



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

Appeal Number: PA/09984/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 24 October 2018**

**Decision & Reasons
Promulgated
On 13 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMED [C]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms N Willocks-Briscoe of the Specialist Appeals Team

For the Respondent: Ms C Robinson of Counsel instructed by Coram Children's
Legal Centre

DECISION AND REASONS

The Respondent

1. The Respondent (the Applicant) is a national of Guinea. The Respondent (the SSHD) dispute his claimed year of birth: the Applicant states he was born in 1993 and the SSHD consider he was born in 1985. He states he arrived in the United Kingdom on 10 January 2010 and on the next day claimed international surrogate protection. He feared persecution on the basis of imputed political opinion because his father had been active in the UFR Party and suspected of involvement in a plot to assassinate the

President which was attempted on 2 December 2009. On 10 December 2009 soldiers had raided the family home and his parents had been taken away. He now had serious mental health problems.

The SSHD's Decision

2. On 7 September 2016 the SSHD refused the Applicant's claim for international surrogate protection. She noted the Applicant's original claim for asylum had been refused and that his appeal had been dismissed on 7 April 2010 and his appeal rights had become exhausted on 20 May 2010. The present decision had been made following further submissions of 25 March 2013 and the Applicant's application for judicial review. She relied on the findings in the determination of 7 April 2010 in which the Judge had made adverse credibility findings in respect of both the Applicant's claimed year of birth and his account of events which led to him leaving Guinea.
3. The SSHD considered that little weight should be given to a country expert report of Ms Monekosso and to the additional documentation to support his claimed year of birth which the Applicant had subsequently provided. The SSHD noted the contents of a 2015 country expert report and addendum from Dr A Schroven and considered that it contained statements adverse to the Applicant's claim and otherwise added little to it.
4. The SSHD referred to mental health policy of the state in Guinea and the availability of treatment and medication for mental health problems. The Applicant's circumstances were not such as would place the United Kingdom in breach of its obligations under Articles 3 and 8 of the European Convention in the event of his return to Guinea.

Hearing history

5. By a decision promulgated on 6 April 2017 Judge of the First-tier Tribunal Geraint Jones QC dismissed the Applicant's appeal on all grounds. On 14 July 2017 Upper Tribunal Judge Kopieczek by consent set aside the decision and remitted the appeal for hearing afresh in the First-tier Tribunal.
6. By a decision promulgated on 28 August 2018 Judge of the First-tier Tribunal Dineen allowed the appeal on asylum and human rights grounds. On 20 September 2018 Judge of the First-tier Tribunal Grant-Hutchison granted the SSHD permission to appeal because it was arguable Judge Dineen had not given sufficient reasons why he did not prefer the age assessment conducted closest to the Appellant's arrival to assessments prepared at later dates and that one of the persons who prepared a later assessment lacked the requisite qualifications; did not address the submissions made for the SSHD based on Dr Schroven's report and why it should be preferred to Dr Melly's; did not deal with the SSHD's challenge

to the medical evidence about the Applicant's mental state and did not assess the evidence from both sides in the round.

The Hearing in the Upper Tribunal

7. The Appellant attended the hearing but took no part. He was accompanied by Dr McClatchey of the Baobab Centre for Young Survivors in Exile who is the Applicant's psychotherapist. I explained the purpose and procedure to be followed and asked the Appellant to confirm his current address.

Submissions for the SSHD

8. Ms Willocks-Briscoe submitted that Judge Dineen had not adequately considered the points raised before him for the Respondent before he had conducted his proportionality assessment. It was of note the 2010 determination of Judge Simon Batiste dismissing the appeal had not been appealed. Consequently, the jurisprudence in *Devaseelan* *[2002] UKIAT 00702 would apply and she referred specifically to paragraphs 39-42. She also relied on the decision in *Chomanga (binding effect of an appeal decisions) Zimbabwe* [2011] UKUT 00312 (IAC), especially the head note that "the parties are bound by the unappealed findings of fact in an immigration judge's decision" but this does not fully reflect the reference in paragraph 19 to the authority upon which the Upper Tribunal relied, namely *SSHD v TB* [2008] EWCA Civ.997 because at paragraph 35 of its judgment the Court of Appeal noted "... different considerations may apply where there is relevant fresh evidence that was not available at the date of the hearing, or a change in the law, and the principal has no application where there is a change in circumstances or there are new events after the date of decision....".
9. She continued that Judge Dineen at paras.59ff had not set out the findings in the 2010 determination as his starting point. This was important because the Applicant was challenging key issues of fact found by Judge Simon Batiste upon which the SSHD had expressly relied as recorded by Judge Dineen at para.37.
10. Judge Simon Batiste did not have before him the "Merton compliant" age assessment of 16 February 2010 by Leeds City Council (the Leeds assessment) upon which before Judge Dineen the SSHD had made specific submissions as evidenced by the Presenting Officer's minute produced to me and dealt with in the SSHD's reasons for refusal. The Judge could not have adequately addressed these points in his decision, particularly at paragraph 66. He had not given adequate reasons for preferring the later age assessments to the Leeds assessment. Ms Robinson interjected that the Applicant had told Judge Simon Batiste about the Leeds assessment as recorded at paragraph 25 of his decision. Ms Willocks-Briscoe continued that the issue of the Applicant's age, whether he was 17 or 25, was

important because it affected the weight to be given to his evidence whether he was a child or an adult.

11. She submitted that similar arguments apply to the treatment of the country expert reports. In 2010 the Judge had been satisfied that the Applicant's father had no actual role in the assassination plot but Judge Dineen had not taken this finding into account at any of paras.41, 49 and 68 of his decision. Nor had he taken into account the 2010 decision's findings at para.25 on the Applicant's age.
12. She continued that Judge Dineen had not given adequate reasons for rejecting the SSHD's submissions before him why the medical evidence filed for the Applicant should be rejected and referred to paras.41 and 56 of his decision and the Presenting Officer's minute. It was accepted the Applicant may have mental health issues but whether they are the consequence of what happened in Guinea or elsewhere had not been adequately addressed in the medical evidence or by Judge Dineen.
13. The Judge had not addressed the SSHD's concerns about the report from Ms Monekosso who had not seen the birth certificate submitted by the Applicant and he had not addressed the submission that the jurisprudence in *Tanveer Ahmed* *[2002] UKIAT 00439 should be applied to give little weight to the birth certificates and arrest warrants provided by the Applicant. Para.64 of Judge Dineen's decision was insufficiently recent.
14. The findings made by Judge Dineen on the Applicant's protection claim were flawed and will have infected his assessment of the Applicant's human rights claim based on his mental health. The decision should be set aside.

Submissions for the Applicant

15. Ms Robinson referred to the Procedure Rule 24 response filed on 22 October 2018. The response highlighted that the SSHD had not sought or been given permission to appeal the Judge's findings at paras.73-75 of his decision dealing with the Applicant's claim under Article 8 of the European Convention and to which no reference is made in the Presenting Officer's minute.
16. The response continued that the Judge heard oral evidence from several witnesses over the two-day hearing and the findings made at para.66 were open to the Judge. Any arguable failure by the Judge to address the professional qualifications of the Applicant's carer would not amount to a material error of law: the Applicant had been a member of her household since 2012. She has children of her own and was a witness of fact, not an expert witness.
17. In respect of the two expert reports the Judge at para.31 of his decision had accurately summarised the position by finding Dr Schroven's report was generally supportive of that of Mr Melly. The two experts had differed

on the generalised risk for returning failed asylum seekers but both agreed the Appellant would be at risk on account of his father's connection with the attempted coup. The Judge at para.68 had taken account of the improvement in democratic procedures in Guinea and the assimilation of UFR members into government.

18. There had been no challenge to the diagnosis of the Applicant's psychological condition and having heard oral testimony from Dr McClatchey, the Appellant's clinical physician, it was open to the Judge to make the findings he did about the aetiology of the Applicant's condition.
19. At para.11 that Judge had set out the substantial and extensive new evidence filed for the Applicant and in particular the additional expert evidence which together with the fact that the Applicant had not been represented at the previous hearing in the First-tier Tribunal were matters in themselves sufficient to be sustainable reasons for the Judge's conclusions at paras. 61-62 of his decision.
20. It was accepted that at para.64 the Judge had not differentiated the documents in his rejection of the application of the jurisprudence in *Tanveer Ahmed* *[2002] UKIAT 00439 but given his earlier findings on the credibility and consistency of the Applicant's account his compendious treatment of them was adequate.
21. At para. 66 of the Judge's decision he gave adequate reasoning for preferring the expert evidence about the Applicant's age which had subsequently been filed over the earlier age assessment, albeit "Merton compliant", of Leeds Social Services.
22. Paras.36ff of the decision were a fair and adequate reflection of the case as put by the Respondent and there had been no need for the Judge to have addressed every point. The Presenting Officer's minute added little. There was no material error of law.

Response for the SSHD

23. Ms Willocks-Briscoe referred to para. 42.7 of the determination in *Devaseelan* that there needed to be "some very good reason" for a failure to adduce relevant evidence at a previous appeal hearing. I noted at para.61 the Judge explained why the additional and expert evidence was not before the previous Judge and at para.62 concluded that those reasons were sufficient to justify considering the Applicant's claim afresh.
24. The Judge had not dealt with the direct challenges made to the expert report of Dr Schroven at paras.63-66 of the reasons for refusal or to the qualifications of Ms Monekosso at paras. 43-44.
25. She argued again that paras. 49 and 68 of the decision dealing with the expert evidence were inconsistent with each other. In the light of what I have said at para.17 above I give little weight to this point.

26. The UFR is now in coalition with the government in Guinea which at para.68 the Judge acknowledged. Ms Robinson interjected that the account needed to be taken of what Mr Melly had said at items 4, 6 and 7 of his report at AB pp.261-266. Dr Schroven had also found there was no risk to the Appellant. I find this submission does not fairly reflect what she has said at paras.38 and 48 of her report in which she distinguishes between the risk to the Applicant from the Guinean authorities simply as a returning failed asylum-seeker and the risk to him when his family antecedents become known.
27. She urged that the medical evidence be viewed simply as supportive but not determinative and referred again to the Judge's compendious review of the documentary evidence at para. 64 of his decision. Additionally, para. 64 did not address the submission recorded at para.52 which was supported by para. 16 of the addendum to Dr Schroven's report at AB pp.371, that there had been no public or independent investigation into the 2009 assassination attempt. This must have an impact on the Appellant's credibility. The decision should be set aside.

Findings and Consideration

28. The Judge acknowledged the jurisprudence in *Devaseelan* and gave sustainable reasons why he decided effectively to consider the Applicant's claim afresh: see paras.60-62. It was not necessary for him to recite the findings in the 2010 determination. The determination itself was in the Applicant's bundle before the Judge and the SSHD.
29. At para.66 the Judge acknowledged that the best evidence for the SSHD's view of the Applicant's age on arrival was the age assessment by Leeds Social Services. He was entitled to set against this the other expert evidence, even if it was prepared subsequent to the Leeds assessment. There was no suggestion the Judge did not have all this in mind in assessing the credibility of the Applicant.
30. The report from the Baobab Centre makes clear that it is a therapeutic report and not an expert report. Appendix One sets out the context in which the report was prepared and the body of the report makes appropriate reference to DSM4. The Presenting Officer's minute may reflect what was said but in terms of assisting any analysis it has limited application because when dealing with the medical reports it mixes references to the reports with submissions as to general credibility. The submissions for the SSHD will have made the Judge aware of the two polarities of the claimed relationship between the Applicant and his father and which figured in his analysis of the Applicant's evidence and the medical evidence before coming to his view that the Applicant was a credible witness.
31. Looked at in the round, the Judge was entitled to reach his conclusions on the Applicant's credibility and, given that, there would have been little or

no need for him separately to canvass possible other causes for the Applicant's current psychological condition.

33. Ms Monekosso's opinion on the documents submitted by the Applicant to support his claimed date of birth is essentially that the format of the documents reflects the format of documents typically produced in Guinea. Her report does not go to whether the right paper and printing inks have been used. She clearly states that her background is journalistic rather than academic but this does not impugn in any way her expertise. The Tribunal is accustomed to hearing from experts from a variety of backgrounds and is experienced in assessing how to filter out a bias which might reflect the expert's own background. For example, an individual involved in a dissident political group is not by reason of that involvement excluded from having considerable knowledge about the treatment of members of the dissident group by the authorities in the home country. A judge will be cognisant that the likely politicalisation of the presentation of the evidence will need to be identified and put aside.
34. The doctrine of giving little weight on a compendious basis to documentary evidence in accordance with the principles enunciated in *Tanveer Ahmed* depends on the nature of the credibility findings. Para.64 of the Judge's decision shows that he was clearly aware of this. It is of note that as to the Applicant's general credibility, the SSHD's reasons letter relies simply on the 2010 determination and the Judge gave sustainable reasons for departing from it, as already mentioned.
35. The challenge before the Upper Tribunal to the Judge's findings on the Article 8 claim is that they are flawed because the Judge's assessment of the Applicant's protection claim is flawed. For the reasons given, I am not satisfied the Judge's treatment of the protection claim is flawed in the manner claimed by the SSHD and consequently I give little weight to this submission.
36. Looking at the entirety of the Judge's decision and notwithstanding the lengthy and forcefully made submissions for the SSHD, I find that the Judge's decision contains no material error of law which had or would be likely to have had any material impact on his conclusions. The consequence is that the Judge's decision shall stand.

Anonymity

37. There was no request for an anonymity direction and having heard the error of law appeal, I find none is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal did not contain any material error of law and shall stand. The effect is that the appeal of the Applicant succeeds.

Anonymity direction not made.

Signed/Official Crest
2018

Date 26. xi.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal