



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

Appeal Number: AA/07232/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 November 2015**

**Decision & Reasons
Promulgated
On 8 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

ZOLEBA MATHIAS GBOIZO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Clarke of Counsel instructed by Fadiga & Co,
solicitors

For the Respondent: Ms S Sreeraman of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a national of the Ivory Coast, born on 17 September 1960. On 15 November 2012 he entered with leave as a visitor. Some three

weeks later he claimed asylum on account of his political opinion. He supported the FPI, the party of President Gbagbo.

The Respondent's Decisions

2. The Respondent has made three decisions on 10 January 2013, 17 June and 16 September 2014 each one refusing the Appellant's claim for international surrogate protection. The reasons letters are in similar form. This appeal is against the last of these three decisions.
3. The Respondent rejected as not credible the Appellant's account in all or nearly all respects other than his identity and nationality.
4. On 23 September 2014 the Appellant lodged Notice of Appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds disputed the Respondent's conclusion that the Appellant's account was not credible and additionally referred to professional political activities in the United Kingdom in support of a "sur place" claim.

The First-tier Tribunal's Decision

5. By a decision promulgated on 19 November 2014 Judge of the First-tier Tribunal Pears made the following decision:-

There is no decision which could be the subject of this appeal. If there is an appeal, the appeal is dismissed on asylum grounds, humanitarian protection grounds and human rights grounds.

In fact there was a decision that of 16 September 2014 already referred to, in the file at the time of the hearing before Judge Pears. It was at the back of the correspondence tag in the Tribunal file.

6. At paragraphs 2-4 of his decision the Judge referred to the history of the Appellant's application and appeals. In particular he referred to the determination of Judge of the First-tier Tribunal Oxlade promulgated on 21 August 2014 in which she dismissed the Appellant's appeal on all grounds against the Respondent's decision of 17 June 2014 to refuse him international surrogate protection. Judge Pears referred at some length to the determination in *Devaseelan* [2002] UKIAT 00702* and considered Judge Oxlade's conclusions in relation to the evidence before him and wrote:-

...the Appellant relies on facts that are not different from those put to the first Judge, and proposes to support the claim by what is the same evidence as that available to the Appellant at that time and put before that first Judge.

He dismissed the appeal on all grounds in the terms already mentioned.

7. On 22 December 2014 Upper Tribunal Judge Martin in her capacity of Judge of the First-tier Tribunal granted extended time for the Appellant to

lodge an application for permission to appeal and granted permission on the grounds that Judge Pears had arguably erred in failing to make any findings in relation to the Appellant's claimed sur place activities.

The Upper Tribunal Hearing

8. At the start of the hearing Ms Clarke who had been Counsel before Judge Oxlade as well as Judge Pears stated that she did not have a copy of Judge Oxlade's determination. Both advocates stated that they had not seen the Appellant's grounds in support of the application for permission to appeal nor the grant of permission. Copies were made and an opportunity given to both advocates to consider them.
9. I explained to the advocates that there was in the file a copy of the decision of 16 September 2014 which had been the trigger for the appeal heard by Judge Pears.

Submissions for the Appellant

10. Ms Clarke addressed the first of the Appellant's grounds that Judge Pears had erred in not granting the Appellant his requested adjournment. The Appellant should have been given an opportunity to produce a statement or a DVD as evidence in support of his claim.
11. Turning to the second ground she submitted that paragraph 17 of the decision simply set out the findings made by Judge Oxlade and did not refer to the evidence in support of the Appellant's "sur place" claim whether documentary or given at the hearing before Judge Pears. He had erred in his conclusion at paragraph 21 by failing to take account of the Appellant's "sur place" claim.
12. The last ground for appeal was that the Judge had not considered the appeal in a fair and balanced manner which Ms Clarke amplified by stating was alleged on the basis the Judge had not referred to any objective material. Had he granted an adjournment then all the evidence would have been available at the adjourned hearing as well as additional objective evidence. The only objective material the Judge mentioned was a BBC country file report referred to in the Respondent's reasons for the original decision.

Submissions for the Respondent

13. Ms Sreeraman submitted the Judge had dealt fairly with the Appellant's application for an adjournment. He had served a statement dated 7 November 2014 to which the Judge had referred in paragraph 7 of his decision. Turning to the Appellant's claim that he had been denied the opportunity to produce the DVD evidence she referred to paragraph 59 of the Respondent's reasons for refusing the Appellant's claim. This referred to a DVD which had been submitted and the Respondent's request that the evidence be re-submitted made by way of a letter of 21 May 2014 to which the Appellant had failed to respond.

14. Judge Pears had not confined his assessment of the Appellant's claim to relying on the adverse credibility findings made by Judge Oxlade. At paragraphs 18 and 19 he had referred to the oral testimony given by the Appellant and a photograph of the Appellant at a demonstration outside Parliament in August 2013. At paragraph 21 the Judge had concluded the Appellant had supplied no new facts to support his claim and the Judge was entitled to follow the learning in *Devaseelan* and to conclude in the absence of any new evidence that considerable weight could be placed on the findings made by Judge Oxlade.

The Appellant's Response

15. Ms Clarke started by referring to paragraph 20 of the Judge's decision that there was no immigration decision before him. In that event there was no valid appeal.
16. If there was a valid appeal the Judge had not given it anxious scrutiny. The evidence before him supported the Appellant's claim. The Judge had not considered it because he had made no reference to the activities of the Ivorian authorities and he had not taken into account the information before him about the risks to journalists in the Ivory Coast.

Findings and Considerations

17. The Appellant's statement was before the Judge. There was no further statement by him although he had not made another one, notwithstanding the Upper Tribunal's standard direction 3 issued on 4 November 2015.
18. The Respondent had adequately dealt with the matter of the DVD evidence at paragraph 59 of the reasons letter. Again notwithstanding the Upper Tribunal's directions there was no DVD before the Upper Tribunal. There was no explanation for the absence of any further statement or a duplicate DVD.
19. There was a bundle of background evidence before Judge Pears. It comprised documents dating from November 2013 and January and May 2014. There was no up-to-date background evidence. Given that the Appellant's claim to have been politically involved or professionally to have been involved in the preparation of political material in his profession, there was little if anything in the background evidence for the Judge to consider.
20. It was of note that on 26 September 2014 the Appellant's solicitors had confirmed to the Tribunal that they were ready to proceed to a full hearing.
21. Addressing the grounds for appeal, I find the Judge gave sustainable reasons for refusing the requested adjournment. In relation to the Appellant's "sur place" claim, the Judge's Record of Proceedings shows there was no oral evidence addressed to this aspect of his claim, no statement made by the Appellant in support of this aspect of his claim and no submissions on this were made to the Judge. Before Judge Pears there

was a statement of 4 February 2013 by Patrick Beuseize who has been recognised as a refugee and who in the Ivory Coast was Secretary-General of the Youth Wing of President Gbagbo's party, the Front Populaire Ivoirien (FPI). He describes meeting the Appellant in July 2012 in the United Kingdom for the first time but gives no details of the Appellant's "sur place" activities in his statement. A letter of 3 February 2013 from Mr Bayeto refers to the Appellant as an active member of the party and being "part of the audio-visual team during the meetings... (and) ...responsible for a documentary film". But this relates to his activities in the Ivory Coast and not in the United Kingdom. The letter from Rachelle Djah in the Appellant's bundle again relates to the Appellant's activities in the Ivory Coast save for a reference to his membership of the UK branch of the FPI and to his participation "in all our activities". None of these activities are detailed.

22. All this supports the conclusion of Judge Pears that there was no new evidence of any substance before him which had not been before Judge Oxlade.
23. For these reasons, I find that there is no material error of law in the decision of Judge Pears which shall therefore stand.

Anonymity

24. Judge Pears made an anonymity direction although he did not give any reasons for it. The issue of anonymity was not raised at the hearing before me. No application for anonymity was filed with the Notice of Appeal or subsequently requested although I note that on his own motion Judge of the First-tier Tribunal Pedro made the direction at a Case Management Review of the appeal on 10 October 2014. However, in all the circumstances I see no reason for continuing or renewing the anonymity direction.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain a material error of law and shall stand. The consequence is that the appeal of the Appellant is dismissed on all grounds.

Signed/Official Crest
2015

Date 30. xi.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal