



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

Appeal Number: AA/05778/2014

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 10 March 2015**

**Determination**

**Promulgated**

**On 28 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE DEANS**

**Between**

**BD**

(Anonymity order made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs L Brakaj, Iris Law Firm

For the Respondent: Mrs H Rackstraw, Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) This is an appeal against a decision by a Judge of the First-Tier Tribunal SPJ Buchanan dismissing an appeal on asylum and human rights grounds. The judge did not find the appellant's evidence credible.
- 2) The appellant is a national of Guinea. The basis of his asylum claim was that he worked as an IT technician with the Gendarmes in Guinea. In the course of his work he came across confidential information. This included a list of names of people accused of being accomplices in an attempted coup. The appellant saw that the list of names included his uncle and a

friend of his uncle. He sent them texts to warn them but was discovered and arrested. He remained in detention for two and a half years and was mistreated. His escape from prison was arranged by his uncle's friend to whom the appellant had texted a warning. He was then helped to leave the country and travelled to the UK.

- 3) The judge did not accept that the appellant had worked as an IT technician for the Gendarmes. In the application for permission to appeal it was contended that the judge failed to take into account material evidence in relation to this. The determination recorded that there were two bundles of documents submitted as evidence and this included an ID badge, a payslip from the appellant's claimed employment and photographs of him at work with a colleague in military uniform. Nevertheless the determination gave no indication that any consideration was given to this evidence in assessing whether the appellant was employed as he claimed, or in assessing credibility. In considering these issues the judge referred only to the appellant's oral evidence. The judge commented that it was difficult to comprehend why the authorities in Guinea would have appointed "an unknown individual to carry out services associated with maintaining a computer system". The application for permission to appeal recorded that pages 19 to 27 of the appellant's bundle of 1 December 2014 included photographs and other documents said to support the appellant's claim that he was engaged by the Gendarmes as an IT technician for a period in 2011. Had the judge examined the evidence submitted and not relied solely on the appellant's oral evidence, he might not have rejected the appellant's claim to have done this work and his conclusions would arguably have been different. The judge used conjecture instead of having regard to the documentary evidence. Permission was granted on the basis that this was arguable.
- 4) A rule 24 notice on behalf of the respondent stated that the judge was aware of the supporting documents and mentioned them at paragraph 3.2 of the determination. It was not material that the judge did not mention them in his reasoning. The judge gave detailed and thorough reasons for rejecting the appellant's claim to have worked in an IT role and found that the claimant possessed only basic knowledge of IT matters. It was unlikely the judge would have come to a different conclusion even taking into account the photographs or ID badge.

## **Submissions**

- 5) In her submission at the hearing before me Mrs Brakaj pointed out that at paragraph 3.2 of the determination the judge referred to two bundles having been submitted on behalf of the appellant. The judge referred to "additional pages of photographs" but it was not clear to which photographs he was referring. The judge made no assessment of the documentary evidence, including the payslip, badge and relevant photographs, together with the DHL envelope in which they were sent. If the judge had looked at the whole of the evidence he might have reached a different conclusion.

- 6) Mrs Brakaj continued that in relation to credibility the judge had asked at paragraph 6.26 why the Gendarmes would have employed the appellant. This documentary evidence went to this central issue. The appellant's evidence was that large numbers of the officers with whom he worked were not computer literate and their knowledge of IT was very limited.
- 7) For the respondent, Mrs Rackstraw relied on the rule 24 response. She submitted that it was clear from the determination that the judge was not convinced by the appellant's claim to have worked as an IT expert. The judge referred at paragraph 6.10 to the appellant's payslips and badge although no findings were made on these parts of the evidence.
- 8) Mrs Rackstraw continued that the appellant was unable to persuade the judge he had any IT expertise and at paragraph 6.26 the judge explained why he rejected the appellant's evidence in this regard. At paragraph 6.27 he further questioned the appellant's level of expertise. There was no error in the determination. The nature of the evidence produced was not sufficient to alter the judge's findings. There were no security features on the badge produced by the appellant, which was just a laminated piece of paper. The wage slips could have been manufactured. The judge was aware of the documentation, which was not of sufficient weight to overcome the deficiencies identified in the appellant's evidence, which was found by the judge to be of poor quality.
- 9) Mrs Rackstraw further submitted that the judge had asked whether the circumstances which supposedly led to the appellant's detention were credible and found that they were not. The appellant had set himself up as an expert. The judge found the evidence given by the appellant in relation to his expertise to be superficial.
- 10) In response Mrs Brakaj stated that although at paragraph 6.10 the judge referred to the payslips and badge he made no findings in respect of them. The judge commented on the alleged superficiality of the appellant's claimed expertise but did not look at whether he was employed as he claimed. The judge commented at paragraph 6.27 that anyone would know how to use anti-virus software but the evidence of the appellant was that those with whom he was worked were not computer literate. The assessment made by the judge about the appellant's level of expertise, for example in relation to encryption, was unclear in that the judge did not set out what information he was expecting and whether the appellant was unable to answer questions or whether the judge expected something more.

## **Discussion**

- 11) In my view the adverse credibility findings made by the judge are unsound and cannot be sustained. This is partly because the judge has failed to have regard to relevant evidence and partly because the judge's reasoning is inadequate. In particular, the judge made no specific findings in respect of the documentary evidence relating to the appellant's

employment, in the form of the payslips, a security badge and certain photographs. The judge does not appear to have had regard to the appellant's explanation of how he obtained a job as an IT consultant. The judge recorded at paragraph 6.26 that it was "difficult to comprehend why the authorities in Guinea would appoint an unknown individual to carry out services associated with maintaining a computer system" but appears to have neglected the appellant's evidence, although it was recorded at paragraph 6.1, that he found his work with the help of his uncle, who introduced the appellant to the commander-in-chief. In addition, although the judge commented on the appellant's seeming lack of specialised knowledge, for example, in relation to encryption or to anti-virus software, the point was made by the appellant in his evidence that he was working with people who had very little knowledge of computers. The judge appears to have used his own knowledge of how a software specialist would approach matters in the UK as a comparison for the appellant's evidence about his role with the Gendarmes in Guinea. In concluding on the basis of his experience of software specialists in the UK that the evidence of the appellant was not plausible, the judge further erred in law.

- 12) I am satisfied that the unsound nature of the findings made by the judge require that the decision be set aside and remade. In view of the extent of the judicial fact finding required, I am satisfied that this is an appropriate appeal to remit to the First-Tier Tribunal for the decision to be re-made at a hearing before a judge other than Judge SPJ Buchanan. None of the findings of fact made by Judge Buchanan are preserved.

### Conclusions

- 13) The making of the decision of the First-Tier Tribunal did involve the making of an error on a point of law.
- 14) I have set aside the decision.
- 15) The appeal is remitted to the First-Tier Tribunal with no findings preserved for the decision to be re-made at a hearing before a judge other than Judge SPJ Buchanan.

### **Anonymity**

- 16) The First-Tier Tribunal did make an order for anonymity and I continue that order pending the further proceedings.

Signed

Date

Judge of the Upper Tribunal