



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02842/2013

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent
On 15 October 2013

Determination Sent
On 30 October 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MOUHAMADOU FALILOU NDAO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Mynott, Jackson & Canter, Solicitors

For the Respondent: Mrs K Heath, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mouhamadou Falilou Ndao, was born on 2 February 1986 and is a male citizen of Senegal. On 8 March 2013, a decision was taken to refuse the

appellant's claims for refugee status and humanitarian protection and to remove him to Senegal. The appellant appealed against the removal decision to the First-tier Tribunal (Judge Frankish) which, in a determination promulgated on 29 April 2013, dismissed the appeal. The appellant appealed to the Upper Tribunal and, by a determination promulgated on 6 August 2013, Deputy Upper Tribunal Judge Rimington set aside the First-tier Tribunal's determination and directed a resumed hearing. At that hearing at Stoke-on-Trent on 15 October 2013, Dr Mynott appeared for the appellant and Mrs Heath appeared for the respondent.

2. Judge Rimington directed that the decision should proceed to be remade on Article 8 ECHR grounds only; the asylum/Article 3 ECHR findings of the First-tier Tribunal were preserved.
3. In his determination at [18], Judge Frankish recorded:

The respondent concedes that 'the documents you have provided have confirmed that your father is a high-ranking military officer in Senegal. (18); the appellant has a legitimate diplomatic passport (17); there are attacks on the barracks where the appellant was growing up (19); there was also an attack on the appellant's school (20). In short, notwithstanding any objection to the conduct of the interview, there were no serious objections to the appellant's credibility. The objection is to whether he is actually at risk.

4. Although those concessions by the respondent concern the appellant's asylum claim, they do have a bearing on the relevant facts of the Article 8 ECHR appeal. At [23], Judge Frankish recorded:

Finally, it was the appellant's own case that his father himself is not a reliable witness. He had told the appellant so many stories about his own background, from being born in Belgium or not being born in Belgium to being brought up by his grandmother which he does not remember to the mother abandoning him to his mother going off to marry someone else, the appellant does not know what to believe.

5. The appellant acknowledges that he came to the United Kingdom on a visit visa but it is his case that he always believed that he had a valid Belgian passport and, after his visit visa had expired, he thought he was entitled to remain in the United Kingdom exercising Treaty rights as an EU citizen. At [23], Judge Frankish found,

In short, the appellant's asylum claim is entirely tendentious and lacks any credible basis. It is not helped by the fact that no claim was made for three years until the appellant was caught using a false passport to cash in a cheque issued to him by, incredibly enough, the Inland Revenue.

6. Whether the standard of proof in the Article 8 ECHR appeal is a balance of probabilities or that of reasonable likelihood (see *EM (Lebanon)* [2008] UKHL 64) I find that this appellant has failed, even on the lower standard, to satisfy me that he has told the truth about his relationship with his father and his knowledge of his true nationality and immigration status. I do not intend to go behind the respondent's concession that the appellant had a diplomatic passport and that his father may have

been a high ranking military officer in Senegal. However, the appellant has brought an entirely false asylum claim before the First-tier Tribunal and has not sought to appeal against the dismissal of the appeal on asylum grounds. I do not accept that the appellant, who presented to the Tribunal as an intelligent reasonably educated young man, did not know that he was in possession of a false Belgian passport and I do not accept that he believed that he had no reason to present himself to the authorities on the expiry of his visit visa; that claim makes no sense whatsoever given that, when he was arrested, he did not seek to assert his right to remain as an EU citizen but rather claimed asylum. I do not accept that the appellant does not have any proper memory of his own childhood and his attempt to blame his predicament on his father is not credible. I note that the appellant had also lied to the respondent by telling her officers that his father's friend had given him the Belgian passport whereas, according to the appellant, his father himself had given him the document. An incontrovertible fact, however, is that the Belgian passport was a false document. Whether or not the appellant's father knew that it was a false document is immaterial; having considered all the evidence and the various explanations and alterations to the account provided by the appellant, I am satisfied that he knew that the document was a false passport and that consequently he had no right to remain in the United Kingdom when his visit visa expired.

7. The respondent accepts that the appellant is in a relationship with Lauren McNamara. I accept that the relationship may have started in or around July 2011. The appellant lives with Miss McNamara in the home she shares with her mother and he has done so since April 2012. I have no reason to disbelieve Miss McNamara when, in her evidence, she states that she suffered a miscarriage in October 2012. I note also that there is some (very limited) medical evidence to indicate Miss McNamara suffered from depression and anxiety which led her to leave her employment and to receive disability benefits. Miss McNamara now claims that she is able to function much better with the support of the appellant. They are engaged.
8. I heard evidence from Miss McNamara and from her mother. I found both these witnesses to be generally credible but I find they have both sought to exaggerate Miss McNamara's current mental health problems. I say that for the following reasons. There is a letter from a Dr Bosah dated 13 July 2013 which reads:

I write to confirm that Lauren McNamara had a history of anxiety and depression and she is under continuous monitoring at this surgery. Any co-operation extended to Lauren would be highly appreciated.

9. Miss McNamara's mother, Karen, asserted in her witness statement that, "Lauren still only leaves the house alone for scheduled appointments. She does not cope with change and unfamiliar situations." [8]. Miss McNamara herself told me that she was now back in employment working for Bibby Line Group. She is employed in an apprenticeship scheme and has a monthly net wage of approximately £700. She has been working in different departments and is currently working in the credit control. I find that Miss McNamara's current employment status sits very uneasily with evidence to the effect that she capable of leaving the house only "for scheduled

appointments.” She is working for a new employer and appears to have had little difficulty in adjusting to working for different departments of the company. I accept that Miss McNamara may have suffered from depression in the past but there is nothing in the current medical evidence or the evidence of her employment which would indicate that her mental health is in any way precarious at the present time. Having said that, I accept that it would not be reasonable to expect Miss McNamara to go to live permanently in Senegal with the appellant.

10. To summarise my findings, I find that the appellant is an untruthful witness who was aware that he should not remain in the United Kingdom following the expiry of a visit visa issued on his diplomatic passport and who sought to remain knowing that a Belgian passport which he had in his possession was not valid. I find it likely that he would never have made himself known to the United Kingdom authorities had he not been arrested on suspicion of fraud. Thereafter he has done little to improve his immigration history by bringing an entirely false asylum claim. I accept that Miss McNamara probably did not know anything about the appellant’s immigration status until he was arrested in February 2013. The fact remains, however, that the appellant did know that he entered the relationship with Miss McNamara without making any attempt to inform her of his lack of immigration status. To that extent, his relationship with her has been based on a lie. I accept that they are in a relationship and that the appellant lives with Miss McNamara at her mother’s home. I accept also that Miss McNamara is devoted to the appellant and no doubt hopes and expects to enjoy a life together with him. However, my assessment of the evidence leads me to conclude that the appellant himself may not be so committed to the relationship. He has entered the relationship withholding the truth about his immigration status from Miss McNamara but I am aware also that when he was interviewed by the respondent’s officers he was ignorant of the name of her father and the college at which she was studying at that time (see refusal letter, paragraph 30). This, together with the other evidence, indicates a lack of commitment to the relationship on his part.
11. The appellant relies on the House of Lords decision of *Chikwamba_2008* UKHL 40 *Chikwamba* is an authority which is often misinterpreted. It is authority for the proposition that, if an out of country application for entry clearance is likely to succeed, then a decision to force an appellant to leave the United Kingdom to make such an application is all the more likely to be disproportionate. It is not authority for a proposition that an appellant (such as the present appellant) who is very unlikely to be able to meet the Immigration Rules must, therefore, be allowed to remain with Article 8 ECHR leave. I am aware that it may be appropriate in certain cases for an appellant to remain in the United Kingdom even where there are no children or where the appellant’s relationship with the United Kingdom citizen has not yet been formalised by marriage. However, in the light of my findings regarding the appellant’s immigration history and his part, as I find it, in his relationship with Miss McNamara, I find that the public interest concerned with the removal of the appellant outweighs the family life interests of the appellant and Miss McNamara. I fully accept that Miss McNamara would be upset if the appellant leaves the United

Kingdom, but I do not accept the assertions, unsupported by medical evidence, that his departure will precipitate a serious decline in her mental health.

DECISION

12. This appeal is dismissed on human rights grounds (Article 8 ECHR).

Signed

Date 29 October 2013

Upper Tribunal Judge Clive Lane