



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

Appeal Number: PA/01242/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 13 July 2018**

**Decision and Reasons Promulgated
On 24 July 2018**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MASSAMDJE [D]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs R Pettersen (Senior Home Office Presenting Officer)
For the Respondent: Ms R Frantzis (Counsel)

DECISION AND REASONS

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made on 26 February 2018 and which it sent to the parties on 6 March 2018. The tribunal's decision was to allow the claimant's appeal from the Secretary of State's decision of 12 January 2018 refusing to grant her international protection.

2. Shorn of all but the essentials, the background circumstances and the assertions underpinning the claimant's claim for asylum were as follows: The claimant was born on 20 June 1983 in the Ivory Coast and is a national of that country. Her father, she says, was associated with the former President of the Ivory Coast Mr Laurent Gbagbo in that he was a practising doctor and a member of Mr Gbagbo's medical team. Further, the two had studied together at Abidjan University. The claimant left the Ivory Coast in 2002 to pursue educational opportunities. She entered the United Kingdom on 9 October 2006, lawfully, as a student and her leave was extended, on the same basis, until 31 October 2010. But further applications were then refused and she became an overstayer. Whilst she was absent from the Ivory Coast some political instability occurred there as a result of Mr Gbagbo refusing to step down as President. The claimant says that this led to her parents being attacked by supporters of Gbagbo's opponents. She asserts that she only became aware of the problems her family had been experiencing, at some point in 2016. Her claim to asylum was made on 24 August 2017. It was a refusal of that claim which has ultimately led to the appeal before the tribunal and now this appeal.

3. The tribunal heard the appeal on 26 February 2018. Both parties had the benefit of legal representation. It heard oral evidence from the claimant but from no additional witnesses. She gave her evidence with the assistance of an interpreter.

4. In the tribunal's written reasons of 26 February 2018 much time is spent upon summarising the evidence of the claimant and the arguments pursued by the Secretary of State. The nub of the determination, in my view, may be found from paragraphs 52 to 60. This is what the tribunal had to say:

"52. The Home Office states that there is lack of evidence to support the relationship between the Appellant's father and the ex-president. However, the evidence of the Appellant given in her Screening Interview, Asylum Interview and in oral evidence have been consistent. In addition, her oral evidence is consistent with her witness statement where she stated:

"My father was a medical student at the University of Abidjan. While my father was a student Laurent Gbagbo was a lecturer at the University of Abidjan in history and geography. My father and Laurent Gbagbo got to know each other very well and became friends whilst at university. When my father qualified as a doctor he became a private doctor for Laurent Gbagbo. When Laurent Gbagbo was sworn in as a president he set up a medical team to look after the health of his, his wife, his children and close friends. My father continued to be his doctor and worked with a team of five-ten people."

53. The background evidence at AB 17 '**Ivory Coast Presidential Conflict**' correlates to the Appellant's account of the e-president's educational history.
54. I accept that there is sufficient evidence in support of what the Appellant claims about her father's relationship with the former president, in addition of the Appellant's own evidence. I accept that the Appellant's father an ex-president were known to one another.
55. The Home Office have raised consideration under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 because the Appellant applied for

Asylum and Humanitarian Protection after being notified of the decision to refuse her application to vary her leave to remain in the UK.

56. The Appellant explained in oral evidence that she was unable to obtain financial documentation from her father due to the difficulties in the Ivory Coast at that time. She lost contact with her family since the end of 2010 and only became aware in 2016 that her parents have been in hiding since 2011. This correlates to the Timeline provided by way of background evidence regarding events in the Ivory Coast at the time, and particularly in respect of her parents.
57. The Appellant explained she only claimed asylum after she became aware in 2016 of the issues with her family. During the time she lost contact with her family in the Ivory Coast. The Appellant claims that in the UK she slept rough, was abused by men and her documents were stolen from her. The Home Office notes that the reason she remained in the UK was because she was in search of a better life. In her interviews and oral evidence, the account she provides of her life in the UK would appear to be far from that, as Ms Frantzis stated, *'this is not, on any analysis, a better life'*. It is only since claiming asylum that the Appellant has been in accommodation and been given asylum support.
58. The CORI report dated August 2016 is contained at AB 71-98. At page 73, the report details *'incidents of arrest and/or violence against FPI/Gbagbo supporters by state actors'*. There is evidence of ongoing targeting of Gbagbo supporters in 2016:
- 'Evidence suggests that Gbagbo supporters are still targeted by government agents. New reports suggest that some of those at risk are Gbagbo supporters, but not FPI members, rather members of the Student Federation of Côte d'Ivoire (FESCI), the student/youth wing, active on university campuses, particularly in Abidjan.'*
59. In the US Department of State's *'2016 Country Reports on Human Rights practices: Côte d'Ivoire, 3 March 2017'* (AB 116) it comments upon the Human Rights situation and that the security situation is not accepted settled in respect of supporters of the former president:
- 'The most serious human rights problems were security force abuses, including extrajudicial killings and the abuse of detainees and prisoners, and the government's inability to enforce the rule of law. The Armed Forces of Côte d'Ivoire (FACI), formerly known as the Republican Forces of Côte d'Ivoire, and the gendarmerie were responsible for arbitrary arrests and detentions, including at the informal detention centres they operated.'*
60. The Appellant's family were supporters of the ex-president and she met him personally. The Appellant's parents are in hiding in Abidjan. The Appellant cannot be expected to return to the Ivory Coast where her parents are in hiding, as there is a real risk that she will be identified as a supporter of the ex-president and subjected to the ordeals as set out in the background evidence provided by the Appellant."

6. That was why the appeal was allowed but it was not the end of the matter because, as indicated, the Secretary of State obtained permission to appeal to the Upper Tribunal. The grounds of appeal attacked the tribunal's credibility assessment suggesting that it was faulty because it relied upon the appellant's own evidence only and did not evaluate the plausibility of the account. It was also suggested, in effect, that the tribunal had failed to properly evaluate the issue of why even if her account were to be accepted, the claimant would be at risk. But it has to be said that it is very difficult to read a good deal of what is said in the grounds as being anything more than attempted re-argument with the tribunal's findings and conclusions. Nevertheless, as indicated, permission to appeal was granted. The salient part of the grant reads as follows:

"Referring to paragraph 9 of R (Iran) [2005] EWCA Civ 982, 27 July 2005, it is my assessment that the grounds on which the respondent seeks permission to appeal are arguable. That is, I consider it arguable that the judge may not have given adequate reasons for:

- (1) accepting the appellant's account as credible (there was an almost total lack of corroborating evidence for the core claims that the appellant made with reference to her father - cp, for example, paragraph 16 of TK (Burundi) [2009] EWCA Civ 40, for February 2009); and/or
- (2) accepting that the account given by the appellant establishes that she would face a real risk of persecutory ill-treatment if she returned to her country of nationality (on account of her father having been, the appellant says, one of the team of doctors associated with ex-president Laurent Gbagbo.)”

7. Permission having been granted there was a hearing before the Upper Tribunal (before me) to facilitate a consideration of whether the tribunal had or had not erred in law. Representation at that hearing was as stated above and I am grateful to each representative.

8. Mrs Pettersen argued that the tribunal's written reasons were defective because the tribunal had, in large measure, simply recited the appellant's evidence to it rather than explaining why it believed that evidence. Further, it had not taken proper account of the claimant's extensive delay in making her claim for asylum. Ms Frantzis, for the claimant, argued that when read as a whole the tribunal had produced a reliable decision which dealt with both consistency of the account and its plausibility. An explanation as to the delay in claiming asylum had been given and accepted.

9. I have concluded, as I indicated to the parties at the hearing, that the tribunal did not err in law. I do accept that it would not be inaccurate to characterise its reasoning as being relatively thin. But it has to be firmly borne in mind that a tribunal's explanation with respect to its reasoning has to be adequate but no more than that. It also, of course, has to be sufficient to enable the losing party to understand why that party has lost. The Secretary of State can discern, from the tribunal's written reasons, why she has lost in this particular instance.

10. I have set out, above, what I regard as the nub of the decision. It is clear from what the tribunal had to say that it found the claimant to be a credible witness. Of course, it had had the advantage of hearing evidence from her and of observing her deal with cross-examination. It was well placed to assess her credibility.

11. A factor which weighed in the claimant's favour with respect to the credibility assessment was what the tribunal perceived to be her consistency in presenting her account at various stages (see paragraph 52 of the written reasons). It was entitled to take that matter into consideration and to attach weight to it. It took the view that there was before it background country material which fitted with the claimant's account (see paragraph 53). It was entitled to reach that view too. Although Mrs Pettersen highlighted the not at all inconsiderable delay on the part of the claimant in seeking asylum, the tribunal did address that matter in the context of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (see paragraphs 55-57). Perhaps it's somewhat benign view as to the considerable delay was on one view generous but it cannot be said to have been perverse or irrational.

12. In the circumstances I am satisfied that the tribunal undertook an adequate assessment as to the claimant's credibility and that it was open to it to believe her for the admittedly brief but not inadequate reasons it gave.

13. As to its findings consequent upon the acceptance of her account, the tribunal referred to background country material which it clearly thought supported the proposition that former Gbagbo supporters might still be targeted by Government agents (see paragraphs 58 and 59). Perhaps a more in depth evaluation of the background country material would have made the written reasons more

complete. But it was open to the tribunal to attach weight to the material to which it expressly referred and to conclude, from that, that the claimant would be at risk upon return.

14. In the circumstances I have concluded that the Secretary of State has failed to demonstrate that the tribunal made any error of law in deciding to allow the claimant's appeal to it on asylum grounds. That means its decision must stand. That is so even if, as it seems to me, it might well be that a differently constituted tribunal might have reached a different view on the same evidence.

15. Finally, and perhaps a little puzzlingly, although the tribunal allowed the appeal on asylum grounds, it dismissed it under Articles 2 and 3 of the European Convention on Human Rights (ECHR). It is not explained why if it thought the appeal should succeed on asylum grounds it did not think it should succeed on, at least, Article 3 ECHR grounds. But nothing was said about that before me and that aspect of the tribunal's decision has not been subjected to any challenge. In any event it may well be that the claimant is content with the outcome on asylum grounds and that her legal representatives are too.

Decision

The Secretary of State's appeal to the Upper Tribunal is dismissed. Accordingly, the tribunal's decision of 26 February 2018 to allow the claimant's appeal on asylum grounds stands.

No anonymity direction is made and none was sought.

Signed:

Date: 19 July 2018

Upper Tribunal Judge Hemingway