



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

Appeal Number: PA/13451/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> April 2022**

**Decision & Reasons  
Promulgated  
On 06<sup>th</sup> May 2022**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**AMD  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E Ugbelase, Bluebridges Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of First-tier Tribunal Judge Freer dismissing the appellant's appeal against the respondent's refusal on 13<sup>th</sup> November 2018 of the appellant's protection claim. The appellant claimed a fear of persecution for a Convention reason should he be returned to Guinea.

2. The appellant entered the UK on 31<sup>st</sup> May 2003 in his early 30s with a visit visa and has stayed in the UK illegally for approximately sixteen years as an overstayer. He made an application for leave to remain on 29<sup>th</sup> September 2012 which was refused. Based on his claimed dependency of A, his said uncle, the appellant next claimed asylum as a dependant of an EEA national. That was refused in 2016. There were no appeals on either refusal.
3. The appellant claims that because of the political violence and repression in his country he would be killed or seriously harmed on return. He maintains his brother who has the same surname as him, has been ill-treated and he says that that has been confirmed by his family.
4. The chronology was put forward that his brother AK was working at Espace FM and that as a journalist he was highlighting the corruption and brutality of the police and was detained in 2016. The appellant was tracked to the UK and gave an interview with Lynx Radio in April 2017. His sister fled Guinea and went to Senegal in April 2018 and the appellant claimed asylum in May 2018. The appellant relied on an account of a man with the same surname as the appellant who had been harmed according to recent newspaper information which was said to have been confirmed by the family.
5. The grounds of appeal set out as follows:  
Ground 1: The judge applied a higher standard of proof than required for asylum claims.
6. Questions of credibility were matters of fact for the Tribunal and the Home Office policy guidance - Asylum Policy Instructions: Assessing credibility and refugee status version 9 published in January 2015 stated: *“A claimant does not have to provide medical evidence of past torture for a claim that torture took place to be accepted, if other indicators enable its acceptance.”*
7. It was further established in **Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11** that caseworkers should not ignore facts which were in doubt or uncertain but rather consider that everything capable of having a bearing on the case must be given the weight, great or little, due to it.
8. At [43] the judge stated that: “The location of overseas family members has not adequately been proved. His sister could have written from Senegal with an account and proof of her identity.” It was submitted that the judge suggested that his sister should corroborate his account but did not take into account the family’s problems and in any event, the UNHCR Handbook made it plain that corroboration was not required in asylum claims.

9. The judge's observations at [57] were unreasonable and the respondent in the refusal letter did not believe that the appellant's account of events was plausible. The appellant had submitted evidence that it was reported in the local papers in Guinea. The judge suggested at [59] that his claim would have been more plausible if he had proved political activity in the UK. That was not reasonable.
10. The judge's assessment at [61] to [70] was flawed. The judge stated at [62]:

*"The surname of the Appellant is a Fulani name to about 10% of the population in his country and very common across West Africa. It cannot therefore be assumed that there is a close or any family connection when a person with that same name features in a newspaper. It is possible that the claim was 'reverse engineered' by looking for such newspaper reports when it was convenient to do so."*

An assessment of credibility must be based on facts. Assuming that the appellant may have fabricated his asylum claim without any proof renders the determination unsafe. A judge should not reach his credibility findings in isolation from the assessment of the country evidence which is what this judge had done.

Ground 2: Failure to appropriately assess sufficiency of protection and internal relocation

11. The judge rationalised at [72] that there were no proven risks. It was submitted that the judge's determination and reasons concentrated primarily on findings of credibility for its outcome and credibility was not of itself a valid end to the function of the Adjudicator. The assessment of sufficiency of protection and whether that exists in any particular case could only be assessed against country background material and the Tribunal had wholly failed to make any assessment of that.

Analysis

12. At the hearing I carefully considered the submissions of Mr Melvin together with the written Rule 24 response that the judge had considered the evidence in the round and took the appellant's account at its highest and had directed himself appropriately at the commencement of his determination. Mr Ugbelase expanded on his written skeleton argument and authorities.
13. Although the judge did set out at [10] that the standard of proof is the lower standard "a reasonable degree of likelihood" and does refer at [43] to "the location of overseas family members has not adequately been proved", thereafter the judge makes references to the appellant failing to *prove* his case and I refer to the standard applied below. The approach overall highlighted a general disbelief of the claim, and an expectation of weighty and reliable evidence.

14. The judge did find that the appellant and his witness spoke in generalities and showed no or little interest in research and digressed, but the real focus of the criticism was towards the appellant's witness A rather than the appellant in terms of his oral evidence and the judge made several references to the requirement of further evidence when considering the appellant's account.
15. To place the approach in context, the judge at [45] at the outset of his findings on credibility, stated that "the appellant is a prolonged overstayer" and added "one reasonably has to wonder why he took so long to make an asylum claim and if it is in fact his last option". That deduction contrasts however with the chronology. In fact, as the judge had already identified at [24], the appellant's brother was said to have been detained in 2016 (some 13 years after the appellant's entry to the UK), the interview took place in April 2017 and his sister fled in April 2018. The appellant claimed asylum on 16<sup>th</sup> May 2018 which was refused on 13<sup>th</sup> November 2018. This, in fact, indicates that there was not a long hiatus between the alleged events and the claim of asylum.
16. The judge focussed on the fact that the appellant was not related to the brother and acknowledged that they shared a very common surname, again at [57]:

*"57. I have no evidence of weight that ABKD was or is a brother to this Appellant. They share a very common surname. The report of 19 April was published more than one year before, not after, the Appellant's asylum claim of 29 May 2018. The Appellant made no earlier asylum claim. The Appellant has not shown the kind of urgency which a serious claim for political asylum normally involves. His country has been dangerous in general terms at all material times and yet when he claimed asylum he had already been here for 15 years. This looks very likely to be an application of opportunity to prolong his stay, rather than based on a real objective fear."*

17. At [58] it would also appear that the judge expected the appellant to produce evidence of direct communication between ABKD and himself or any member of either family and that "*it is not established by any reliable evidence that what happened to ABKD poses any kind of threat to this appellant*" The appellant's claim was that in fact he did not know where his brother was, and his sister was in Senegal.
18. Indeed, **Karanakaran [2000] EWCA Civ 11** at [98] set out that the court '*frequently has to make its assessment on the basis of fragmented, incomplete and confused information. It has to assess the plausibility of accounts given by people who may be understandably bewildered, frightened and, perhaps, desperate, and who often do not understand either the process or the language spoken by the decision-maker/investigator. Even applicants with a genuine fear of persecution may not present as models of consistency or transparent veracity*'.

19. From [59] onwards the judge finds it “incomprehensible” as to why the telephone call from Lynx Radio happened and that it was “also incomprehensible” why he would put his family at risk by making anti-government comments when they are in reach of the government. As set out in **HK v Secretary of State for the Home Department [2006] EWCA**, ‘inherently unlikely’ does not mean it is untrue [28] and it is important not to recharacterise an asylum seeker’s risk based on an Adjudicator’s own perceptions, see [29], and a claim should not be rejected merely because it is unusual in nature [72].
20. The judge then at [59] states: “*There is a wholesale failure to prove that this interview has ever taken place. It is likely to be a manufactured account to boost an asylum claim. I find it fairly improbable that it took place.*” Both the reasons given, and the standard of proof here appear to depart from the guidance in **HK** and **Karanakaran**.
21. Then the judge, [60], criticises the appellant for failing to be politically active since 2003 and dismissed the appellant’s account of attending a meeting here as “vague and inconsequential as to be not legally significant” but at [62] continued find that the key to the appeal was identification although he dismissed the evidence because it was too general and could have been ‘reverse engineered’. He reasoned:
- “62. The surname of the Appellant is a Fulani name to about 10% of the population in his country and very common across West Africa. It cannot therefore be assumed that there is a close or any family connection when a person with that same name features in a newspaper. It is possible that the claim was ‘reverse engineered’ by looking for such newspaper reports when it was convenient to do so.*
- 63. The Appellant has not proved any connection to one or any of the named D people in the documents on which he relies and he has not proved that Albert is related to him as uncle or at all. The Appellant has not proved that he has relatives in Guinea or Senegal or that they have passed any relevant information to him. They have not given any direct evidence. If they exist, at best their evidence came to me as hearsay and should be given no more than limited weight. No birth records for these people have been produced.”*
22. If the judge were indeed applying the lower standard of proof, there is a possibility that the appellant may be linked to somebody with a similar Fulani name which in fact is only given to one in ten of the population and the approach when stating it ‘cannot be assumed’ that there is any family connection does not engage the correct standard of proof. As stated by Lewison LJ at [18] of **ME (Sri Lanka) v SSHD [2018] EWCA Civ 1486**, where the test is ‘real risk’, ‘*it is unsatisfactory in a case of this kind for the fact-finder to express findings of fact in the negative*’. To speculate on

whether it was possible that the claim was reverse engineered by looking for newspaper reports is just that, speculation.

23. At [63] the judge also states he has not proved that Albert is related to him as uncle or at all but that was not necessarily fatal to his claim for asylum. Having found that identification was crucial to dismiss the claim because the appellant's relatives in Senegal had not given direct evidence and that "if they exist, at best their evidence came to me as hearsay and should be given no more than limited weight" and further to expect that birth records should be produced contradicts the authorities in relation to corroboration in asylum claims.
24. Although at [50] the judge noted that corroboration was not a legal requirement in asylum cases due to the low standard of proof he did not apply that test throughout the decision. He criticised the witness for only giving hearsay evidence of the arrest of the appellant's brother so that it "lacks corroboration" but moreover erred at [50] and [63] by expecting more than "hearsay" evidence and evidence of birth records contrary to **ST (Corroboration, Kasolo) Ethiopia [2004] UKIAT 119**. It is correct that where it can be reasonably assumed that corroboration should be required that is relevant but to expect production of for example birth certificates from less organised countries than the UK steps outside the guidance in relation to protection claims. The findings also indicated the judge's reliance on his own views of the plausibility of the ability to produce documentation and thus corroboration from a country with which there was no indication that he was familiar.
25. I can appreciate that the judge stated at [65] when arriving at his conclusions that "the entirety of the core of the case is unproved to any standard of proof" but again the judge proceeded at the close of that paragraph to state "of course it would not have been necessary to inquire if the basis step of providing relevant birth certificates had been carried out" and at [69] and [70] the judge had this to say:

*"69. The nature of this evidence is like having a Mr Smith or Jones making an application and one then sees lots of brief reports of other Mr Smiths or Joneses experiencing problems, without knowing if they are from the same Smith or Jones family or not. I never saw a single letter that had passed between the Appellant and his alleged uncle or alleged brother or alleged sister nor any family photographs or family tree evidence.*

*70. I also note that no independent person turned up to give character evidence for any of the two witnesses. We only have them vouching for each other. We do not know how long they have shared a home or, if it matters, why Albert does not take part in the important family phone calls. This meant that an opaque picture of private life emerged."*

26. The task of the judge was to assess the evidence in the round. Overall, a careful reading of this decision indicates that it is undermined by an expectation and requirement that corroborative evidence is required and a wholesale rejection of the possibility that even though the appellant had the same surname as someone in a report that this could not be anything other than discounted. The test is 'real risk' This could not properly be characterised as a type of case in which the absence of readily or ordinarily available evidence could be held against the appellant further to **TK (Burundi) [2009] EWCA Civ 40**, without proper analysis of why there was an absence of that evidence, and the judge made no analysis of the feasibility of obtaining such evidence as he required.
27. On the basis of my findings on ground 1, I shall say no more about ground 2 save that I note the reference to [52] where the judge stated he did take the case at its highest but concluded that there was a failure to establish any real risk of persecution from the authorities. That said, at [53] there is reference to an Amnesty International Report to the effect that the radio station [FM Espace] was shut down by the authorities for a week in 2018.
28. For the reasons given above, I find there is a material error of law in relation to the approach on credibility and thus fundamental findings are undermined. The decision should be set aside with no findings preserved.

### ***Notice of Decision***

The judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under Section 12(2)(b)(i) of the TCE 2007 and further to 7.2(b) of the Presidential Practice Statement.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington

Date 26<sup>th</sup> April 2022

Upper Tribunal Judge Rimington