



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

Appeal Number: PA/03508/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
Heard on 22 January 2019**

**Decision & Reasons Promulgated  
On 13 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT**

**Between**

**[C Z]  
(Anonymity order not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Fitzsimmons of Counsel

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of the Ivory Coast born on 10 August 1999. He appeals against a decision of Judge of the First-tier Tribunal Hamilton sitting at Hatton Cross on 18 May 2018 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 23 March 2017. That decision was to refuse the Appellant's application for international and human rights protection.

2. On 22 June 2016 the Appellant's mother and the Appellant were granted visas to visit United Kingdom. They arrived here on 13 July 2016. On 28 September 2016 the Appellant claimed asylum and he was substantively interviewed about that claim on 13 March 2018.

### **The Appellant's Case**

3. The Appellant's claim was summarised by the Judge at [5] of the determination:

"The Appellant claimed that if he returned to the Ivory Coast he would be at risk of persecution and serious harm because he had refused to join a criminal gang called the "Microbes" that recruited children and use them to carry out criminal acts. As a result of this refusal the Appellant had been beaten and threatened by gang members and would be harmed or killed by them if he returned to the Ivory Coast. In October and November 2016 gang members had come to the family home looking for him. This had been reported to the police. He had developed mental health difficulties caused by his experiences and his fear of returning to the Ivory Coast."

4. The Appellant relied on an expert report from Professor Aguilar on country conditions in Ivory Coast. He also relied on a psychotherapist's report, from Mr Sobel, which had concluded the Appellant was suffering from post-traumatic stress disorder, major depressive disorder and generalised anxiety disorder.
5. The Respondent refused the claim partly because the Appellant's fear was said to be of non-state actors but also because the Respondent did not accept the credibility of the claim pointing to the length of time between the claim for asylum and arrival in the United Kingdom. Even if the Appellant were at risk in the Ivory Coast adequate protection was available. The background evidence showed police were taking action against gang members. On the Appellant's own account after gang members came to the family home in October and November 2016 the police were willing to assist the Appellant's family and investigate their concerns about the gang. Alternatively, the Appellant could relocate to another part of the country as there was no evidence the gang had any significant influence outside the capital, Abidjan. There was no evidence of continuing interest in the Appellant. He was not taking medication, but any treatment needed would be available in the Ivory Coast.

### **The Decision at First Instance**

6. At [35] the Judge found that the Microbes gang were likely to have a continuing adverse interest in the Appellant and would wish to do him harm if they could but the long gaps between the times they came looking for him strongly suggested that finding and harming the Appellant was not a priority for them. They were not particularly motivated to find him. Professor Aguilar appeared to have a limited direct experience of the Ivory Coast. Some of the background evidence indicated that steps were being taken to address the problem of criminal gangs of street children who were being targeted with social programs. Nevertheless, the overall

impression was of an inadequate service that was unable to provide anything approaching a consistent or effective level of response to the sort of street crime engaged in by the Microbes. The gangs were disparate groups of dispossessed street children and young adults, they were not part of an organised criminal network and the Microbes did not have a significant presence outside the capital.

7. At [51] the Judge found that if the Appellant were to return to the capital there would be a real risk that he might come to the attention of those who wished to do him harm. The Appellant's diagnosis was consistent with his account of having been attacked by gang members and being frightened that they would attack him again (see [58]). The Appellant would have adequate emotional practical and financial support on return to the Ivory Coast. This would be available from both his family there and family members living abroad. The family were capable of arranging the Appellant's relocation. They were educated and belonged to a high socio-economic class. The Appellant was young, intelligent and adaptable and would be able to reintegrate into life in the Ivory Coast by working or pursuing his studies.
8. Even if the only route of return were via Abidjan the Appellant had not shown his family would be unable to arrange for him to stay somewhere safe there on a temporary basis before he relocated. The background evidence did not bear out the claim that it was dangerous for people to travel within the Ivory Coast. It was likely the Appellant's uncertain immigration status had caused him to suffer from depression. He would rather not return to the Ivory Coast and the thought of returning causes stress and anxiety. However, he would have substantial family support were he to return and any medical issues he might have were not sufficiently serious to engage either Article 2 or 3 of the ECHR.
9. The Appellant and his sister had not been honest about their family circumstances in the Ivory Coast or the level of support available from family members. The Appellant had not established either an emotional or financial dependency on his sister that went beyond the normal relationship that could be expected to exist between a child/young adult and an adult sibling. If the Appellant returned to Ivory Coast, he would be living in a country where he enjoyed the full rights of a citizen and where he had lived for most of his life. He could speak the national language and was familiar with its traditions and culture. He would have to relocate to another part of the country and whilst this would still be difficult for him the support he would receive would mitigate those difficulties.
10. It was likely to be in his best interests to remain in the United Kingdom but it did not follow that because it was in his best interests it would be disproportionate to require him to return to the Ivory Coast. He would be able to maintain contact with friends and family in the United Kingdom by modern means of communication and visits. The Judge dismissed the appeal.

### **The Onward Appeal**

11. The Appellant appealed against this decision in grounds settled by counsel who appeared at first instance and who appeared before me. They made five main points. The first was that the Judge's approach to the psychotherapist's report was erroneous in law. The psychotherapist had seen the Appellant's educational documents. He had regard to the Appellant's performance in school and took that into account in forming the view that the Appellant was not malingering or embellishing his symptoms. The psychotherapist's view was entirely consistent with the NHS evidence as to the extent of the Appellant's vulnerability. The NHS therapist had confirmed a PTSD diagnosis of severe.
12. The 2<sup>nd</sup> ground argued that the Judge had failed have regard to the lack of mental healthcare facilities in the Ivory Coast. The psychotherapist had included an extract from the World Health Organisation (WHO) "Mental health atlas country profile 2014" which stated that there were no mental health outpatient facilities in Ivory Coast and only 2 mental health hospitals.
13. The 3<sup>rd</sup> ground argued the Judge had misdirected himself as to the standard of proof concerning the risk on the route of return. There were numerous checkpoints both regular and irregular at which robberies and bribery of travellers took place. There was no requirement that risks be systemic all that was required was a real risk. The fact that the majority of attacks took place at night did not mean that the Appellant would necessarily be safe travelling during the day.
14. The 4<sup>th</sup> ground argued there was no proper basis for the Judge to doubt the credibility of the Appellant and his sister as regards their family circumstances and his general credibility should have been taken into account. There was no attempt by the Appellant to distance himself from his uncle in the United Kingdom.
15. The 5<sup>th</sup> ground argued that the Judge had failed to undertake a holistic assessment of relocation focusing on the socio-economic status of the Appellant's family but not having full regard to the reasonableness of the Appellant has an 18-year-old with a mental health diagnosis being forced to relocate without his family unit elsewhere in Ivory Coast. The 6<sup>th</sup> ground argued that the Appellant's relationship with his sister constituted family life. The Article 8 claim should have been assessed in the light of jurisprudence for durable solutions for unattended children and care leavers.
16. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Boyes on 17 September 2018. In refusing permission to appeal he wrote that none of the grounds were arguable as errors of law. The Judge was entitled to reach the conclusion he did about the medicolegal report, he did not have to accept something as fact simply because an expert said it was so particularly where there was other evidence which the Judge found more reliable or which undermined the expert's conclusions. The 2<sup>nd</sup> ground was unmeritorious. It was not going to succeed at first instance because there was some provision for mental

health services in the Ivory Coast. They did not have to match the United Kingdom and the Judge had found they were sufficient. Grounds 3 and 4 were not arguable and ground 5 (failure to undertake a holistic assessment of relocation) did not begin to get off the ground. It was an attempt at a catchall but was without merit.

17. The Appellant renewed his application for permission to appeal to the Upper Tribunal on grounds substantially the same as those to the First-tier. The renewed application came before Deputy Upper Tribunal Judge Alis on 9 December 2018. Granting permission to appeal he wrote:

“At paragraph [55] of the decision the Judge preferred other evidence to that of the expert, but the Judge did not address the fact that the expert report considered the other evidence but still concluded he suffered from severe PTSD, depression and anxiety. It [is] arguable grounds one and two identify an error in law. The medical evidence is relevant to the issue of whether it would be unduly harsh to require the Appellant to relocate. All grounds are arguable albeit some have less merit than others”.

There was no rule 25 response from the Respondent.

### **The Hearing Before Me**

18. As a consequence of the grant of permission the appeal came before me to determine in the first place whether there was a material error of law in the decision of the First-tier Tribunal. If there was the decision of the First-tier Tribunal would be set aside and directions given for the rehearing of the appeal. If there was not then the decision of the First-tier Tribunal would stand.
19. For the Appellant counsel argued there was no evidential basis to criticise the experts. Mr Sobel had sight of school certificates and had met the Appellant. If the Judge was going to depart from expert evidence, there had to be sustainable reasons. This determination did not cross that threshold. The concern that the Appellant’s mental health would suffer in the event of removal had not been taken into account. The Judge had not referred at all to the annex to Professor Aguilar’s report about mental health facilities or lack of them in Ivory Coast. The Judge appeared to have found there was no family life with the sister because that was not possible. The Appellant entered as a child and was found to be a genuine asylum seeker but for the issue of internal relocation.
20. In response the Presenting Officer submitted that there was no material error of law in the decision. The Respondent had not accepted the Appellant was suffering from PTSD because of the lack of evidence in support. The refusal letter made clear there were facilities available for any treatment the Appellant might need. The grounds of onward appeal were a mere disagreement with the conclusions reached by the Judge. The Judge had looked at the background evidence. The attachment to the Professor’s report showed that there were facilities available if the Appellant needed help. Professor Aguilar was not an expert on the Ivory Coast which limited the weight that could be given to his report. The

Appellant's family life with his sister was one between adults with no more than normal emotional ties. The Judge had not ignored the medical evidence but had reached appropriate conclusions.

21. In conclusion, counsel acknowledged it was open for a Judge to take a different view of the medical evidence but the difficulty in this case was shown by [54] to [56] in which the Judge had said that the expert's conclusion was significantly inconsistent with the positive report on the Appellant from East Surrey College. The Judge had added that if the Appellant believed himself to be safe his mental health issues did not interfere significantly with his day-to-day functioning. It was argued on the Appellant's behalf that the expert, Mr Sobel had factored in to his report the Appellant's relative success at college. The Appellant was genuinely presenting his symptoms and not embellishing his account. The Judge had not dealt with that. The evidence of health care available in Ivory Coast came from WHO.

### **Findings**

22. The Judge made two core findings in this case. The first was that the Appellant had come to the adverse attention of the Microbes gang and there was a risk that he would do so if he settled in the capital Abidjan. However, the Appellant would be safe if he relocated to another part of the country which he could do with the support of his family. The second core finding was that the Judge accepted the Appellant had depression but noted that the Appellant was doing well at college and concluded from that that provided the Appellant considered himself to be in a safe environment his mental health issues did not interfere significantly with his day-to-day functioning.
23. The Judge's conclusions have been attacked by the Appellant on a number of bases. Firstly, that the Judge has failed to adequately address the difficulties which the Appellant would have in relocating to another part of Ivory Coast. It was an important part of the Judge's reasoning that there was ample family support available to help the Appellant to relocate including travelling through the capital. There was a significant reason for this conclusion of available support and the Judge's adverse credibility finding in relation to the Appellant's claims of a lack of family support. It was to be found in the application that had been made by the Appellant's mother for entry clearance as a visitor in 2016.
24. The Judge dealt with this at [66]. The evidence that the family were now poor was, as the Judge put it, "significantly inconsistent" with the information provided when the Appellant's mother applied to come to the United Kingdom. She had a trading business and income from properties and property investments. Her brother-in-law was the chief economist at the International Coffee Organisation who sponsored her to come to the United Kingdom. The Judge was concerned that the Appellant and his sister were downplaying their connection with this uncle who was clearly an influential and prosperous figure who could be expected to support the Appellant.

25. I find it significant that these points have not been addressed in the grounds of onward appeal and instead there is a rather general disagreement with the Judge's conclusions. A mere disagreement does not amount to a material error of law. The Judge was concerned to be scrupulously fair in this appeal and he accepted the Appellant's account of being afraid of the Microbes gang because it had not been challenged by the Respondent. Having said that, the Judge was fully entitled to consider the question of whether the Appellant could relocate and what the practical difficulties would be that would have to be overcome in doing so.
26. What the Judge meant by saying that the risk of a hold up whilst travelling was not "systemic" was that it was not organised in such a way that it represented a real risk. A random risk of attack would not be sufficiently likely to cross the threshold of the lower standard to show real risk. There was nothing in the Appellant's profile that would mean he was likely to face such a risk while travelling since he could rely on the support of family members as the Judge pointed out. I do not read the determination as being that the Judge was applying an incorrect standard of proof for an asylum appeal. He had carefully directed himself on the appropriate standard of proof at [21] to [26] of the determination.
27. It was a matter for the Judge what weight he placed on Professor Aguilar's report but he was bound to take into account that Professor Aguilar was knowledgeable about Africa in general but was not an expert on the Ivory Coast as such. This is perhaps illustrated by the fact that rather than addressing the issue of medical facilities in Ivory Coast directly the Professor merely appended to his report a copy of an extract from a WHO summary of mental health facilities. Although such facilities (as Judge Boyes pointed out in refusing permission) are not at the same level as in the United Kingdom they do exist and this ground far from undermining the determination in fact reinforces it.
28. It does not appear to be seriously challenged in the grounds that the Judge was correct to say that the reach of the Microbes gang did not extend beyond the capital and that the Appellant would therefore not come to their adverse attention were he to live outside the capital. At [46] the Judge found that Professor Aguilar had reached his conclusions by speculation and extrapolation was little more than educated guesswork. That criticism was open to the Judge on the evidence before him.
29. The second part of the determination deals with the Appellant's medical issues, the effect they would have on the Appellant's ability to relocate and the impact on his private life. The question was whether the Appellant could be expected to relocate within a country of which he was a citizen, in short whether it would be unduly harsh for him to have to do so, following the decision in Januzi. This involved a two-stage consideration. The first was the impact on the Appellant and his life in this country by requiring him to leave. The second was the reasonableness of requiring him to return to Ivory Coast and relocate once he was there. The Judge pointed out at [53] that it would be more normal to have a medicolegal

report prepared by a clinical psychologist or psychiatrist, but he also noted that the expertise of the author, Mr Sobel was not challenged.

30. The difficulty with Mr Sobel's evidence was that the impairment of the Appellant's functioning was described by him as severe but at the same time there were positive reports on the Appellant from East Surrey College. Further, the various academic achievements of the Appellant were evidenced by certificates he had obtained. The Appellant's answer to this inconsistency is to say that the psychotherapist had factored into his report that the Appellant was doing well at college. The difficulty with this argument is the extract from the report quoted by the Judge at [54] where the Appellant symptoms were described as including "severe impairment in social, occupational or school functioning". It was clear that the Appellant was not suffering severe impairment in school functioning. Given the internal inconsistency in the psychotherapist's report the Judge was obliged to resolve the issue for himself and he did so by discounting the weight he attached to the psychotherapist's report.
31. It was not a question of saying the Appellant was malingering. The grounds appear to be making a complaint about the determination which said no such thing. In those circumstances it was open to the Judge to reach the conclusion he did that the Appellant would be capable of managing a return to Ivory Coast and with help from his family would be able to relocate safely to another part of the country.
32. I agree with the submission on the part of the Respondent that the grounds of onward appeal in effect amount to no more than a disagreement with the Judge's conclusions. It is also correct as Judge Boyes pointed out that some of the grounds are weaker than others. The argument as to Article 8 in particular falls into this category. The Judge assessed the Appellant's best interests as he was obliged to do, doing so separate from the issue of proportionality also in accordance with the jurisprudence. However, the Judge could not ignore the fact that the Appellant had not been truthful about his family circumstances in Ivory Coast and was entitled to factor that into account when assessing risk on return and availability of support.
33. The Appellant had no right to live in the United Kingdom. Whilst he could not be blamed for the actions of his mother, he was now an adult, being 18 at the date of hearing. He had not established an emotional or financial dependency on his sister which went beyond normal relationship ties. That assessment was a matter for the Judge on the basis of the evidence having heard both the Appellant and his sister give evidence and noting the concerns he had about their evidence of family relationships. The conclusion he drew was one to which he was entitled and the objection to it contained in the grounds is a mere disagreement.
34. Upon return to Ivory Coast the Appellant would be able to re-establish his family life with his parents which had been severed by his mother when she returned to Ivory Coast leaving the Appellant in the United Kingdom. The private life which the Appellant had built up in this country in



education and with friends had been established as time when he had no right to be here and thus little weight could be attached to that private life in the proportionality exercise. In conclusion I do not find there was any material error of law in the decision of the Judge and I dismiss the Appellant's onward appeal.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 6 February 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

No fee was payable and I have dismissed the appeal and therefore there can be no fee award.

Signed this 6 February 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge