



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

Appeal Number: AA/10941/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22 August 2017**

**Decision & Reasons  
Promulgated**

**On 4 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**CSB  
(ANONYMITY DIRECTION MADE)**

**and**

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

Appellant  
Respondent

**Representation:**

For the Appellant: Ms G Loughran instructed by Wilson Solicitors LLP

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Sierra Leone. He appealed to a panel of the First-tier Tribunal against the respondent's decision of 24 November 2014 refusing further leave to remain. An earlier appeal against that decision was dismissed but that decision was overturned and remitted for a fresh hearing.
2. The appellant had entered the United Kingdom in January 2010 when he was aged 13. He had come on a visit visa and entered with his father and two of his half-sisters. His father left without the three children and the

appellant claimed asylum on 8 March 2010. That claim was rejected on 4 August 2010 but he was granted leave to remain as an unaccompanied minor until 3 August 2013. He did not appeal that decision.

3. With regard to the instant appeal, the panel noted expert reports concerning the Poro society which the appellant claimed to be at risk of being forced to join, and also a psychological report which said that though the appellant did not suffer any moderate or severe mental health conditions he did suffer from chronic symptoms of psychological distress as a result of past traumatic experiences and feelings of potential threat arising from the insecurity inherent in his current immigration status and the expectation was that he would be highly vulnerable to a worsening of symptoms should he be returned to Sierra Leone.
4. The appellant's evidence was that he was at risk of being required to be initiated into the Poro society which would be a violent experience. His father was not a member of the Poro but his elder brother had been required to join. His aunt, IB, was convinced that he would be subjected to this ill-treatment which would lead to death and she believed it was his mother who wanted this initiation. His sisters, BB and JB, also gave evidence. Their evidence included references to the experiences of the older brother, A.
5. It was common ground that the Poro is a secret society in Sierra Leone and that initiation into the Poro was violent and involves scarification and forcible initiation takes place in certain circumstances.
6. The panel said that in coming to its findings on credibility it took into account the young age at which the appellant was interviewed in 2010, his relative youth at the time of witness statements made during the history of the case and the inevitable difficulty that any of his witnesses had in recalling the events of 2010 and previously. The panel said it took into account Ms Loughran's submissions that the appellant was a sensitive witness, in light of the psychiatric evidence. They said that in fact they found his evidence to be clear and confidently presented. The panel also took account of the close family relationship between the siblings and the inevitability that the account of how and why they came to the United Kingdom has been the subject of discussion between them.
7. The panel did not accept the appellant's account that his father did not intend to leave the children in the United Kingdom. It regarded the story told by him and by his aunt, I, as inherently unlikely. It was considered to be very unlikely that the father would simply have got on a flight and left the children behind if he had seriously wished to take them back to Sierra Leone, and noted that there was minimal initial telephone contact with social services and little or no attempt made by any of the four parents or wider family to recover any of the children in the past seven years, despite the father having been a frequent visitor to the United Kingdom in the past, having attended I's home and having a brother who also visited the United Kingdom. The panel also noted variations in the claim as to how

the connection with I came about and did not accept that the appellant, a boy of 13 from a reasonably well-off family who was attending school in Sierra Leone and living in Freetown and not a rural area could not have known his age. Various points of credibility raised by the respondent were rejected. It was concluded that his account was not credible.

8. Following on from that the panel did not accept that the appellant was at risk of being forced to be initiated into the Poro society against his will on return, nor that his parents would force him to be initiated. Various points of the background evidence concerning the Poro were noted, and also the fact that the appellant's father was not in the Poro. There was no evidence as to the membership of the Poro in the appellant's maternal family. It was not found that the appellant was under any direct threat from the Poro itself or that it would seek him out. The panel remarked that the only evidence it had of the threat of a forced Poro initiation required by the appellant's parents was from the appellant himself, supported by his sisters, whose evidence it was said could not be considered objective or independent, and by I who could only repeat what was told to her according to the panel. On balance it was not accepted what was said about what had happened to A, which seemed to the panel to have been developed over time requiring more detail as the years passed.
9. Having concluded that he was not at risk on return the panel considered Article 8 and allowed the appeal under Article 8 on the basis that the respondent should grant further leave to remain until the immigration status of BB and JB had finally been determined.
10. The appellant sought permission to appeal to the Upper Tribunal against the findings on risk on return, and the respondent challenged the Article 8 findings. Permission was granted in relation to both.
11. The first ground of appeal, which was developed by Ms Loughran in oral submissions, is that the judge failed to follow the practice direction of the First-tier and Upper Tribunal on child, vulnerable and sensitive witnesses. In particular she argued that though the panel had referred to the age of the appellant and also the psychiatric evidence at paragraph 38, it had not made a finding on whether he was a sensitive witness or not and as a consequence the credibility findings were flawed. The panel had thereafter come to adverse findings on the appellant's credibility which would not have been made had the guidance been properly applied.
12. Mr Clarke argued that the findings at paragraph 38 were sufficiently clear to show that the guidance had been taken into account and properly applied.
13. I am in agreement with Mr Clarke on this point. It seems to me sufficiently clear that the Tribunal took into account the relevant issues of the appellant's youth at the time when he made the witness statement, the difficulties of the witnesses in recalling events from some years previously

and the submission that the appellant was a sensitive witness in light of the psychiatric evidence.

14. Nor do I see any error of law as identified in ground 2. It was argued that the panel had speculated and come to findings based on plausibility which were essentially based on its own notion of reasonableness. It seems to me have been properly open to the panel at paragraph 42 to comment on the inherent unlikelihood of the account given, in particular that it was very unlikely that the appellant's father would have simply got on a flight and left the children behind if there was a serious desire to take them back to Sierra Leone, and bearing in mind also the minimal contact subsequent to that. Clearly, as was pointed out in HK [2006] EWCA Civ 1037, inherent probability can be a dangerous and even a wholly inappropriate factor to rely on in some asylum cases, but the remarks of Neuberger LJ at paragraph 29 went on to discuss this matter in the context of societies with customs in circumstances very different from those of which the members of the fact-finding Tribunal have any, even second-hand, experience. The points which concerned the panel were essentially matters of common sense to a large extent. Likewise the conclusion that the panel did not accept that the appellant would not have known his age, given that he was attending in a school in a city and was from a reasonably well-off family, was properly open to the panel.
15. The difficulty with the determination however with regard to international protection comes in my view from ground 3 and the contended failure to have regard to the witness evidence. There was written and oral evidence from the appellant's witnesses concerning what had happened to the elder brother A. I do not consider it was properly open to the panel to dismiss this evidence purely on the basis that it could not be considered objective or independent. Certainly the panel had doubts as to the appellant's credibility and that was relevant to the assessment of the issue and that was factored in, but in my view more detailed consideration was required to be given to what was said in both the written and the oral evidence of the witnesses. I also consider that insufficient consideration was given to the evidence of I in that context. It is clear, as was pointed out in the grounds and emphasised by Ms Loughran that evidence from a family member is capable of bearing weight and rejecting evidence purely on the basis that it was not objective or independent was not in my view properly open to the panel. Likewise, with regard to I's evidence, again as Ms Loughran pointed out, hearsay evidence is permissible in this jurisdiction and consideration had to be given in greater detail to what weight should be given to evidence she provided of what the children had told her.
16. Accordingly, I consider the panel erred in this element of their decision and as a consequence the case on international protection will unfortunately have to be reheard and that is best done, in my view, in light of the nature of the error in question in the First-tier Tribunal. I am reinforced in that view by my conclusions on the Article 8 point. The Secretary of State's argument in the grounds was that the findings in this regard were flawed in that precariousness of the private life had not been taken into account

and also the absence of financial independence was a negative factor in the proportionality assessment. Reference was made to the decision of the Court of Appeal in Rhuppiah [2016] EWCA Civ 803.

17. In this regard the point made in the appellant's grounds was that the appeal was brought under section 83 of the 2002 Act and Article 8 was therefore not a ground of appeal to be determined by the panel.
18. Mr Clarke argued that since the decision was pre April 2015 and there was a section 120 notice there was no bar to Article 8 being argued. He adopted the grounds and argued that with regard to the appellant's siblings the problem was that they did not have leave at the time of the hearing as could be seen from paragraph 68 where the judge noted that all their asylum applications had been refused in 2010 and thereafter there had been an extension of the appellant's discretionary leave until his younger sister came of age, which period had now expired.
19. On this point Ms Loughran argued that it was originally a section 83 appeal and the appellant had discretionary leave at the time and had made an indefinite leave to remain application on 3 November 2016 which had not been decided. Given the change in appeal rights she argued that if it was agreed there was an error of law by the panel with regard to Article 8 the best thing would be to remit the matter to a First-tier Judge pending a decision of the Secretary of State on the indefinite leave to remain application. It was agreed, she argued, that there was a material error with respect to Article 8.
20. I agree that the panel erred with regard to Article 8. Although I have some doubts as to whether Article 8 was not before the panel, I am satisfied that the evaluation of Article 8 was flawed as argued by the Secretary of State in her grounds. As a consequence this matter is to be reheard in any event in the First-tier with regard to the international protection issues, I conclude that the Article 8 issue is best to be considered there also, though it would be helpful I think if that consideration does not take place until there has been a decision on the appellant's indefinite leave to remain application.

### **Notice of Decision**

21. In conclusion then I have found material errors of law in the panel's decision and as a consequence the matter is remitted for a full rehearing on all issues to a First-tier Judge at Taylor House.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, consisting of a large initial 'A' followed by several loops and a final flourish.

Signed  
Upper Tribunal Judge Allen

Date 1 September 2017