



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001371

First-tier Tribunal No: RP/00038/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 December 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

KAVUNGU VINDA FRANCISCO LIDIU
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 19 July 2024

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Angola. His appeal against the respondent's decision of 3 November 2024 to refuse his human rights claim and to revoke the appellant's refugee status was dismissed by First-tier Tribunal ("FtT") Judge Aziz ("the judge") for reasons set out in a decision promulgated on 28 March 2023.

2. The appellant claims the decision of First-tier Tribunal Judge Aziz is vitiated by material errors of law. Two grounds of appeal are relied upon.
3. First, in considering whether there are very significant obstacles to the appellant's integration into Angola the judge considered the evidence of the appellant and his mother, and, at [85], said that he was not persuaded by the evidence that they have no family ties whatsoever to Angola. The judge found that there was a deliberate attempt by the appellant's mother to deceive when she stated that every member of her immediate and wider family had either died or left the country. The appellant refers to the previous decision of FtT Judge O'Malley dated 8 October 2007. FtT Judge O'Malley found the appellant's mother is Cabindan and that she knows no one in Luanda apart from the friend who gave her shelter and collected [F] from Cabinda. Judge O'Malley found that the appellant's mother has not previously lived in Luanda and does not have close current connections there.
4. The appellant claims that in reaching his decision Judge Aziz failed to have regard to the previous findings of Judge O'Malley as his starting point in accordance with the guidance set out in *Devaseelan v SSHD* [2002] UKIAT 702, and fails to provide adequate reasons for the conclusion that the appellant's mother engaged in a deliberate attempt to deceive.
5. Second, the judge failed to give adequate reasons for his findings and conclusion that the appellant's language ability would enable him to integrate in Angola without very significant obstacles.
6. Permission to appeal was granted by First-tier Tribunal Judge Fox on 4 May 2023.

THE HEARING OF THE APPEAL BEFORE ME

7. Notice of the hearing listed before me was sent to the parties on 4 June 2024. On 11 July 2024 the Tribunal had received a letter from Fountain Solicitors stating that they are 'newly instructed' and requested an adjournment of the hearing. The appellant was therefore plainly aware of the hearing. The application for an adjournment was refused by the Upper Tribunal Lawyer on 12 July 2024 and that decision was communicated to the appellant on 15 July 2024. On 17 July 2024 the Tribunal received further correspondence from Fountain Solicitors confirming they are no longer instructed by the appellant.
8. The appellant did not attend the hearing. There is neither any application to adjourn nor any explanation for the appellant's absence. I am satisfied that the Notice of Hearing has been served upon the appellant as required by Rule 36 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In considering whether to proceed under rule 38, I am satisfied that the appellant has been notified of the hearing and I consider it to be in the interests of justice to proceed with the hearing in the appellant's absence.
9. Ms Arif invited me to dismiss the appeal. She submits that in reaching his decision, the judge found the appellant and his mother not to be

credible witnesses. Ms Arif submits that at paragraph [85] of the decision the judge makes it clear that he rejected the claims made by the witnesses and found that the appellant speaks a relevant language and has transferable skills. She submits it was open to the judge to conclude that the appellant has failed to establish that there are very significant obstacles to his integration in Angola and that it was open to the judge to dismiss the appeal for the reasons set out in the decision. Ms Arif submits the grounds of appeal amount to a disagreement with the decision.

DECISION

10. I reject the appellant's claim that in reaching his decision the judge failed to have regard to the previous findings of Judge O'Malley as his starting point in accordance with the guidance set out in *Devaseelan v SSHD* [2002] UKIAT 702, and fails to provide adequate reasons for the conclusion that the appellant's mother engaged in a deliberate attempt to deceive.
11. As Nicola Davies LJ said in *AL (Albania) v SSHD* [2019] EWCA Civ 950, the approach to be taken by a Tribunal to earlier findings of fact made in a determination relating to a different party, such as a family member, but arising out of the same factual matrix is now established. In *AA (Somalia) v SSHD* [2007] EWCA Civ 1040, Carnwath and Ward LJ (Hooper LJ dissenting) held, applying *Ocampo*, that in such a case the guidelines given by the Immigration Appeal Tribunal in *Devaseelan* apply. Those guidelines begin with the premise that the first tribunal's determination should be the starting point. The earlier determination should be followed unless there is a very good reason not to do so. It is not the end point and it is open to another Tribunal to depart from the findings if there is very good reason for doing so.
12. The claim advanced by the appellant's mother before Judge O'Malley in 2007 was that she and her former partner, who lived in Cabina had been active in the FLEC movement. The claim for international protection made by her was on the basis that in July 2001 she and her partner were in Luanda when they were distributing leaflets which were kept in the house of a friend. Judge O'Malley found at [24] of the decision that the appellant is Cabindan and that she knows no-one in Luanda apart from a friend. The conclusions set out at paragraphs [23] to [36] of the decision of Judge O'Malley are all directed to the Tribunal's assessment of the international protection claim being made by the appellant's mother. Judge O'Malley found, at [26], that he was not satisfied it is reasonably likely that the appellant's mother was ever involved in the distribution of leaflets in Luanda. Judge O'Malley also said, at [27], that he was not satisfied that the appellant's mother was ever detained in Luanda or subsequently abused as claimed. Judge O'Malley however accepted the appellant's mother is from Cabinda and is a supporter of FLEC at a relatively low level. It was in that context that Judge O'Malley considered the risk upon return to Luanda. There was no wider consideration of Judge O'Malley of any familial links to Angola and no express findings made by Judge O'Malley that the appellant's mother has no family ties whatsoever to Angola.

13. Judge Aziz had the benefits of hearing oral evidence from the appellant's mother. The judge noted at paragraph [85] that the appellant's mother was questioned about the familial ties in cross examination. In the absence of any express finding previously by Judge O'Malley in 2007 regarding the familial ties that the appellant and his mother have to Angola, it was open to the judge to conclude as he did at paragraph [85] of his decision:

"I am not persuaded by the evidence of the appellant or his mother that they have no family ties whatsoever to Angola. I was not convinced by the evidence of the appellant's mother (who was questioned about this in cross-examination). I find that there was a deliberate attempt to deceive when she stated that every member of her immediate and wider family had either died or left the country. I do not find that she was being candid with the Tribunal."

14. The judge was not departing from the determination of Judge O'Malley and the decision of the judge demonstrates no material error of law. It follows that I reject the first ground of appeal.
15. The second ground of appeal simply amounts to a disagreement with a conclusion that was open to the judge on the evidence before the Tribunal. The appellant's claim that the judge failed to give adequate reasons for his finding that the appellant, who only knows what is considered to be a minority language, would be able to and should be required to learn one of the main languages in Angola in order to integrate, is without merit.
16. As the judge recorded at paragraph [83] of the decision, the appellant claimed that he does not speak the languages in Angola. However, the judge noted at paragraph [86] of the decision the appellant's girlfriend gave evidence that she had seen the appellant and his mother conversing in Lingala and that the appellant's mother gave her evidence in Lingala. The appellant accepted that he speaks 'some' Lingala. The judge said the evidence was that the appellant speaks Lingala with his mother in the family home and has done so since childhood. The judge found the appellant is able to converse very well in Lingala. He noted that whilst Lingala and English may not be one of the majority languages spoken in Angola, as minority languages, the appellant does have some linguistic ties to Angola. The judge considered all of the factors relied upon by the appellant and acknowledged that in not having lived in Angola since he was two, there will be difficulties and hardships. The judge weighed that against the appellant's skills and qualifications and having considered matters in the round, found that appellant has not established that the high threshold set by the very significant obstacles test has been met. The appellant's ability to speak the languages spoken in Angola was a factor relevant to the judge's consideration of the test. The judge said enough to show that care had been taken in his assessment of the evidence and that the evidence as a whole has been properly considered when considering whether the test is met. The second ground of appeal has no merit and is no more than a disagreement with the conclusions reached by the judge.

17. The assessment of an an Article 8 claim such as this is always a highly fact sensitive task. The findings and conclusions reached by the judge are neither irrational nor unreasonable, or findings that are wholly unsupported by the evidence. Having considered the grounds of appeal I am satisfied that the evidence or points in question were considered by the judge and the judge reached a decision that was open to the Tribunal on the evidence before it.
18. It follows that I dismiss the appeal.

NOTICE OF DECISION

19. The appeal to the Upper Tribunal is dismissed and the decision of First-tier Tribunal Judge Aziz stands

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 November 2024