



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/02268/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly

Determination Promulgated

On 26 January 2015

On 9 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ANNE ROSE BISSECK
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson counsel instructed by GMIAU.

For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lambert promulgated on 15 July 2014 which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 26 November 1974 and is a national of Cameroon.
4. On 25 April 2008 the Appellant applied for asylum.
5. On 24 September 2009 the Secretary of State refused the Appellant's application. The Appellant appealed the refusal and her appeal was dismissed on 21 January 2010 by Immigration Judge Thorne. Permission to appeal that decision was refused on 23 February 2010 and 31 March 2010. Following presentation of a medical report dated 13 September 2010 the claim was reconsidered by the Respondent and on 6 December 2011 was refused. Permission to appeal by way of Judicial Review was granted on 17 June 2013 which led to the reconsideration dated 24 March 2014. It was the appeal against that decision that came before First-tier Tribunal Judge Lambert.
6. The refusal letter gave a number of reasons for refusing the Appellant's claim that she was at risk on return to Cameroon as a political activist. They can be summarised as in essence that: the Appellant's claim to have been detained as a result of her political activism with the SDF or AFDC was not accepted; Judge Thorne had not found her to be a credible witness; actual or perceived membership of the SDF does not put the Appellant at risk; because of the adverse credibility findings made against the Appellant little weight could be attached to the documents she produced; the letter from Mr Zamboue of the SDF did not support her claim to have been detained; regarding the report of Dr Miller it was not accepted that the injuries claimed to be the result of torture in 2001 occurred in the way alleged; there were a number of adverse credibility findings made in relation to the Appellant which undermine her claim as to the events of 2007-2008; the Appellant's medical problems did not reach the high threshold set out in Article 3; there was no breach of Article 8.

The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lambert (“the Judge”) dismissed the appeal against the Respondent’s decision. The Judge found :
 - (a) She found no reason to revisit the decision of Judge Thorne that the Appellant may have been detained in January 2001 and may have been a low level supporter or even a member of the SDF but she did not find that the letter from Mr Pascal added to her claim. She found she could place little reliance on the letter because of inconsistencies such as to the date she joined the party , he claimed it was 2000 and she said it was 2007 and mr Pascal made no mention of her having been helped by the SDF to leave Cameroon in April 2008.
 - (b) She accepted on the basis of Dr Millers report that the Appellant was detained and tortured in 2001 and that contrary to the findings of Judge Thorne that there was a prison in Yaounde.
 - (c) She found that past persecution was an indicator of future risk but not determinative.
 - (d) She found that the authorities were not interested in the Appellant between 2001 -2008.
 - (e) She found internal inconsistencies in her evidence about her involvement with the SDF in 2007-2008.
 - (f) She did not find the Appellant’s account of how she came to leave Cameroon in 2008 was credible.
 - (g) She did not find that the Appellant would be at risk on return.
 - (h) She found no breach of Article 3 or 8.
8. Grounds of appeal were lodged and on 4 November 2014 while noting that some grounds were stronger than other Upper Tribunal Judge Dr R Kekic gave permission to appeal.
9. At the hearing I heard submissions from Mr Nicholson on behalf of the Appellant that enlarged on the grounds of appeal;

- (a) The Appellant was found credible as her claim to have been tortured and detained and should therefore have been found credible as to her claim as to the circumstances that led her to flee in 2008.
- (b) Mr Pascal may have been confused as to the date she joined the party writing a letter 11 years later.
- (c) The Judge relied in Judge Thorne's findings which were flawed.
- (d) The reasons given for not finding the Appellant's account credible at paragraphs 8.4-8.7 were very short and did not do justice to the evidence provided in her witness statement, her oral evidence and made in submissions.
- (e) The Court of Appeal had granted permission on the basis of the letter from Mr Pascal of the SDF and the medical evidence and this should have been taken into account.

10. On behalf of the Respondent Mr Mc Vitie submitted that :

- (a) He relied on the case of Chiver (10758) that the Tribunal may believe some parts of an Appellant's account but not others. In this case the Judge accepted her claimed torture in 2001 but not what she said about the events of 2007-2008.
- (b) The Judge gave sustainable reasons for rejecting the letter of Mr Pascal.

The Law

11. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under

argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

“Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator.”

13. In relation to the adequacy of findings I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) at headnote (1) : *“Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”*

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
15. I am satisfied that the background and chronology of this case was clear to the Judge by the time she came to write the decision even if at the time of the hearing she may not have read every document in the bundle. Having written an accurate summary of the previous history of how the appeal came before her I am satisfied that she was not obliged to list every document that she read before

coming to her decision and that it was not an error of law to specifically fail to refer to the grounds of appeal that were before the Court of Appeal. Paragraph 7.3 makes clear that the Judge appreciated that there was fresh evidence in the form of medical evidence and a letter from Mr Pascal which she took into account. The decision of Judge Thorne has not been set aside but Judge Lambert put that decision into context by reference to Devaseelan and her detailed consideration of the new material before her (7.2-7.3).

16. Mr Nicholson's principal submission appears to be that having accepted as she did that the Appellant had been truthful in her claim to have been tortured in 2001 it was more likely that she was credible about the events of 2001-2008. I am satisfied that the Judge properly directed herself on this issue at 8.4 of her decision that while past persecution was an indicator of future risk it was not determinative. It was open to her to reject the subsequent history given by the Appellant provided she gave adequate reasons for doing so.

17. The findings as to why the Judge rejected her evidence about later events are criticised as brief but I am satisfied that the Judge gave sufficiently detailed and cogent reasons at 8.2 and 8.4-8.7 why she did not find the Appellant's evidence persuasive about the events of 2001-2008 and I can see no error in the fundamental approach she adopted to her consideration of the evidence. She was not obliged to set out every piece of evidence she considered in reaching her conclusions. Judge Lambert made those findings having had the opportunity to consider all of the documentary evidence and having heard the Appellant give oral evidence before her including the Appellant's own evidence that she was completely politically inactive as far as the SDF was concerned between 2001-2008. I remind myself that there must be a fundamental error in the approach to findings of fact not simple a disagreement with weight given to certain pieces of evidence, reminding myself what was said by Lord Hoffman in Biogen Inc v Medeva Ltd [1997]

"... specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification

and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

18.. The Judge gave clear reasons why she did not find the letter of Mr Pascal supportive of the Appellant's claim and these were reasons that were open to her whether or not the permission granted by the Court of Appeal was based in part on the letter. There were clear inconsistencies as to her level of involvement in the party, how she left Cameroon in 2008 and even the date she joined the party: the suggestion that Mr Pascal may simply have forgotten when she joined is speculation and is an attempt to re argue the case.

19. I am satisfied that the Judge at paragraphs 8.13 to 8.19 as part of her assessment under Article 8 considered both the Appellant's mental health problems , her relationship with her partner and her length of residence in the United Kingdom. There is no factor drawn to my attention which has been overlooked again I find that this is simply a disagreement with the weight given by the Judge to the competing factors in the balancing exercise.

CONCLUSION

20. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

21. The appeal is dismissed.

Signed

Date 8.2.2015

Deputy Upper Tribunal Judge Birrell