



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

Appeal Numbers: PA013312017

THE IMMIGRATION ACTS

Heard at Field House

**Decision and reasons
Promulgated**

On: 10 May 2017

On: 23 May 2017

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

[M G]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Childs of Counsel

For the Respondent: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Ivory Coast born on [] 1963. He appealed against the decision of the respondent dated 24 January 2017 to refuse to grant the appellant asylum and humanitarian protection in the United Kingdom. The appellant appealed against the respondent's decisions. Anne's appeal was dismissed by First-tier Tribunal Judge MA Khan following a hearing at Hatton Cross. The appellant's application for leave to appeal was granted by first-tier Tribunal Judge Pooler, stating that it was arguable that the First-tier Tribunal's Judge erred by not giving

adequate reasons for his adverse credibility findings and making clear findings and failing to take material facts into account and possibly making a mistake of fact, at paragraph 12 and failed to take into account the documentary evidence mentioned at paragraph 10.

First-tier Tribunal Judge's decision

2. The Judge in his determination stated the following which I summarise. The core of the appellant's case is based on his fear of persecution in the Ivory Coast. He claims that he was the president of the union and also a member of the IPF political party. He also claims to have financially supported the student's organisation. The appellant was into the United Kingdom on 15 February 2016 to purchase items and returned to the Ivory Coast. Within five days because his son fell ill. On his return. He claims he was arrested by the authorities, detained and tortured. He was released on 21 February 2016 to attend his son's funeral on 22 February 2016. He claims he did not return home for a month because he was under pressure from the military as they were calling him on his mobile threatening to kill him. He was arrested, beaten and tortured and then taken to a medical clinic where he escaped. He left the country forged French passport.
3. There are a number of credibility issues against the appellant with regards to the student's organisation FESCI which are inconsistent. This is as to when to members of the FESCI came to his house. The appellant's evidence about his first arrest and release and also his second arrest and escape are not credible.
4. At the hearing the appellant's oral evidence was extremely vague and evasive. He failed to answer the questions put to him even in examination in chief, let alone in cross-examination. His evidence in regards to the aims and objectives of the IPF are totally lacking in detail. His evidence that members of the party manage the party and are the brain of the party lacks credibility. He failed to explain how the members organise themselves elect officer bearers and how the party is managed. The appellant hardly knows anything about the running of the IPF, despite him claiming to be a member and vice secretary general of the Koumanssi area in 2001 and the mobilisation secretary since 2007. The appellant's evidence about the membership of the IPF is not credible or consistent and lacks total credibility.
5. The appellant's arrest on 20 February 2016 and release on 21 February 2016 is not credible.
6. It is also not credible that the appellant claims to be a member of the IPF would help the FESCI, an organisation that is set up by the government of Ivory Coast, even though the appellant may have some personal contacts in the FESCI. The appellant's evidence is inconsistent with background materials.

7. The appellant claims that he was arrested for the second time in 12 May 2016 and tortured by the military during his detention for two months. He claims that he managed to escape through the back entrance where the toilet was not credible.
8. The appellant claims that he came to the United Kingdom in February 2016, but returned to the Ivory Coast within five days of this entry because he claims his son fell ill and died on 18 February 2016. On his oral evidence. He said that he arrived in the United Kingdom on 15 February 2016. In his written statement, he states that he returned after five days after he entered the United Kingdom which means, he returned on 20 February 2016, which would mean that his son had already died before he left the United Kingdom. In his screening interview the appellant made no mention of his son's illness. The appellant is not inconsistent.
9. The appellant claims that he first met the witness, Mr Bagou in November 2016 and after two interviews. He was appointed mobilisation secretary of the IPF in the United Kingdom. His evidence, however, is that he first met the appellant in May 2016 and this is when the appellant would have still been in the Ivory Coast. When it was put to him that in May 2016. The appellant was still in the Ivory Coast; he became vague and evasive and said he was not sure.
10. The appellant had a very vague explanation of the aims and objectives of the IPF. Mr Bago in his evidence stated that any member of the IPF would be able to give detail account of the aims and objectives of the party. Mr Bago's evidence with regards to membership cards was extremely vague and evasive.
11. The appellant travelled through France on a false passport and did not claim asylum in that country. His credibility is seriously damaged by his failure to do so.
12. There is no risk of return to the appellant because his version of events is not accepted. His family are still in the Ivory Coast and have not been questioned about the appellant's whereabouts and, if the authorities were looking for the appellant they would have approached his family, which they did not. The Judge dismissed the appellant's appeal.

The grounds of appeal

13. The appellant in his grounds of appeal stated the following which I summarise. The Judge has made many typographical and grammatical errors which renders the reasons incomprehensible. The Judge put vague, evasive and confusing throughout the decision but it is not clear what exactly was vague, confusing in the evidence. The Judge failed to consider the key documents and evidence which support the appellant's claim. The Judge has failed to explain why these documents and evidence are not relevant or carry little weight. Therefore, it is not clear whether they have even been considered.

14. The Judge made a material error of fact by finding that the government supports the FESCI which is not supported by Background evidence. The Judge found the entire account incredible but yet his work as the leader of the trade union is not disputed.

Rule 24 response

15. The respondent in her Rule 24 response stated the following, in summary. The respondent opposes the appellant's appeal and submits that the Judge directed himself appropriately. In a comprehensive determination, the Judge considered all the evidence presented, including oral evidence of the appellant and his witness, Mr Bago of the IPF in the United Kingdom. The Judge found the appellant's knowledge of the IPF to be lacking, particularly as the aims of the organisation. The appellant and Mr by Val gave discrepant evidence. He also considers Article 8 of the 2004 Act and found the appellant's credibility to be damaged. The Judge's findings were open to him on the evidence and there is no material error of law in the decision.

Discussion and decision as to whether there is an error of law

16. I have considered the first-tier Tribunal Judge's decision with care. Permission was granted on the basis that the Judge did not give clear reasons for his decision and that it is not clear from the decision whether he took into account all the evidence, including the copious documentary evidence. At the hearing, Ms Child that there is no reference documentary evidence provided, of which there was a considerable amount, at the hearing.
17. Having considered the decision, I am of the view that the decision of the First-tier Tribunal is not a safe one. It is incumbent on the Judge to take into account all the evidence in the appeal, not only the oral evidence. it is also not a contest between the appellant and the Secretary of State, but an evaluation of the evidence as to whether the appellant can be believed and that his account is credible. Therefore, the fact finding must be based on all the evidence in the appeal.
18. It is also incumbent on the Judge to set out the appellant's explanation to any issue raised before reaching a finding on the issue. The Judge has failed to take into account the appellant's explanation before reaching his conclusion.
19. The Judge made a material error of fact by finding that the Ivory Coast government supports the FESCI which was not supported by background evidence.

20. Failure to take documentary evidence into account is in itself reason enough to find that there is a material error of law in the decision.
21. In the circumstances, I set aside the decision and I remit this appeal to the First-tier Tribunal for proper findings fact to be made based on all the evidence in the appeal.

Appeal remitted to the First-tier Tribunal

Signed by

Date this 18th day of May 2017

A Deputy Judge of the Upper Tribunal
Mrs S Chana