



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/08675/2012
AA/08677/2012

THE IMMIGRATION ACTS

**Heard at Manchester
On 21 July 2015**

**Decision & Reasons Promulgated
On 18 August 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**SOULEMAN SYLLA (FIRST APPELLANT)
SACKO FOUSSENI (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G Brown instructed by Lawrence Lupin, Solicitors

For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, Souleman Sylla (date of birth 1 March 1980) and Sacko Fousseini (date of birth 10 September 1985), are cousins and citizens of the Central African Republic (CAR). The appellants had appealed to the First-tier Tribunal (Judge Brunnen) against a decision of the respondent to remove them from the United Kingdom following the refusal of their claims for asylum. The reasons for refusal letter is dated 19 September 2012. The First-tier Tribunal dismissed the appeals in a decision promulgated on

17 April 2015. The appellants now appeal, with permission, to the Upper Tribunal.

2. Granting permission, Designated Judge McCarthy found that the pleaded grounds were arguable and, in addition, noted the following:

“Before concluding this permission to appeal statement, I observe that at no juncture in the lengthy asylum and appeal procedures has either appellant sought to argue that the Home Office did not comply with paragraph 339ND of the Immigration Rules (which is a transposition of Article 13(3)(b) of the Procedures Directive (2005/85/EC)). It is unclear whether the appellants have ever been able to give a full account of their claims because of the difficulties obtaining a suitable interpreter. It would appear that even the appellants’ solicitors relied on an unqualified interpreter whose fluency in English was doubtful. It would appear that no-one thought of alternative ways of gathering information such as using relay interpreters (Sango to French, French to English).

I am particularly concerned because it would seem that the appellants did not give oral evidence at the hearing before Judge Brunnen because they were not confident in speaking French. That resulted in Judge Brunnen having to examine the various accounts. It is evident that Judge Brunnen noted a number of problems with the accounts but was not confident whether they were the result of the appellants not being credible or because of the interpretations being unreliable. I flag it up in case it has any relevance to the issue of how Judge Brunnen assessed the appellants’ credibility which will need to be considered by the Upper Tribunal because of the arguable legal point I have identified.”

3. Mr Brown characterised these comments of Judge McCarthy as raising “*Robinson*” obvious arguable errors in the First-tier Tribunal decision. Mr Harrison, for the respondent, agreed with Mr Brown. Mr Harrison was concerned that, notwithstanding the evident thoroughness of Judge Brunnen’s decision, the appellants had, in effect, been denied an entirely fair hearing because they had been unable to give evidence to the Tribunal (or, indeed, full particulars of their accounts to the respondent) in Sango, their first language. Mr Harrison also considered that the First-tier Tribunal had failed to make adequate clear findings as to the medical evidence, wrongly attaching limited weight to that evidence because the authors of the report had not given a clear indication of alternative causation of the injuries with which the appellants had presented. As Judge McCarthy stated [3], that approach has led the Tribunal to perpetrate an arguable error in the assessment of the medical evidence.
4. As Mr Brown accepted, difficulties over the medical evidence and the fact that the appellants had been denied the opportunity of giving evidence and being cross-examined in their first language, might not prove material if the judge’s alternative finding [146] that, on the basis that the appellants’ accounts of past ill-treatment were true, they could yet avail themselves of internal flight within the CAR, was sound. However, in assessing internal flight, Judge Brunnen has failed to take any account of the characteristics possessed by these appellants and which may render the internal flight alternative an unduly harsh one. It is not clear from the

judge's assessment of internal flight that he has considered the medical evidence showing that the appellants suffer from post traumatic stress disorder (PTSD).

5. Mr Harrison submitted that the inability of the Tribunal to provide a fair hearing to the appellants, coupled with the judge's error in respect of his analysis of the medical evidence and the fact that the internal flight analysis was also flawed, indicated that the decision had to be set aside. On considering all the documents and the submissions, I find that I agree. I do so with some reluctance given the customary thoroughness which Judge Brunnen has brought to his analysis of these appeals. In setting aside his decision, I stress that I do not suggest that these appellants will always be denied a fair hearing if they cannot give their evidence through a Sango interpreter. I do, however, believe that every effort should be made to examine how the evidence of the appellants might be given in a language in which they feel confident (for example, by a "relay" of interpreters as suggested by Judge McCarthy). For that reason, I direct that there should be a Case Management Review (CMR) in the First-tier Tribunal; it would be helpful for the Resident Judge at Manchester or one of the Designated Judges there to conduct that review. At the CMR, the First-tier Tribunal will expect to receive detailed submissions from the appellants' solicitors as regards the language interpretation difficulties, together with any contribution which the respondent may wish to make. None of the findings of fact of the First-tier Tribunal shall stand.

Notice of Decision

6. The decision of the First-tier Tribunal promulgated on 17 April 2015 is set aside. It is appropriate that these appeals should be remitted to the First-tier Tribunal (not Judge Brunnen) for that Tribunal to remake the decision. I direct that the appeals be listed for a Case Management Review (CMR) in Manchester before (if practicable) the Resident Judge or a Designated First-tier Tribunal Judge on the first available date.

No anonymity direction is made.

Signed

Date: 4 August 2015

Upper Tribunal Judge Clive Lane