



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

Appeal Number: PA/06881/2018

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice Decision & Reasons Promulgated  
Centre  
On 25 April 2019 On 30 May 2019**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**B S D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Dieu, instructed by Crowley & Co Solicitors  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) we make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

2. The appellant is a citizen of Guinea who was born on 16 May 1981. He arrived in the United Kingdom on 7 November 2016 with a visit visa with leave valid until 29 March 2017.
3. On 14 November 2017, the appellant claimed asylum. He claimed to fear persecution on account of his political opinion if he returned to Guinea. He claimed that he had been arrested and detained on three occasions when he was ill-treated. In particular, he claimed to fear an individual (“M C”) who worked in the Ministry of Foreign Affairs and with whom he had previously worked in the civil service.
4. On 15 May 2018, the Secretary of State refused the appellant’s claims for asylum, humanitarian protection and on human rights grounds.
5. The appellant appealed to the First-tier Tribunal. Judge Suffield-Thompson dismissed the appellant’s appeal on all grounds. She made an adverse credibility finding and rejected the appellant’s account which was the basis of his claimed well-founded fear of persecution on return to Guinea.
6. The appellant sought, and was granted, permission to appeal by the First-tier Tribunal (Judge Keane) on 3 October 2018. The respondent did not file a rule 24 response.
7. At the hearing, Mr Mills conceded that there were difficulties, based upon the appellant’s grounds, with the judge’s reasoning that led her to make an adverse credibility finding. In particular, Mr Mills accepted there were difficulties in paras 38, 39 and 40 of her determination. He indicated that he did have submissions to make on the other matters raised in the grounds but if the Tribunal was satisfied that the errors in 38, 39 and 40 were material it was unnecessary to do so. We indicated that we did consider the errors in paras 38, 39 and 40 to be material to the judge’s adverse credibility finding.
8. The judge’s reason for adverse credibility finding are set out at paras 35 - 44. At para 38 the judge said this:

“38. The Appellant has claimed that on three occasions he was arrested and detained and on each occasion he was severely beaten to the extent that on one occasion he was hospitalised and that he was left with serious scars on his body, hands, face and back. The Appellant was represented by, in my experience and opinion, a very experienced and competent firm of solicitors who invariably produce medico-legal reports for their clients in cases such as these. There was no such report about his scarring before me and I do not accept his evidence as credible that they did not discuss the option of such a report being carried out with him as it would have hugely assisted his case if it had come back as positive. I find the lack of such a report has a negative impact on his credibility.”
9. It was, in our judgment, impermissible for the judge to consider that the absence of a medico-legal report had a “negative impact” on the

appellant's credibility because in her "experience and opinion" such reports were invariably produced by the appellant's legal representatives in cases such as the present. There may be any number of reasons why a medico-legal report was not produced in relation to the appellant. Whatever was the "experience" of the judge in relation to the appellant's legal representatives, it could not found an adverse inference against him that in this particular appeal one had not been produced. The appellant simply did not have the benefit of any supporting medico-legal report and nothing further could be inferred from its absence.

10. At para 39, the judge again fell into error. There she said this:

"39. The Appellant also claims that although he was arrested three times he was not charged on any occasion but was released and went straight back to work. Again, I do not find this to be credible. If he was flouting the law so blatantly that he was arrested three times then it makes no sense that he was not charged with any criminal offences and placed before a court."

11. There was no evidential basis for the judge's stated reason that, in effect, it was improbable in Guinea that if the appellant had been arrested three times, he was not charged with any offence and brought before a court. The judge does not refer to any background evidence which would support this "implausibility" reasoning and, in its absence, what the judge says is not self-evident and, in our judgment, amounts to irrational reasoning.

12. Then, at para 40 the judge deal with the appellant's claim to fear a person of some importance in Guinea called "M C":

"40. The Appellant claimed that most of his issues were to do with a man that he worked with in the civil service, called {M C}. He states in his witness statement that this man is a General Inspector for the Ministry of Foreign affairs and that although he works for the Presidency he is not a government minister. He said that the [M C] that the RL refers to is a different man altogether. I find that if this man were as high up in the ministry as the Appellant claims he would be able to produce some evidence to the Tribunal that this man exists but he has not been able to do so."

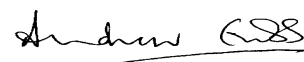
13. The difficulty with the judge's reasoning is that the appellant did put before the judge evidence that the "M C" he claimed to fear did exist. The judge refers to it at para 20 in the context of the submissions made on behalf of the appellant when she refers to the submission that: "There is proof of his existence as he is named in an email before the court (page 55)." Indeed, at page 55 of the appellant's bundle there is in translation a letter (at pages 56 and 57 of the bundle) - it is not an email - purporting to come from an official in the Ministry of Foreign Affairs in Guinea identifying "M C" as a senior official in the Ministry of Foreign Affairs. The judge was, therefore, wrong to reason that the appellant had not been "able to produce" any evidence as to M C's existence.

14. These errors are, in our judgment, material to the judge's adverse findings. Central to the appellant's claim was that he had been arrested and detained on three occasions and that he feared an important person, "M C", in Guinea. The judge did not accept any of these matters principally for the reasons she gave in 38 - 40 which were directly concerned with that aspect of his claim. Whilst we accept that the judge gave a number of other reasons for disbelieving the appellant's account, her reasoning at paras 38, 39 and 40 were significant and we are not satisfied that, in their absence, her credibility finding would necessarily or inevitably have been the same. The errors which were acknowledged by Mr Mills were, as a consequence, material to her adverse credibility finding and to her decision to dismiss the appellant's appeal. Her decision cannot, as a result, stand and we set it aside.

### **Decision**

15. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.
16. Given the nature and extent of fact-finding required, and in the light of para 7.2 of the Senior President's Practice Statement, the appropriate disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Suffield-Thompson.

Signed



A Grubb  
Judge of the Upper Tribunal

29 May 2019