



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08012/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 12th June 2015

Decision and Reasons Promulgated
On 24th June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**EVARISTE MBODA MBODA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor of Burton & Burton Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

Background

2. On 16th April 2015 Judge of the First-tier Tribunal Page gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal A J Parker in which he allowed the appeal on all grounds against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant, an adult citizen of Cameroon.
3. In granting permission Judge Page noted that the grounds of application contended that the judge erred in making favourable credibility findings based upon the appellant's evidence. Further, a contradiction in expert evidence had been relied upon in connection with risk allegedly caused by the appellant's ethnic background. It was also contended that the judge had entirely failed to deal with the issue of a national passport to the appellant who had allegedly escaped from detention whilst facing the serious charge of attempting to assassinate the president of Cameroon. Judge Page thought all of these points were arguable.

Error on a Point of Law

4. At the hearing before me Mr McVeety confirmed that the respondent relied upon the grounds of application and the permission. He then expanded on the grounds by emphasising that, although the judge had found that the appellant had been accused of the attempted assassination, he made no reference to the ease with which the appellant had left the country using his own passport having escaped from detention. The background evidence before the judge suggested that he would have been arrested at the airport.
5. Mr Mohzam submitted that the expert evidence showed the difficulties created during a presidential visit, it being open to the judge to decide whether the appellant had been actually arrested or not. He asserted that the judge had made proper reasoned findings on the available evidence. Further, the judge did not have to address all the issues raised in the refusal, particularly that relating to the passport although he conceded that this was not covered in the decision.
6. After considering the matter for a few moments I announced that I was satisfied that the decision showed errors on points of law such that it should be set aside and re-made. My reasons for that conclusion follow.
7. Although the grounds of application amount to a disagreement with the findings of the judge there are good reasons for the respondent taking that position. The judge assessed the appellant's ethnicity (Bamileke) as a factor which made his situation worse. Although the judge refers to the expert report (pages 25 and 26) as supporting that conclusion, the judge appears to have overlooked the significant point that the Bamileke are a group who dominate politically in Cameroon and, whilst the expert report refers to discrimination against them, no actual incidents are referred to.
8. Whilst the above discrepancy, alone, might not amount to a material error, it must also be seen in the light of the judge's failure to deal with the relevant circumstances of the appellant's departure from Cameroon through the airport using his own

passport (which contained a UK visa) at a time when he had been detained on suspicion of attempting to assassinate the president and had allegedly escaped from prison. In failing to consider this matter the judge also failed to deal with the allegation in the refusal letter that the Cameroonian authorities have checks in place to look for wanted individuals (paragraph 23). It is not possible to say that, even if the judge had taken this issue into consideration, he would have reached the same favourable credibility findings. The judge's failure to take into account this material evidence amounts to an error on a point of law.

9. As the judge's credibility findings cannot stand because of the errors to which I have referred it is appropriate that this appeal should be heard afresh by the First-tier Tribunal. This course of action is consistent with paragraph 7.2 of the Practice Statement of the Senior President of Tribunals issued on 10th February 2010.

DIRECTIONS

10. The decision of the First-tier Tribunal is set aside and the appeal will be heard afresh before the First-tier Tribunal at the Stoke Hearing Centre on 4th December 2015.
11. The appeal should not be before Judge of the First-tier Tribunal A J Parker.
12. The time estimate for the hearing is three hours.
13. An interpreter in French (Cameroonian dialect) will be required.

Anonymity

An anonymity direction was not requested before the Upper Tribunal and nor did I consider it appropriate.

Signed

Date

Deputy Upper Tribunal Judge Garratt