



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

Appeal Number: PA/05136/2017

THE IMMIGRATION ACTS

Heard at Field House

On 13 April 2018

**Decision & Reasons
Promulgated
On 23 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**SOULEMAN [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Mitchell, Counsel instructed by Sutovic & Hartigan

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Carroll promulgated on 21 December 2017. The case concerns the appellant, a national of Guinea, whose claim in relation to asylum, humanitarian protection and under human rights considerations was rejected by the Secretary of State. It has a lengthy procedural history dating from a decision of Immigration Judge Hart in December of 2010.

2. When this matter came before the First-tier Tribunal in December of last year it was already fairly stale. No criticism is made by Miss Mitchell, who acts for the appellant, in respect of the approach adopted by the judge, in particular taking as the appropriate starting point the findings of fact and credibility as set out at paragraph 9 in the form of an extensive quotation of nearly 30 paragraphs of the earlier decision. The judge then appropriately deals with the reasons the Secretary of State gave for refusing the application before proceeding to summarise the hearing which took place on 5 December 2017 leading to the decision now under appeal.
3. The judge's assessment is full and carefully reasoned. It begins at paragraph 23 of the decision where there is assessment of the appellant's case, starting with the reference back to Judge Hart's earlier decision.
4. The difficulty, however, begins in paragraph 32 where the judge says this:

“In the light of all of the evidence referred to above and the 2011 findings, I find that the appellant has fabricated his account of his political affiliation and membership of the UFDG in order to mount a fresh claim for asylum. The evidence demonstrates that the appellant has not been involved in politics in either Guinea or the United Kingdom.”

5. The judge then proceeds to consider other material including at paragraph 41 the testimony of Dr Monica Carter dealing with both physical and psychological trauma. The judge states at paragraph 42:

“The doctor's assessment of the appellant's scars is based entirely upon the appellant's fabricated account”.

Then at paragraph 51, in coming to overall conclusions, the judge says;

“In the light of all of the evidence and for the reasons given above, in the determination of 2011 and for the reasons given by the respondent, I do not find the appellant credible as to the circumstances in which he claims he was compelled to flee Guinea or as to his claimed fear of return. I find that the appellant's case does not engage the United Kingdom's obligations under the Protection Regulations and that return would not give rise to a risk of treatment in breach of Articles 2 or 3 of the 1950 Convention.”

6. The grounds which were settled by Counsel were somewhat lengthy but the short point is simply that the judge in this instance adopted an approach which on its face indicated a departure from the clear authority that fact-finding and credibility finding should be in the round and not compartmentalised. Reference in particular was made to **HE (DRC - credibility and psychiatric reports) DRC [2004] UKIAT 00321** at paragraph 22:

“Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come.”

In addition there is reference to the oft-cited passages in **Mibanga** to like effect.

7. Ms Ahmad, who acts for the Secretary of State, has resisted it with some tenacity. She has taken me in particular to **HH (medical evidence; effect of Mibanga) Ethiopia [2005] UKAIT 00164**, and made particular reference to paragraphs 20 and 21 of that decision.

“[20]In the present case, it is manifest that the Immigration Judge has arrived at his conclusions as to credibility by looking at the evidence in the round. At paragraph 16 of the determination, he reminded himself that ‘I must look at the case in the round in light of all the relevant circumstances’. At paragraph 20, the Immigration Judge confirmed that he had ‘considered the appellant's evidence in the round together with the background evidence and her interview record’. Plainly, the medical report was part of the appellant's evidence.

[21] The Tribunal considers that there is a danger of **Mibanga** being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's ‘cake’ analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task.”

8. What Ms Ahmad submits is that the same can be said of this decision. On two or more occasions the judge makes express reference to drawing conclusions “in the light of all the evidence”. This may well be what the judge intended to do, but the Upper Tribunal must consider with care what appears on the face of the decision.
9. Looking at the totality of the First-tier Tribunal decision of the impression is given that the judge first made credibility findings in relation to this appellant, resting that conclusion very heavily on what had been said by Judge Hart in the earlier decision. Having made adverse those credibility findings, the judge proceeds to dismiss the medical evidence as “based entirely upon the appellant’s fabricated account”. It may be that the judge did consider the mix of the ingredients in the round, but regrettably the impression given by the way in which this decision has been crafted is that the judge dealt with the matter in the improper and compartmentalised deprecated in **Mibanga** and other authorities.

10. I cannot be confident that the proper approach was followed in this case and it must therefore follow that the decision of the First-tier Tribunal is set aside.
11. The proper course is to remit the matter for a *de novo* decision by a different judge and I do so order. It is, of course, perfectly perfectly possible that the judge rehearing the matter will come to precisely the same conclusion, but justice requires that in doing so the approach to the evidence and credibility findings follows the guidance given by the Court of Appeal in **Mibanga** and repeated elsewhere.

Notice of Decision

- (1) The decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to Taylor House for a fresh hearing by a judge other than First-tier Tribunal Judge Carroll.
- (3) No findings of fact are preserved.
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date

20 April 2018

Deputy Upper Tribunal Judge Hill QC