



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
AA/09613/2014**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 6 May 2015

On: 28 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR MAMADY CONDE
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Mr R Pennington-Benton, of counsel (instructed by
Lawrence Lupin, Solicitors)**

**For the Respondent: Mr E Tufan, Senior Home Office Presenting
Officer**

DETERMINATION AND REASONS

1. The appellant is a national of Guinea, born on 14 October 1994. His appeal against the decision of the respondent dated 3 November 2014 refusing his application for further leave to remain in the UK on asylum, humanitarian protection and human rights grounds and to remove him

was dismissed by First-tier Tribunal Judge Walker in a decision promulgated on 10 February 2015.

2. On 4 March 2015, First-tier Tribunal Judge Brunnen granted the appellant permission to appeal, finding that the Judge's dismissal of his private life claim without any considerations to the content of his private life and the evidence relating to it, was arguably an error of law.
3. He found that the remainder of the grounds appeared to be without merit. However, permission to argue those grounds was not refused.

Background to the appeal

4. The appellant was born on 14 October 1991 in Conakry, Guinea. He belonged to the Malinke tribe. He had no medical conditions. He lived with his parents and younger sister until his mother died. He was still young at the time.
5. His father remarried and had three sons. His stepmother did not accept him and did not treat him well. She forced him into selling fruit and ice water on the streets. He was eight years old at the time. His father did not intervene although he was aware of this treatment.
6. He went out to work selling fruit and iced water very early each day so he could attend school from 2pm until 6pm. If he had not sold all the produce he could not attend school.
7. He continued to do the work required by his stepmother for three to four years. After this, he ran away from home and lived in the market in Conakry.
8. When he was 11, his father died. He slept on a table in the market place. In the morning, he helped the women set up their produce and he would be paid about 500 francs per day.
9. A year after he ran away, he met his sister at the market. She told him that she too had left the home after he left. She was a domestic servant and she lived at their house. He did not keep in contact.
10. There were problems at the market. He belonged to the Malinke tribe and the majority of people belonged to the Peul tribe. If the people knew he was Malinke, he would not get work. He had minor fights and was beaten and hit on his head. He has since had problems with his knee.
11. Two or three times a month at night, people including adults and children were kidnapped and their body parts and internal organs were taken. The rest of the body was thrown onto the railway tracks. No investigation was carried out as to these deaths.

12. He had known a man called 'Frank' for a year. The latter visited the market. The appellant helped load his car. Frank came twice a week. He sometimes gave the appellant money. He took pity on the appellant.
13. The appellant explained his fears to him. A few days later Frank asked if he wanted to go to the USA. He said he would. One day Frank came to the market and told him to get into the car with him. Frank took him to his house. He stayed there for a week and Frank gave him food.
14. A week later, Frank told him that the appellant was going to Europe. They would be travelling together. On the journey, whilst in the hotel, Frank touched him. The appellant did not like it and threatened to hit him. Frank told him that he could not leave. The appellant realised he had nowhere to go. He told Frank that he would sleep on the floor and that if he touched him again he would shout.
15. The reason he came to the UK was "because I had no hope in Guinea. I had no home and often slept at the market or in front of bars."
16. If he goes back to Guinea, he would have to go back to living at the market. He fears that he will be caught and killed like the others. He will be beaten again by the bandits. They would abuse him, steal from him and attempt to rape him. In the past, he managed to get away. He fears that the police will not assist him. He has no family or friends to help or protect him. It is the rainy season and he has no roof over his head.
17. Judge Walker set out the respective cases of the appellant and the respondent. The respondent contended that the appellant's motivation for claiming asylum was based on a desire for economic betterment and not a genuine fear of persecution. When his claim was refused, he was granted discretionary leave to remain on account of his age until 14 April 2012.
18. The appellant is now 20 years old and on return would not be a vulnerable or orphaned child. He had been looked after by Hillingdon Social Services. He had had full access to education and medical care.
19. Both the current President and ruling government in Guinea are from Malinke, the appellant's claimed ethnicity. There would be sufficiency of protection for him. Internal relocation would also be available if he does not wish to return to his home area.
20. The Judge's findings are set out from paragraphs 38 onwards. He found that there had been ethnic unrest in the past between the Malinke and other groups but there was no current evidence showing that such unrest is widespread now. In any event, a person could stay away from certain areas or gatherings so as to avoid becoming involved in such unrest [41].
21. The Judge found that there was no "objective evidence" that that individuals kidnap and murder in order to obtain internal organs. The appellant is now a grown man and can look after himself. He would not be subjected to any risk on account of this claim [42].

22. The appellant claimed to have received threatening telephone calls in the UK, believing they may have been from Frank or his friends. No evidence had been produced about this other than the claim itself. Nor did he explain why he thinks Frank would be behind this. The appellant last saw Frank at Heathrow Airport nearly five years ago and has not seen nor heard from him since. It was not credible that Frank would re-appear and make such threats. He rejected the appellant's claims about those threatening phone calls [43].
23. The appellant's wishes not to return to Guinea have nothing to do with his being personally targeted in any way. Nor would there be any inherent risk to him on a return there. He would be returning as an adult who is fit and well. He is taking no medication. He speaks English very well and has four languages including Malinke, Sousou, French and English [45].
24. He has also acquired skills and qualifications after being educated for nearly five years in the UK. He has qualifications in IT which are of great benefit anywhere in the world. He also has work experience. All this adds up to his being at an advantage in the job market [45].
25. He has also re-established contact with his younger sister via Facebook and he has a family member to return to.
26. There would be a sufficiency of protection on return there. He has not shown that the Guinean authorities are unable or unwilling to provide protection against persecution or serious harm.
27. He would also have the advantage of internal relocation within Guinea. He belongs to one of the main ethnic groups. That would help him integrate in other areas and cities in that country. Although there may be some hardships involved in relocation, given his circumstances, this would not be particularly onerous [47-48].
28. With regard to his human rights claim, and in particular Article 8, the appellant was not able to satisfy the requirements of Appendix FM or paragraph 276ADE with regard to private life. He is no longer in a relationship with a girlfriend as he previously was. He does have good friends, three of whom came to Court to give evidence on his behalf. This does however not amount to family life.
29. He has been in the UK for nearly five years. This does not amount to private life that would be of such substance as to engage Article 8. Nor had any reasons or facts been put forward warranting any Article 8 claim being considered outside of the Immigration Rules [54-55].
30. Mr Pennington-Benton referred to evidence from the interview record of the appellant, including the fact that he moved out of home between the ages of 11 and 12. He had not seen or heard from his stepmother and stepbrothers since. The only family member he stayed in contact with was his sister.

31. He had been abused by his stepmother who used to hit him with a stick. Although he met his sister in 2007, he was not able to maintain contact with her as she was in domestic servitude and he was on the streets.
32. One of the reasons for leaving Guinea was because he belonged to the Malinke tribe. The Peul, the majority of people in his area, were jealous of the Malinke and refused them work. He had been involved in fights. He complained of a knee problem on account of people hitting him on his knee.
33. He fears return because of his membership of the Malinke who are still persecuted and under threat from the Fula community. He would be identified on return. The country is unstable.
34. Further, because of his support for RGP, he is at risk of persecution.
35. Mr Pennington-Benton submitted that the Judge erred in failing to fully consider Article 8 and in particular private life. He submitted that the Judge held that Article 8 was not engaged [54-55]. In granting permission to appeal to the Upper Tribunal it was noted that the threshold is not a particularly high one. The main focus is on proportionality. Whatever the Judge thought of the asylum claim, Mr Pennington-Benton noted that the Judge did not disbelieve the history given by the appellant, simply stating that the appellant would not as an adult be personally at risk.
36. Nevertheless, the treatment and life experiences of the appellant and his subjective feelings are relevant factors under Article 8. Although Mr Pennington-Benton submitted at paragraph 14 of his recent skeleton that the appellant has a girlfriend, he accepted that this is not correct. The appellant did have a relationship but no longer has one.
37. He submitted that the Judge was wrong to have discounted private life in this case. There is a highly fact sensitive assessment that is required. He submitted that it should be given proper consideration upon remittal to the First-tier Tribunal. It is necessary and desirable, especially in the case of a young and vulnerable person with a difficult history such as the appellant, for the decision under Article 8 to be made carefully.
38. Mr Pennington-Benton submitted that the term "exceptional" meant circumstances in which refusal would result in unjustifiably harsh consequences for the individual, rendering the refusal disproportionate. The matter had to be looked at in the round.
39. He referred to the respondent's guidance regarding a claim outside the rules based on exceptional circumstances. This did not mean "unusual" or "unique." The epithet expresses no more than an expectation as to the statistical likelihood of cases requiring a grant of leave outside the established categories in the rules.
40. He submitted that the appellant's only experiences of Guinea appear to have been difficult and harsh. He experienced the death of close family

members; his treatment and abuse by his stepmother; homelessness and brutality on the streets. His only family contact in Guinea was occasional contact with his sister via Facebook. He does not have real connections to Guinea. He was a child when he left and in a real and compelling sense has nothing to return to. Given those factors, he submitted that there are very significant obstacles to the appellant's integration into Guinea under paragraph 276ADE.

41. He also submitted that whilst it was true that the appellant did not make "very significant submissions" in respect of the potential risk factor of his membership of RGP, he had mentioned in the witness statement.
42. In that respect he referred to the statement dated 4 December 2013 in the respondent's bundle. There the appellant stated that he supports the RGP, whose supporters are persecuted by opposition leaders and he does not feel safe going back. His country is not stable. He also made a statement on 5 April 2012. There he stated that the Fula community are now uprising and have threatened to bring in rebels, resulting in curfews. He would easily be identified and would remain at risk on account of his ethnicity.
43. On behalf of the respondent, Mr Tufan referred to paragraphs 137 and 138 of the refusal letter. The respondent had considered whether his application raised any exceptional circumstances warranting a grant of leave to remain outside the requirement of the immigration rules. It was noted that he was a Guinean national who entered the UK on 29 June 2010. He had therefore lived in the UK for only four years and was now 20. He did not fulfil the requirements under paragraph 276ADE.
44. The Judge noted that he was unable to fulfil the requirements under paragraph 276ADE [54]. The appellant had given evidence to the effect that he has good friends here, three of whom came to give evidence on his behalf. The Judge took into account that this showed good friendships [54].
45. The Judge noted that he had only been here for about five years. He had been educated at the taxpayer's expense and nothing else had been put forward. The Judge referred to his qualifications that he had undertaken in the UK. He therefore submitted that there was nothing of an exceptional nature beyond those factors which had been taken into account.
46. With regard to his claim of potential risk owing to his membership of RGP, he submitted that his real claim related to his ethnicity as a Malinke and his fear that individuals kidnap and murder in order to obtain internal organs [42]. There was hardly any reference to the RGP. Mr Tufan submitted that there was not a material error in the circumstances.
47. In reply, it was submitted that there remained a prospect under the rules regarding very serious obstacles relating to his return. Further, his experience and background were all relevant to the private life considerations which had not been engaged with by the Judge. Nor was it

clear as to the basis for the finding that the appellant has re-established contact with his younger sister.

Assessment

48. Mr Pennington-Benton accepted that the appellant had not made very significant submissions relating to the asserted potential risk factor on account of membership of RGP. This had been mentioned in the witness statement that was put forward.
49. He submitted that the appellant had provided a more recent statement to the Upper Tribunal where this has apparently now been substantially fleshed out. However, there was no application before the Upper Tribunal under Rule 15(2A) of the 2008 Procedure Rules. No application was made to introduce this evidence.
50. Although directions in this regard had been sent by the Upper Tribunal to the appellant he only recently adduced this evidence in support of the appeal. There was no compliance with the Rule's requirements.
51. The appellant had contended before Judge Walker in a short statement dated 4 December 2013, that he feared return to Guinea because of Mr Frank and his accomplices who will be looking for him and because of the party he supports. He asserted that the RGP supporters are 'very persecuted by opposition leaders'.
52. However, as pointed out by Judge Brunnen in granting permission to appeal, there was one brief reference to a political party in the short statement cited in the grounds. There was no other reference to it or any other involvement in politics in the appellant's interviews or any of his several other, much longer statements.
53. I agree with that assessment. There does not appear to be any merit, as noted by Judge Brunnen, in the submission that consideration of this brief reference might have affected the outcome of the asylum claim.
54. Further, as noted by Judge Brunnen with regard to paragraph 276ADE(vi), the appellant was not over 18 years of age at the date of his application, which is the relevant date, having regard to the opening words of that paragraph.
55. The respondent had regard to the grant of discretionary leave.
56. The Judge noted with regard to Article 8 that the appellant was unable to satisfy the requirements under paragraph 276ADE with regard to private life [54].
57. I do however find that the Judge's reasons for finding that the appellant has been in the UK for five years but that this does not amount to private life that would be of such substance as to engage Article 8, were inadequate and terse in the circumstances [55]. As noted by Judge

Brunnen in granting permission, the threshold for engagement of Article 8 is not high.

58. I find that there is merit in Mr Pennington-Benton's submission that having regard to the implicit acceptance of the appellant's credibility, this is a case where, in considering proportionality, there could arguably be unjustifiably harsh consequences rendering the decision to remove disproportionate.
59. The Judge was required to have regard to all factors relevant to proportionality. The appellant had referred to his age and his strong integration into UK society. Moreover, the Judge did not consider his return on the basis of the appellant's experiences of Guinea, which had been difficult and harsh. As submitted by Mr Pennington-Benton, he had experienced the death of close family members, mistreatment and abuse, homelessness and brutality on the streets. He has difficult and troubling memories.
60. These were not matters that were appropriately considered by the Judge. The appellant had given reasons and had put forward facts which might warrant his claim being considered outside of the immigration rules.
61. I accordingly find to the limited extent above, that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law. I accordingly set aside the determination insofar as it relates to the appellant's private life appeal.
62. It was submitted without contention to the contrary that this was an appropriate case to be remitted for hearing to the First-tier Tribunal.
63. I have had regard to the Senior President's Practice Statement regarding the issue of remitting an appeal to the First-tier Tribunal for a fresh decision. In giving effect to that approach, I am satisfied that the effect of the error has been to deprive the appellant before the First-tier Tribunal of a full and proper opportunity for his case to be put and to be considered.

Notice of Decision

The decision of the Tribunal involved the making of an error on a point of law. The appeal is accordingly remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision on the appellant's private rights claim to be made.

The appropriate administrative arrangements will accordingly need to be made and completed.

No anonymity direction is made.

Signed

Dated 26 May 2015

Judge C R Mailer
Deputy Upper Tribunal Judge