



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: IA 15444-11

THE IMMIGRATION ACTS

At **Field House**
on **09.10.2012 & 26.06.2013**

signed : **31.07.2013**
Sent Out: 02.08.2013

Before:

Upper Tribunal Judge
John FREEMAN

Between:

R M

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: (on 9 October 2012) *Marisa Cohen*
(on 26 June 2013) *David Chirico*
(both counsel instructed by Wilson LLP)
For the respondent: (at both hearings) Mr Steven Walker

DETERMINATION & REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Russell Campbell and a lay member), sitting at Taylor House on 7 February and 22 March 2012, to dismiss a revocation of deportation appeal by someone who claims to be a citizen of Sierra Leone. His date of birth is given as 1 January 1972. The following three paragraphs contain the ruling I gave after the hearing of 9 October 2012: there was considerable delay in relisting the appeal for the re-hearing directed, owing to difficulties in arranging for those representing the appellant to inspect Home Office files relating to various stages of his claim. Both Mr Walker and Mr Chirico did their best to resolve these.

ERROR OF LAW

2. Permission was given solely on the question of the burden and standard of proof of nationality in the particular circumstances of this case. The Home Office asserted, on the strength of a SPRAKAB report, that this appellant is from Nigeria, and the panel correctly said they had to establish that on the balance of probabilities. However they also gave this as the standard by which the appellant needed to show that he came from Sierra Leone, so as to establish that he faced a well-founded fear of persecution there as a homosexual.
3. Mr Walker conceded that this was an error of law, which required a re-hearing on this point. It may well be, as the Home Office maintained in their reply, that there are only two alternative positive findings possible: either this appellant comes from Sierra Leone, or from Nigeria. However, on asylum/article 3 all he needs to show is a reasonable likelihood that he does *not* come from Nigeria, and does come from Sierra Leone, so that on removal he would have to face the persecution he says he fears there.
4. Having been alerted by a recent short report to the decision of the Court of Appeal in *Amin Zidan Abdullah* [2013] EWCA Civ 42, I no longer consider this concession was rightly made. Although the general standard of proof in asylum/article 3 appeals is on a reasonable likelihood only, the appellant had to show on the balance of probabilities that he was not returnable to Nigeria, if he were to have an arguable case, based on any real risk of Convention persecution or ill-treatment on return to Sierra Leone. If that is right, then the first-tier panel made no error of law at all (see 6 - 13 for my views on their article 8 decision, apart from the nationality point), and the appeal would in any event have to be dismissed on that basis. However, since that was of course not the one on which a re-hearing was directed, I shall go on to set out my views on the basis on which the case came before me for that.
5. Permission was not refused on the article 8 point raised in the grounds; though I have no intention of giving any more encouragement on that than the first-tier judge who dealt with the permission application, it may be argued too, in the first place on error of law, if the nationality point fails. So far as the appellant's claimed citizenship is relevant to this point too, here he needs to show it is more likely than not that he comes from Sierra Leone.

FINAL HEARING

6. **The claimed error of law on article 8** had not been accepted or recorded as agreed in any subsequent ruling. However, since if I came to a contrary view on the appellant's nationality to that taken by the panel, I should inevitably have to reconsider the whole of his human rights case for myself, Mr Chirico put before me, and I considered a considerable volume of psychiatric evidence, including the oral evidence of Dr Paul Osler. However it is now necessary to return to the decision of the first-tier panel on article 8 and consider whether or not it did contain an error of law requiring a re-hearing on this point, subject to the question of the appellant's nationality, which I shall have to decide for myself, for the reasons already given.

7. Appellant's immigration history

- 09.04.1999 arrives in this country on false British passport; claims asylum on detection
22.03.2003 asylum refused
18.03.2004 first appeal dismissed
08.03.2006 sentenced to 8 months' imprisonment for using a false identity document
15.05.2006 Abbot & Co, solicitors, write to Home Office saying appellant entitled to Nigerian citizenship, and requesting he be removed to that country
30.04.2007 sentenced to 15 months' imprisonment for using a false identity document: the sentencing judge notes that this is his second conviction for that offence, and recommends deportation.
09.10.2007 receives notice of intention to deport
26,11,2007 remains in detention under immigration powers
17.12.2007 appeals against deportation
23.06.2008 second appeal dismissed
23.09.2008 face-to-face interview with Sierra Leone High Commission, who refuse to accept him as their citizen
25.08.2009 telephone interview with Nigerian High Commission
07.09.2009 Home Office receive report from SPRAKAB, expressing view that appellant is from Nigeria, and not Sierra Leone
26.10.2009 Nigerian High Commission in London issue appellant with emergency travel document: Home Office give appellant removal directions to Nigeria
29.10.2009 applies for judicial review of removal directions
11.2010 appellant bailed on judicial review application: injunction restraining removal to Nigeria refused
23.12.2010 makes fresh asylum/human rights claim on basis of homosexuality, and requests revocation of deportation order
11.03.2011 revocation refused (the decision under appeal in these proceedings)

8. The panel had and carefully considered the following psychiatric evidence: the numbers relate to the paragraphs in which they did so.

- 23, 45 & 47 Dr Rachel Daly
25 & 47 Dr Akpan
40 – 43 Dr W Hopkins
44. Professor Cornelius Katona
46. Drs N Shirolkar & L Moodley, and Dr Iles
48. Dr Malfatto
49. Dr Luciana Rubenstein

9. The panel dealt with the various heads of the appellant's article 3/article 8 claim before them, making findings of fact and drawing conclusions as set out in the following paragraphs:

94. The appellant is not a homosexual.
95. He would have access to treatment for his HIV+ condition on return to Nigeria.

96. The medical evidence before them showed on balance that, while the appellant suffered from a severe depressive illness with psychotic symptoms, in the form of 'hearing voices', he had insight into these, and could resist them. His condition was well known to the Secretary of State, and suitable care would be taken of him during the removal process.
 97. The appellant's claimed fear and risk of self-harm on return was based on his claim to be a homosexual, which the panel had disbelieved; but here they went on to find that the appellant was himself aware that this was a false claim.
 98. The appellant would have access to suitable medicines and treatment to control his psychosis on return to Nigeria, in particular in Lagos. His condition would not make him unable to seek treatment. So his return to Nigeria would not infringe his rights under article 3 or article 8, so far as either his HIV+ status or his mental health were concerned.
 99. While there had been some delay by the Home Office in dealing with the appellant during the early part of his stay here, the private life he had acquired in this country only became significant from about 2006. He had twice been convicted of using a false identity, and no proper explanation had been given as to how he had become involved in such activities. The first conviction involved a fraudulent attempt to open a bank account.
 100. The appellant could not rightfully have benefited from any policy to extend exceptional leave to remain to asylum-seekers from Sierra Leone, since he was from Nigeria.
 101. Weighing up the factors on both sides, the balance was in favour of deportation.
10. Mr Chirico's grounds of appeal to the Upper Tribunal challenged the panel's decision mainly on the basis of their findings on the appellant's nationality (ground 1); but he went on in ground 2, headed "Errors in approach to article 8", to argue as follows:
13. The appellant's claim not to be Nigerian, but from Sierra Leone, was relevant both to the question of
 - (i) how far removal to Nigeria would interfere with his private life; and
 - (ii) whether he should have been given exceptional leave to remain, either under the policy relating to those from Sierra Leone in force from 1999 – 2001; or under the '*R (S)*' policy between 2008 – 10.
 14.
 - (i) If the question of delay by the Home Office had been properly taken account of, in the light of *EB (Kosovo)* [2008] UKHL 41 either by them or the adjudicator who decided the first appeal in 2004, then the appellant would have been granted leave to remain on that basis; in which case he would have had no need to overstay, or commit offences of deception to facilitate that.
 - (ii) "The Tribunal glosses (at 100) the offences of which the Appellant was convicted. These glosses were not based upon any submissions and are based on no evidence. The Tribunal has consequently attached irrationally elevated weight to the Appellant's criminality."

11. Mr Chirico did not add to these arguments, either in his skeleton argument (which did deal with the merits of the appellant's article 3/article 8 claims), or in oral argument before me. Those at paragraph 13 of his grounds depend on my own findings of fact on the appellant's nationality, to which I shall come in due course; if I find that he is from Sierra Leone, then I shall reconsider his article 3/article 8 claims on all the evidence now before me. However, it is necessary now to consider whether the challenges to the panel's article 8 decision at paragraph 14 of the grounds raise any error of law on their part which require a re-hearing on that point, irrespective of my findings on the appellant's nationality.
12. In my judgment the panel's unchallenged finding at paragraph 100 about the Home Office delay having taken place before the appellant acquired a significant private life in this country in 2006 is fatal to the argument put forward at 14 (i). Even if I had taken the view that he should have been given indefinite leave to remain on the ground of that delay in 2004, though the fact of his not having it might have led to the offences of which he was last convicted in 2007, it could hardly excuse them.
13. So far as the 14 (ii) argument is concerned, the main relevant facts relating to the appellant's convictions were briefly, but clearly set out in the second sentencing judge's remarks, which were there for both sides to see and deal with in the appeal papers before the panel. As for the additional information about the first conviction (about its involving an attempt to open a bank account), that was equally clearly set out in the decision on the appellant's second appeal, which also formed part of the appeal papers: see paragraph 26 of that. As has often been said by this Tribunal and the higher courts, the sentencing judge's remarks are the starting-point for dealing with the facts behind convictions in deportation appeals. If the appellant had more to say about his offences, then it was for his counsel before the panel (Mr Chirico) to make sure it was said.

NATIONALITY

14. It follows that I do not see any error of law in the panel's article 8 findings, which might require a re-hearing on that point, independently of the question of the appellant's nationality, to which I shall now turn. In doing so I shall assume, contrary to the position on article 8, that it would be enough for him to show a reasonable likelihood that he is from Sierra Leone to provide a foundation for his asylum/article 3 claim relating to return there. On the other hand, if there is no reasonable likelihood of his being from Sierra Leone, then there would be no such basis for that claim. Such a finding would inevitably, no other country of origin having been seriously put forward, result in a conclusion that the appellant was more likely than not from Nigeria; but that is by the way.
15. Mr Chirico points out in his skeleton argument that the appellant has for the last 13 years (in fact now 14) always maintained that he is from Sierra Leone, though he has spent a great deal of time in Nigeria. The history he gave had him moving to Lagos when he was about 15 (so around 1987); then returning to Sierra Leone in late 1998, only to find his parents and siblings had all been killed. However that encomium on the appellant's consistency is too simple by far: while his case, as presented to his solicitors, and to the appellate authorities has certainly always been that he is a native of Sierra Leone, I need to

look in context at exactly what he, or others, apparently on his behalf, have told others at different times over the years. Before I do so, it is worth noting that, though it was never doubted in the appellant's two previous appeals that he was from Sierra Leone, no issue had been raised on this, and so nothing can be drawn from that.

16. The appellant was not called to give oral evidence, owing to what has been said about his mental state; so his own explanations for those statements, to which I shall come, are related on his behalf by Mr Chirico in his skeleton argument. The basis for that is a draft witness statement for the appellant, taken by Rachel Henson of his solicitors in the circumstances described in her own of 6 February 2012; and Miss Henson's own further statements of 21 March 2012 and 21 June 2013. I shall give my own views on each of the occasions concerned as I go, for clarity; but it should not be thought that I have reached these, or any other findings of fact, without considering the whole of the relevant evidence before me.

17. **Abbot & Co letter** The first time it was asserted, apparently on the appellant's behalf, that he was from Nigeria was on 15 May 2006: this was a point where (no doubt because of credit for time on remand), the appellant was less than two weeks from the end of the custodial period of) an 8 months' sentence: his first asylum appeal had already been dismissed in 2004. Abbot & Co, solicitors, describing the appellant as "our client", said he had instructed them he wanted to be removed to Nigeria. The history they gave was that he had been born in Sierra Leone, but to a Nigerian mother, by a Sierra Leonean father. Instead of leaving Sierra Leone for Nigeria when he was 15, he had been "... forced to leave Nigeria back to Sierra Leone because of the situation in which he found himself" at that age. Then in April 1999 he had come from Sierra Leone to this country.

18. The appellant had gone on to say this, according to the solicitors:

... he was not looking forward to going back to Sierra Leone, because he feared he could be killed, but would like to be removed to Nigeria to stay with his mother's relatives. In addition, during his stay in Nigeria, he acquired Nigerian citizenship because his mother is Nigerian. He has no family to go back to in Sierra Leone.

... [he] was sentenced on 8 March and will be released unconditionally on 26th May 2006. he does not want to remain in Belmarsh prison at the end of his prison terms. Client would want to be removed immediately.

The solicitors ended by asking the Home Office to get his travel document ready before his release date; otherwise they were urged to move him to an immigration detention centre, or release him on bail with suitable conditions.

19. The appellant's explanation, so far as he is said to be able to give one, for how that letter came to be written is that he never gave Abbot & Co any such instructions; and "it is far from clear that he ever authorised them to make submissions on his behalf". In addition, it is pointed out on his behalf that three members of the firm were later "... struck off the Law Society Register for dishonesty and malpractice". The details are given in an extract from the Law Society Gazette of 19 May 2011.

20. In Miss Henson's further statement, she describes the appellant's reaction when she first put the Abbot & Co letter to him on 20 March 2012, just before the final first-tier hearing: her firm had had it from the Home Office, in accordance with the First-tier Tribunal's directions, on the 6th. The appellant remembered someone who may have been from that firm coming to see him in HMP Belmarsh; but not signing any letter of authority, or getting any further correspondence from them afterwards. He denied that his mother had been Nigerian, or that he had ever acquired Nigerian citizenship.
21. I probably have as much judicial experience as most people, gained over the last 24 years, of the ways of immigration solicitors, honest and otherwise. There are certainly dishonest ones to be found, amongst whom Abbot & Co may have been; but I know nothing to suggest that even the dishonest are inspired by any other motives than the ordinary ones of mankind in general, self-interest being a prime example. Whatever the honesty or otherwise of the member of the firm who wrote the letter of 15 May 2006, I see no reason at all for him to have done so, in the terms he did, if they did not represent the instructions he had had from the appellant. As the passage I have quoted shows, it is quite clear and to the point, and shows understanding of the likely position of a criminal prisoner, nearing the end of a short sentence, but facing an uncertain period of immigration detention afterwards.
22. As for the appellant's own memory of Abbot & Co's visit to him in Belmarsh, the occasion was six years old by the time it was put to him: given the voluminous evidence about his mental state over the years, I do not regard his not remembering giving formal instructions to them as reliable evidence that he did not in fact tell them the version of events set out in the letter, and ask them to see if the Home Office would remove him to Nigeria, and I see no reasonable likelihood that this was not what actually happened. It is quite true that the Home Office failed to act on the letter, at the time or at all; but experience also suggests that Home Office inaction is not significant of anything other than institutional paralysis, intermittent at best. I will return later to the conclusions to be drawn from this and other findings I may reach.
23. **Nigerian emergency travel document** This came into existence following a telephone interview the appellant had with the High Commission on 25 August 2009 (as shown in their detention review of 23 November that year). There is no record of what took place at the interview as such; but the emergency travel document, signed by a passport officer at the Nigerian High Commission, certifies that the appellant (named) "... has stated to me that he is a Nigerian and that I have no reason to doubt his statement." It is clear from the detention review that this process was set about following a face-to-face interview between the appellant and the Sierra Leone High Commission on 23 September 2008, when the official involved refused to accept him as their citizen, and suggested he "... could possibly be from Nigeria or Ghana" (see detention review, p 2).
24. The appellant's reaction to the news that the Home Office had and were relying on the Nigerian emergency travel document is set out in Miss Henson's statement of 21 June 2013: she had told him about it over the phone on 26 April, and read it out to him. He repeatedly denied having spoken to anyone from the Nigerian High Commission, or being

from Nigeria himself. According to Miss Henson, the appellant became very distressed during this conversation, and shouted repeatedly.

25. Mr Chirico suggests in his skeleton argument that the coloured photograph of the appellant attached to the emergency travel document shows something significant, but which he does not specify, about his physical state at the time of whatever dealings took place between him and the Nigerian High Commission in 2009; but I cannot see anything remarkable in it myself. While the skeleton argument goes on to refer to the appellant as “serious mental [*sic*] ill” at the time, it does not refer to any psychiatric or psychological evidence to suggest that he might have told the High Commission that he was one of their citizens, even though he was in fact from Sierra Leone. Instead, it is suggested that this apparent statement by him should not be relied on because his account of events in his asylum interview “... lacks coherence on a micro-level (i.e. he repeats himself, distracts himself, repeats himself obsessively”.
26. While this depiction of the appellant as an historian may not be wholly inaccurate, I have no doubt that the Nigerian High Commission would not have issued him with an emergency travel document, in the form set out, if he had not declared himself as one of their citizens. I shall return later to his motives for doing so, and the conclusions to be drawn from them.
27. **SPRAKAB report** This was obtained as part of the Home Office inquiries which followed the refusal of the Sierra Leone High Commission to accept the appellant as a citizen. It was made on the basis of the recording of a 20-minute phone interview between him and SPRAKAB (not necessarily the analysts themselves) on 7 August 2009. The general approach to be taken to evidence of this kind is set out in the judicial head-note to *RB* (Linguistic evidence - Sprakab) Somalia [2010] UKUT (IAC) 329, upheld with one minor reservation in *RB (Somalia)* [2012] EWCA Civ 277:

Linguistic analysis reports from Sprakab are entitled to considerable weight. That conclusion derives from the data available to Sprakab and the process it uses. They should not be treated as infallible but evidence opposing them will need to deal with the particular factors identified in the report.
28. The analysts were respectively from Sierra Leone and ‘Nigeria and Ghana’ (from the languages listed as spoken by him, a person of mixed descent) themselves; but the language in which he was spoken to was English. The conclusion the analysts reached was that the appellant spoke a variety of this language found “with certainty not in Sierra Leone; most likely in Nigeria or Ghana’. They had analysed the recording of the conversation they had with the appellant, both on a linguistic basis (phonetics, morphology, syntax and lexis), and his general knowledge of the culture and geography his claimed country of origin.
29. The analysts’ general comments are that the appellant does not seem to be a mother tongue English speaker: they record that he told the interviewer he was born in Freetown and lived in Kenema, Sierra Leone, and that he does not speak any Sierra Leonean native language, or Krio (the English-derived *lingua franca* of the country), or display any geographical, historical, cultural or political knowledge of it. There follow a whole series

of detailed specific phonetic findings: the symbols used would be too tedious to transcribe here, but can be followed by anyone with a basic knowledge of phonetics: the conclusion on this head is that the appellant has “a pronunciation with certainty not found in any variety of English spoken in Sierra Leone”. A series of morphological or syntactic findings follow: here too details are given of each, with explanations of the difference. Again the conclusion is that the appellant’s English is not typical of that spoken in Sierra Leone, but is typical of that spoken in Nigeria or Ghana. I shall discuss those of the analysts’ detailed findings which are challenged by Professor Patrick (see below) when I come to deal with his report.

30. Turning to ‘Lexicon and colloquialisms’, the analysts reach a similar conclusion; but here the only examples given are two verb/preposition compounds, (leaving aside the phonetic element) ‘*settle down*’ instead of other expressions with the same meaning, and ‘*brought up*’, instead of ‘*grew up*’. The section on ‘Knowledge assessment’ is similarly jejune: apart from a general view, it refers only to the appellant’s inability to recognize names of streets in Kenema or Freetown, and to the variety of occupations ascribed by the appellant to his parents, whose names he doesn’t remember.
31. The SPRAKAB report is challenged on the appellant’s behalf in one by Professor Peter L Patrick, dated 13 November 2011. Professor Patrick is Professor of Sociolinguistics at the University of Essex, and as such familiar with ‘the accepted scientific frameworks of linguistics and sociolinguistics’. While he is not an expert in the dialects or languages of West Africa, he is an expert in Jamaican Creole, to which he says Krio is ‘closely historically related’.
32. Professor Patrick begins (at section 1, headlined ‘**My own expertise**’) by opining that the decision in *RB* would have been substantially different, if “an objective, independent scientific linguist” had been consulted. “By contrast to Sprakab staff, I have a substantial reputation as a scientific linguist”. He says that SPRAKAB reports “... generally do not conform to the minimum acceptable requirements for scientific linguistic analysis”, without making any attempt to explain what those requirements are, and how SPRAKAB reports in general fall short of them; but he says his colleagues in the field would support him, if asked. He does however make it clear later, at 3 (r), that he is not himself qualified to give an opinion about the appellant’s origin.
33. It seems these comments about *RB* are directed towards the conclusions expressed, closely related to the evidence taken by the panel in the individual case before them, at paragraphs 164 and 169 of *RB*; but they fail to deal with, or even to note the treatment at 165 - 166 of the evidence of Professor Derek Nurse, emeritus Professor of Linguistics at St John’s University, Newfoundland, put in by the Immigration Law Practitioners’ Association, and discussed at paragraphs 136 – 142. Professor Nurse is listed as joint author of two of the works listed in Professor Patrick’s list of references at appendix III.

¹ Creole might be described as the language of transported slaves who had lost their own, and more particularly their descendants; while Krio is that spoken by freed slaves, returned to their own continent, without being able to speak any language from Africa.

34. A good deal of Professor Patrick's report is taken up with onslaughts on points in the SPRAKAB report which do not form the basis of any conclusions expressed in it; for example, the appellant's not speaking Krio, or English as his mother-tongue, or any West African vernacular language. He suggests that it was unfair not to assess his knowledge of Krio or vernaculars; but it is clear from the SPRAKAB report (see 29) that he had himself disclaimed any knowledge of these languages.
35. Given the length of Professor Patrick's observations, I shall confine myself to those bearing directly on the point in issue, which is the reliability or otherwise of SPRAKAB's conclusions about his speaking a Nigerian, rather than a Sierra Leonean kind of English: this is what they were asked to, and did report on by way of language analysis.
36. At paragraph 3 (h) Professor Patrick notes the poor quality of the recording of the appellant's interview with which he was provided, and which made it impossible for him to make his own assessment of whether the appellant's English sounded native. This is of course unfortunate, but, as Professor Patrick accepts, does not exclude the possibility that the original was of better quality. I should also note that particular familiarity with particular dialects or speech modes may make assessment easier in any event, as everyone knows from everyday life.
37. At paragraph 3 (j) Professor Patrick gives the view that

What knowledge Sprakab's employees do possess of West African English appears to derive solely from the analysts' claimed status as native speakers, and hence does not qualify as expert knowledge ...

He does not say whether, and if so why they would have been better qualified to express an opinion on the appellant's speech if they had learnt their West African English at a university. However further on, at 4 (b), Professor Patrick does indicate, by reference to the 2004 *Guidelines for the Use of Language Analysis in Relation to Questions of National Origin in Refugee Cases*, what sort of expertise he regards as valid. The Guidelines, he says, were drawn up by a committee of 19 linguists from various countries, "... 5 of whom were full professors, at least 17 of whom held PhDs at the time, and at least half of whom have first-hand experience of linguistic analysis in the asylum context". This body has set its own guideline for expertise, which it says

... can be evidenced by holding of higher degrees in linguistics, peer reviewed publications, and membership of professional associations ... also from reports, which should use ... citation of relevant academic publications ...

38. Professor Patrick goes on at 4 (c) – (i) to explain how in his view SPRAKAB analysts have fallen short of academic standards, on such points as training and publication of papers, as well as membership of professional bodies, though he makes clear his view that this last is no guarantee of expertise on its own.
39. Meanwhile, at 3 (l) – (q), Professor Patrick offers a number of suggestions about how the appellant's language skills might fit in, or not, with the history he had given. At 3 (l) Professor Patrick sets out the appellant's history, noting that in his first appeal he had claimed membership of the Kissi and Mende tribes, and in his second that he had never

been to school and was illiterate when he arrived in this country in 1999. However at (m) Professor Patrick notes that he had always been content to be interviewed in English, which he said he had learnt from his parents.

40. At 3 (o) Professor Patrick says that, if the appellant came from Freetown as he said, and his parents chose to speak English rather than Krio with him, "... he might conceivably have Sierra Leonean English as his dominant native language", given the popularity of English world-wide and particularly in Freetown, over and above the rest of Sierra Leone. At (p) Professor Patrick goes on to suggest that the appellant might have chosen, in a formal situation such as an interview, to use his own most standard English, which would have been affected by his ten years (by then) in this country, and not include non-standard features as he might have done at home. At 3 (q) Professor Patrick notes the lack of any clear-cut boundaries between English and Krio, as set out at nos. 9 and 10 of the 2004 Guidelines.

41. While I am prepared to accept all these points, so far as they go, they do not address one of the main negative features (from the appellant's point of view) of the SPRAKAB report, which is their conclusion that his English not only fails to show distinctive Sierra Leonean features, but does show Nigerian ones. I shall have to consider this in due course against the possibility that the appellant did grow up in Sierra Leone, as he says, but spent a long time in Nigeria when he was still young.; however Professor Patrick does not offer any help in how to approach this question.

42. Eventually (paragraph 4 (j), at p 12 of his report) Professor Patrick approaches the points noted by the SPRAKAB analysts. He makes a general point about whether their standard of comparison is Krio, or 'Sierra Leonean English', and whether a distinction should have been drawn between the two. He says

Phonetic brackets [χ] and phonemic slashes /χ/ are inconsistently and incorrectly used, so that the pronunciation status of the sounds uttered cannot be clearly determined with respect to the varieties to which analysis assigns them.

However Professor Patrick does not give any examples of such a solecism, nor explain the function of either brackets or slashes.

43. Finally reaching the points of difference themselves, Professor Patrick deals with some of them as follows at 4 (k):

- "He omits the pronunciation of dental plosive /t/ in certain positions"
 - ex.: "paren[t]s"

Professor Patrick's own view on this feature is that it "... occurs variably in all known English dialects, including standard American and British English as well as Krio and West African Englishes"

44. To support this proposition, Professor Patrick cites one of his sources, which from the title in his list seems to be a kind of general encyclopedia of varieties of English. However, he does not cite any specific support for the proposition which he goes on to formulate,

which is that “Its occurrence does not distinguish Krio or West African Englishes from each other, and it is therefore not diagnostic for [the appellant]’s speech”.

45. I shall go on to Professor Patrick’s next point.

- “He omits the pronunciation of alveolar lateral approximant /l/ ... He pronounces alveolar lateral approximant [l], in comparison to alveolar trill /r/ ...”

Professor Patrick makes the obvious point that this is not two features, but one: “the variable treatment of liquid sounds is a widespread feature of West African languages and the creole languages descended from them. [Here he cites two other works] It is an areal feature found widely across West Africa and, again, does not distinguish Krio or West African Englishes from each other, and it is therefore not diagnostic for [the appellant]’s speech”.

46. Professor Patrick’s third and last detailed point on the phonological evidence is this:

- “He pronounces aspirated dental plosive [t^h], compared to non-aspirated /t/ ...
 - Examples are given of intervocalic and initial pre-vocalic ‘environments’.

Professor Patrick makes a similar objection here to the point noted on the left-out /t/ and the [l] for /r/.

47. After making these objections, Professor Patrick goes on:

Some of these features might have been traced to the scholarly literature on Krio and West African Englishes [*three examples are given*] though SPRAKAB – whose analyst claims to know the language [*sc. Krio*] has made no effort to do so. What is more striking to a linguist is the absence of analysis, or description, or even mention of any diagnostic features that Sprakab may consider to be diagnostic of one variety of language rather than another. Nothing is said here to support or explain the contrast between Krio and the various West African English dialects – the basis of their conclusion – or to refer it to existing literature.

48. There follows a criticism of SPRAKAB’s not differentiating between, for example, obligatory and voluntary occurrences of certain usages, for which Professor Patrick blames not only the analysts, but their supervising linguist. Next comes a diatribe against the analysts for not using the International Phonetic Alphabet [IPA] as they promised. Professor Patrick claims that there are 64 instances in 18 word-pairs where IPA characters are not used, but instead “non-phonetic symbols which do not belong to the IPA and have no clear interpretation. In a word, they are nonsense symbols”; however he neither lists these instances, nor even gives any examples of them. He may or may not be entitled to blame the SPRAKAB analysts for flouting the basic rules of scientific language analysis; but it is impossible for me to reach any independent view as to whether he is right or wrong, because, contrary to the basic rules for expert witnesses, he has himself failed in this case to provide me with the means of doing so.

49. Turning to Professor Patrick’s views on SPRAKAB’s grammatical (morphological/syntactic) points, he appears at first sight to be making a justifiable criticism at (p) of their comparing the appellant’s English with the standard version, rather than with the kind spoken in Sierra Leone. Unfortunately however Professor Patrick has

not read the section concerned quite carefully enough: what the analysts say here, in their own words is

The person's manner of forming words and phrases is not typical of a variety of English spoken in Sierra Leone. The person constructs phrases in a manner typical of a variety of English spoken in Nigeria or Ghana.

50. Clearly it is the features in the appellant's English which make it typically Nigerian or Ghanaian that are being illustrated here, and not those which make it different from that spoken in Sierra Leone. The standard English equivalents are simply provided for reference and comprehension: while Professor Patrick uses the examples he gives to attempt to enlist the reader in making SPRAKAB look ridiculous "It should be evident to non-experts that the analysts are here judging [the appellant] negatively for speaking West African English grammar instead of using the Queen's English in formal mode", it is not SPRAKAB who end up looking that way.
51. A little thought would have led to the conclusion that SPRAKAB could not possibly be blaming the appellant for deviating from a Sierra Leonean norm, when they explained '*long time I left*' as 'I left [the country] a long time ago'. It is unfortunate that an expert witness taking part "... in a scientific analysis which may determine a man's fate" (to borrow Professor Patrick's own words in criticising SPRAKAB), should not have reflected on this.
52. On the other hand, when Professor Patrick takes the trouble to make a specific linguistic point, as he does at (q), then it is possible to accept his opinion on some points without reservation. Many of the points made by SPRAKAB in their grammatical section relate to the appellant's failing to mark the past tense, compared to standard English usage: as Professor Patrick explains, this is a common feature of West African English, and appears in other varieties world-wide².
53. One exception to that generalization, as Professor Patrick points out, is the stigmatization by SPRAKAB of the appellant's use (in Professor Patrick's orthography) of "*A de for Kenema*" as opposed to "*A bin tap na Kenema*". This is a point where Professor Patrick can and does claim some specific expertise, since his 2007 book identifies the former as typical of Krio. I am prepared to accept his statement that the latter is equally typical, so that this cannot be taken as a point against the appellant. The only thing that prevents it from being a point positively in his favour is that Professor Patrick's expertise does not go so far as to show that either of these usages is *not* typical of Nigerian English.
54. Another exception refers to the expression "I'm hearing you", where Professor Patrick is clearly right in saying that this can be heard in many varieties of English, though I have to differ from him (as a native speaker of the standard form, which as an American he is not) about its being 'standard English grammar'. The result is that I do not place any reliance on SPRAKAB's views on the grammatical or lexical features of the appellant's speech; nor do I think it would be right to rely on their assessment of his cultural and geographical

² Professor Patrick refers to the same encyclopedia as before; but I can speak from several years' judicial experience in a country where the local pidgin was the everyday language of the courts.

knowledge of Sierra Leone, which perhaps inevitably formed only a small part of their report.

55. The remainder of Professor Patrick's report is concerned with the inadequacy of SPRAKAB's linguistic sampling, with 'Legally recognized standards in forensic linguistic practice', and with the questions of whether SPRAKAB analysts are qualified for their rôle, or under any institutional pressures to come to particular conclusions. I shall not concern myself, beyond one or two points referring to *RB* with what may be called the theoretical side of these questions, because it has already been authoritatively established in that decision that the makers of SPRAKAB reports *are* entitled in principle to be treated as expert witnesses. I shall then move on to any challenges to the individual report in the present case.
56. Professor Patrick refers to the 2010 Practice Directions of the Upper Tribunal on the general requirements for expert witnesses: this point was dealt with by the panel in *RB*, but as he does not seem to have taken any notice of what they said about it at paragraph 167, it will bear repeating:

It might be said (although it was not said in the present appeal) that Sprakab reports should be ignored or treated as of less weight because they do not comply with Practice Directions relating to expert evidence. We do not think that would be right. In the first place the reports do indicate, within the limits of the anonymity we have held to be justifiable, the identity and qualification of the writers. Secondly, unlike many "expert reports", they come in essence from an organisation rather than an individual, and it is the characteristics and methods of the organisation that are of importance in this context. Thirdly, they are typically prepared for a decision-maker and not for an appeal, and so it is not appropriate to impose on them rules relating to evidence prepared specifically for use in litigation.

57. The last sentence contains the only point on which the decision in *RB* was disapproved by the Court of Appeal; so the rest of the paragraph stands. Though this question had not been argued before the panel in that case, they had clearly given it serious thought, and I intend to follow the first and second part of the views they gave.
58. The other general point which needs mentioning here is the one taken by Professor Patrick on *AA* (Language diagnosis: use of interpreters) Somalia [2008] UKAIT 00029. *AA*, like *RB*, was written by Mr CMG Ockelton, and his judicial head-note is correctly cited by Professor Patrick:

It is no part of an interpreter's function to report on the language or dialect used. The expertise needed to identify a language or dialect is not typically the expertise of an interpreter. In any event, an interpreter should not be in the position of giving, or being asked to give, evidence on a contested issue.

The point taken by Professor Patrick on that is that "... even expert interpreters – whose qualifications exceed those of 247 and 207 – are not competent to make an expert assessment of claimant's speech as belonging to a particular language or dialect".

59. *AA* was not referred to in *RB*, though Mr Ockelton would certainly have had it in mind. The decision was not about someone called or put forward as an expert witness on behalf of the appellant; but of a Tribunal interpreter who counsel for the appellant wished to use

as one, a fundamental difficulty perhaps more apparent to the judicial than the academic reader. The suggestion that this might have been done was rejected in the strongest terms:

It is in our view in the highest degree undesirable for the interpreter as a Court official to be asked to contribute in any way to the determination of a contested issue.

60. Such interest as the decision in *AA* has for present purposes lies however in the other basis on which the Tribunal rejected counsel's proposal: This is best seen in the following passage, from paragraph 7:

An interpreter's function is to comprehend and communicate, not to assess or analyse. A person's skills in interpretation lie in his ability to understand what is being said to him in one language (or dialect) and communicate it accurately in another language (or dialect). It is simply wrong to say that the abilities of an interpreter necessarily import an ability to distinguish accurately between different dialects and to be able to attribute dialects to different sources. A person whose first language is French may attain standards of near perfection in English interpretation, without being able to say with accuracy whether he is dealing with a person from Ipswich or Indiana, or even with a person whose own first language was not English. As an interpreter he may widen his vocabulary base and his understanding of different accents and dialects so that he can cope with whatever version of English is used by the person for whom he is interpreting, without needing or wanting or being required to consider or work out what the dialect is, but merely to do his own job of understanding and communicating. Of course an interpreter *may* know (or think he knows) something about the type of language or dialect the person for whom he is interpreting is using; but that is quite a different matter. It is not part of his function as interpreter.

61. The point being made there is not that people with the kinds of language skills possessed by an interpreter will not by their nature have the necessary expertise for what might be called language diagnosis; but that this is not an interpreter's job, and that it cannot be assumed, as counsel had suggested, that someone doing that job would *necessarily* have the skills required for language diagnosis. As for the ordinary language skills of either a Tribunal interpreter or a SPRAKAB analyst, it is not clear on what basis Professor Patrick is qualified to comment on them.
62. Going on to the points specific to this case, at paragraph 5 (h) Professor Patrick takes points on the stated origins of the present analysts, which (see 28) are said to be respectively Sierra Leone (247) and 'Nigeria/Ghana' (207). Professor Patrick's points are as follows. Analyst 207 is later said to have been born in Ghana, "... and has resided [*Professor Patrick's emphasis*] in Nigeria for a longer period of time". Professor Patrick goes on to make the apparently obvious point that origin and residence are not the same thing, and severely to criticize SPRAKAB on the basis that they have got the two concepts mixed up. Then he refers to a previous report, in which the origins of the same analysts as in this case are given differently: 'Sierra Leone/Liberia' (247), and 'Nigeria' (207). This Professor Patrick describes with some scorn as "tailoring of analysts' claims about their own identity to fit the analysis in hand".

63. I am not going to apologize for referring to two very basic facts of human biology, because it seems they have been rather lost sight of here. Every person (so far in the history of science) has two parents; but can only be born in one place. If one reads the details given for analyst 207 in the present report with any care, it is clear that he³ was born in Ghana; but that his mother tongue is Hausa, not a language of Ghana, but one of Nigeria. If biography were really the issue, it is quite easy to re-construct 207's: though he was born in Ghana, one of his parents must have been Nigerian. There is nothing illegitimate or misleading, for those who are not looking for mistakes for their own sake, about such a person describing themselves as of 'Nigeria/Ghana' origin, and then going on to explain that, though born in Ghana, they have lived longer in Nigeria.
64. So far as the details given in the other case are relevant, it is to the suggestion of bad faith on the part of the analysts, made by Professor Patrick. Here it is necessary to look at the purpose of the report: in the present case the appellant had claimed to be from Sierra Leone, so that any part-Liberian origins analyst 247 may have had were not relevant to his diagnostic skills, but only his connexion with Sierra Leone; however Professor Patrick gives no details of the contested claim in the other case to which he refers.
65. Again, returning to analyst 207, the Sierra Leone High Commission had suggested (see 23) that the appellant could possibly be from Nigeria or Ghana; so that is likely to have been the way in which the issue in this case was presented to SPRAKAB, making it entirely understandable that 247 should have described himself as from 'Nigeria/Ghana'. Once again, Professor Patrick has not set out the issue in the previous case, where any connexion with Ghana may have been irrelevant.
66. **Findings of fact** I have already found (at 22 and 26) that there is no reasonable likelihood but that the appellant did instruct Abbot & Co to secure his removal to Nigeria in 2006, and did claim to an official of the Nigerian High Commission in 2009 that he was a Nigerian citizen. So far as his speech is concerned, I have to choose between SPRAKAB and Professor Patrick; not in the constructive sense of preferring one language diagnosis to another, because Professor Patrick accepts that he is not qualified to give one in this case, but by way of his inevitably destructive analysis of SPRAKAB's methods and views.
67. I have already made it clear that I do not consider that SPRAKAB's assessment of the grammatical or lexical features of the appellant's speech can be relied on for a diagnosis, nor their views about his knowledge of Sierra Leone, or lack of it; so the language diagnosis in this case has to depend on the phonological features they noted. On this head I have dealt individually at 43 - 46 with the three specific items in their assessment which Professor Patrick felt able to challenge; but there are five others, on which he makes no comment.
68. I shall deal with the overall assessment of phonological features in the light of Professor Patrick's general challenges to SPRAKAB's position and methods, and begin by reviewing the comments I have already made about those, referring to previous paragraphs of this

³ In this decision, as under the Interpretation Act 1889, the masculine includes the feminine, unless the context otherwise requires.

decision. His only challenge to the SPRAKAB report, specifically directed to the question of whether its phonological presentation prevents its being independently assessed, is dealt with at **48**. As pointed out there, Professor Patrick's challenge itself fails to provide the necessary detail for independent assessment either. At **63 – 65** I have given reasons for rejecting his claim of bad faith on the part of the individual analysts in declaring their origins.

- 69.** So far as Professor Patrick's strictures on the general position of SPRAKAB are concerned, of course I bear in mind that they were not put before the Tribunal in *RB*; but in my judgment the general approach taken there remains valid, and there is nothing in it contrary to the previous decision in *AA*, for the reasons given at **58 - 61**. Furthermore, the Tribunal in *RB* give detailed reasons for their views at paragraphs 154 – 169 of their decision, with which Professor Patrick makes no attempt to deal, but which themselves deal with the expert evidence before them from Professor Nurse (about which Professor Patrick says nothing either). These reasons led them to the conclusion that, contrary to the challenges made to SPRAKAB's methods and impartiality, "SPRAKAB evidence is of high quality and its opinions are entitled to very considerable weight".
- 70.** All I want to add to that assessment is by way of drawing together the points already made on Professor Patrick's general views on the qualifications required by expert witnesses. He begins by suggesting that valid language diagnosis evidence can only be given by 'scientific linguists', such as himself for example; but (see **32**) does not list what in his view the minimum acceptable standards for such an analysis might be. At **37 - 38** he makes it clear that he does not regard native speakers of a language as having any expert knowledge of it, contrary to the position of those who possess the highly academic forms of accreditation referred to by the committee responsible for the 2004 Guidelines. Professor Patrick makes his own position clear by vaunting the academic qualifications of the committee themselves, five out of 19 being full professors, and at least 17 having PhDs. While he does also mention that at least half of them have first-hand experience of language analysis, it is quite clear that Professor Patrick is not inclined to regard anyone without academic qualifications as a genuine expert.
- 71.** Helpful as academic opinions may sometimes be, this of course is not the position taken by the law. For present purposes, an expert witness may be taken as someone who not only has knowledge of a particular subject, not possessed by the ordinary person (which of course is the position of any native speaker of a language which is not that of the country where the expertise is to be exercised); but also is able to give an explanation for his conclusions on that subject in a way which can be independently verified or invalidated.
- 72.** This is not something the average native speaker, or even the average court interpreter is capable of doing; but it is something which SPRAKAB analysts can and do provide, by explaining their findings in recognizable phonetic terms. I have already dealt with Professor Patrick's challenges to the way in which these analysts have done so; and it also has to be pointed out that his strictures on their methods have not stopped him giving his own comments on the three phonological features out of seven noted by him on which he felt qualified to do so.

73. I shall now turn to my own assessment of the phonological evidence as a whole, dealing first with the points on which it is challenged by Professor Patrick. I am inclined to accept what he says about the appellant's omission of dental plosive /t/ in certain positions: any native speaker of English will be aware that it may happen, in the example given (*'parents'*) in any spoken variety of the language.
74. If Professor Patrick's next point ([l] for /r/ for short), were simply a question of straight 'l' for 'r' substitution, as his comments suggest, then again it is common knowledge that this may happen in a number of varieties of spoken English, though not in the standard kind. However, Professor Patrick's comments significantly leave out the words "in certain positions", which appear in the original SPRAKAB report at this point. The examples given there are of a very specific kind, where an intervocalic 'r' is not pronounced, as in 'during' and 'period'. This is not such a well-known feature at all, and Professor Patrick's challenge to it as being diagnostic goes no further than a general citation of two writers for the proposition that "... the variable treatment of liquid sounds is a widespread feature of West African languages and the Creole languages descended from them".
75. That is no more than I have accepted in the first sentence of this paragraph, put into academic language and related to the particular group in question. I am not prepared to accept that the SPRAKAB analysts in this case, who were well aware they were comparing the appellant's pronunciation, not with standard English, but with either the Sierra Leonean or Nigerian versions, were not capable of recognizing the appellant's speech on this point as corresponding with the latter, and not with the former.
76. Professor Patrick's third comment (about the appellant's use of aspirated [t^h], instead of non-aspirated /t/) also significantly omits the original's "in certain positions". Again, if one takes the trouble to look at the original report, some of the examples given are of an aspirated initial 't', which may be a familiar feature of standard English, noticeable for example when speakers try out their French. On the other hand, some do not fall into this category at all: one very noticeable one is the pronunciation of Freetown, the capital of Sierra Leone, but no doubt a well-known place in Nigeria too. This is notably different in SPRAKAB's phonetic rendition of the appellant's speech; and it can hardly be supposed that there would have been any mistake about his pronunciation of the name of what he says was his home town.
77. Taking into account the five phonological points noted by SPRAKAB which stand uncontradicted by Professor Patrick, I have accepted his challenge to only one out of eight points made by them in this area. While of course my general view does not depend on any mere score, on all the evidence on this subject I have no doubt that the SPRAKAB analysts are correct when they say he "... has a pronunciation with certainty not found in any variety of English spoken in Sierra Leone", and, in the case of the last point ([t^h] for /t/), is "... typical of a variety of English spoken in Nigeria and Ghana." SPRAKAB's general comments end with the conclusion that the appellant speaks a variety of English found most likely in Nigeria or Ghana.

CONCLUSIONS

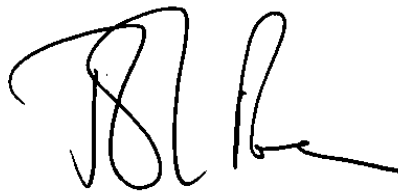
78. **Issues** Having found that in 2006 the appellant declared himself, through solicitors, as returnable to Nigeria, and in 2006, to the Nigerian High Commission, as a citizen of that country, and that in 2009 he spoke English, at least from a phonological point of view, not in any way found in Sierra Leone, but, in at least one instance, typical of Nigeria, I now have to consider whether those findings are compatible with his own account, repeated to the Home Office and the appellate authorities on many occasions, that he was born and grew up in Sierra Leone, and only went to Nigeria when he was 15, staying on for over ten years, but without having any further connexion with that country.
79. The appellant's consistency in that account (overlooking what he said to the Nigerian High Commission) was strongly urged on his behalf by Mr Chirico, as is usually the case when an asylum-seeker has not been inconsistent in accounts given over a period. Of course consistency is in the historian's favour; but it ought to be recognized as a natural feature of people in general when telling a true story, and not something to marvel at in an asylum-seeker.
80. **Mental health** In assessing the appellant's own motives for what he said when he did, as opposed to his way of talking, I need to look at the relevant evidence about his mental state. From his patient record for his second period in prison, that seems first to have given cause for concern on 12 September 2007: a registered mental health nurse who saw him on 30 January 2008 found him rational, but frustrated at remaining in immigration detention. However on 18 March 2008 a genito-urinary surgeon who had seen him about something else noted that his history showed he had been admitted to hospital in March 2007 because of a mental health breakdown, and that the appellant himself had told him he had been considered suicidal in April that year.
81. Perhaps as a result of what the surgeon had said, on 8 May 2008 the well-known Professor Cornelius Katona saw the appellant at the Colnbrook Removal Centre, and described him as "pleasant and co-operative throughout his interview", but suffering from "depressive disorder with psychotic features" and PTSD [post-traumatic stress disorder]. In September and October that year two consultant psychiatrists agreed that he was suffering from mental illness which made it appropriate for him to be detained in a hospital for mental treatment. One (Dr Bolonna) agreed with Professor Katona's diagnosis of "depressive disorder with psychotic features"; the other (Dr Grummitt) agreed he was psychotic, reporting 'hearing voices'.
82. The appellant was duly admitted to hospital, from where he was discharged on 22 December 2008. The discharge report noted that he acknowledged that his mental state had improved since he was admitted: he was described as follows

His mood is objectively more reactive. He don't have any active suicidal thoughts or plans. He was able to think clearly and logically. There was no formal thought disorder or any delusions. He still hears voices but they were less distressing now. His attention and concentration has improved. He has good insight into his mental illness and has been compliant with his prescribed medication.

83. Further expressions of concern about the appellant's mental health, on his return to detention, by a retired GP (Dr Charmian Goldwyn) and others who saw him, including a consultant forensic psychiatrist (Dr Rachel Daly) on 25 June 2009, led to a visit to him on 14 August, resulting in a report dated 8 October by Dr Sameer Sarkar, who holds an American diploma in psychiatry. Dr Sarkar says he did not do a full risk assessment, but noted "the hopelessness associated with infinite detention (and the length of it – some 21 months)". While Dr Sarkar expressed concern for the appellant, and mentioned the appellant's own worries about what he thought would happen to him, he did not give any further opinion as to his lucidity or otherwise.
84. **Conclusions** The main difficulty about the language diagnosis evidence on its own is that the SPRAKAB analysts were unaware that the appellant had always claimed to have left Sierra Leone for Nigeria when he was 15; however the language diagnosis evidence does not stand on its own. Dealing with that point, however, the analysts took the appellant's history as he gave it them, and at least they cannot be blamed for working to a Home Office agenda on it. I should have welcomed some expert evidence, from Professor Patrick or anyone else suitable, about how far a 15-year old who goes to another country, where the official language is the same as his own, and spends about ten years there may be expected, not only to take on the speech patterns of his new country, but to lose those of his own.
85. Without such evidence, I simply have to do the best I can to assess what is before me in the light of common sense and common knowledge. On that basis, I still consider it remarkable that someone who lived in Freetown for his first 15 years should so completely have taken on the speech patterns of his new country as to pronounce even the name of his own home town according to them, and I still regard the SPRAKAB phonological evidence as going contrary to that version of events.
86. Abbot & Co's letter of 2006 does not of course go directly contrary to that version, because it too has the appellant leaving Sierra Leone for Nigeria when he was 15: however, it mentions the appellant's mother being Nigerian, which is not something he has ever said anywhere else. This is significant, because it was no doubt on that basis that he was asserting in that letter that he could be returned to Nigeria. While the contents of the letter are not otherwise incompatible with the basis the appellant has given for his asylum and human rights claim, relating to Sierra Leone, they are certainly compatible with his being returnable to Nigeria.
87. What the appellant told the Nigerian High Commission in 2009 is also not incompatible with that version of events, so long as he did have a Nigerian mother (not having any other claim to that citizenship, so far as is known). It is possible that the appellant does come from Sierra Leone, but had a Nigerian mother, by right of whom he might (and, in view of his acceptance as a citizen by the High Commission) would more likely than not be entitled to Nigerian citizenship, and through whom he might have acquired early Nigerian speech-patterns.

88. However that is no more than speculation, because it has never been in this appellant's interests to declare a Nigerian mother, except when dealing with the Nigerian High Commission. I have considered the possibility that he deliberately gave them a false account on two occasions (the first time through Abbot & Co), preferring to be returned to Nigeria, rather than remain in custody here; but is nevertheless a native of Sierra Leone, and not returnable to Nigeria. However, the appellant has disclaimed any memory of giving that account at all, and again I am not prepared to accept that it is even reasonably likely he might have done so for that reason.
89. What I am not prepared to accept, for the reasons I have given, is the appellant's own case, involving birth in Sierra Leone to two Sierra Leonean parents, with no other connexion with Nigeria beyond ten years' residence from the age of 15. Whether the standard of proof he has to meet on this point is the balance of probabilities, or merely by way of showing a reasonable likelihood (as to which see 3 – 4), I do not accept that this appellant is not returnable to Nigeria, and so the condition precedent to his asylum and human rights claim, based on the consequences of return to Sierra Leone, is not met.

Appeal dismissed

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)