gave reasons for rejecting the account and that left him with a problem concerning the expert's report. Where the expert's report is based on the account being credible then little or no weight can be attached to the expert's conclusions. In rejecting the expert's evidence he did not simply reject the report but he considered the report and the

evidence and ultimately rejected the claim. His finding on the report was open to him and I am satisfied he did consider the report's full conclusions. There was no error in his approach to the report.

16. The next area of concern, raised by Mr Chaudhury, surrounded the FtTJ's finding in paragraph [33] of his determination. The newspaper finding is one of a number of findings the FtTJ made when he was considering the appellant's claim. He made two findings about this article:
 - a. The article described what happened to the appellant's father and it lacked credibility it would appear in a newspaper eleven months after he had left the country.
 - b. The appellant produced the same photograph that that was contained in the newspaper and this suggested the article was something that the appellant had written up.
17. Mr McVeety accepted the FtTJ had incorrectly dated this article because the newspaper was dated May 2013 whereas the FtTJ suggested it was dated May 2014. If this had been the only reason for rejecting the appellant's claim then Mr Chaudhury's submission would have some weight. However, by the time the FtTJ considered this piece of evidence he had already made a number of findings about the appellant's claim in paragraphs [24] to [32]. He had considered the evidence and had regard to the report so far as it was relevant to his findings at that point.
18. Mr McVeety's point about the existence of the photograph was a matter the FtTJ also referred to. The FtTJ felt the report was self-serving not merely because he erroneously thought the report was dated a year later than it actually was but also because the newspaper used a photograph that the appellant himself had. These were the reasons he concluded the report was self-serving but even though he erred on the date of the paper his other finding remains good as of course does his finding about how much weight to attach to the document bearing in mind the expert witness had not viewed it.
19. I therefore find that whilst there was an error on the date it ultimately was not material because of his other negative findings.
20. The final issue related to the appellant's witness statement and what happened at immigration control. Mr Chaudhury submitted the FtTJ failed to consider the appellant's witness statement. However, the FtTJ clearly had the bundle of documents including the statement because at paragraph [5] he referred to the fact the appellant travelled with an agent and was provided with a false passport. The expert witness claimed to be an expert on affairs in

Guinea but he is not an expert on UK Border Agency practices. The FtTJ rejected his claim to have entered on a false passport and based on the other negative findings this was open to him.

21. I am satisfied that all the findings made were matters open to him. Whilst there was an error on the date I am satisfied this was not material.

Decision

22. The decision of the First-tier Tribunal did not disclose an error. I uphold the original decision.
23. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No such order was made in the First-tier and I see no reason to make such an order now.

Signed:

Dated: **December 15, 2014**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

There was no application for a fee award and I uphold the original fee award decision.

Signed:

Dated: **December 15, 2014**

Deputy Upper Tribunal Judge Alis