



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001470
First-tier Tribunal No: PA/53143/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24th of April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

LS (GUINEA)
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Johnrose, Lei Dat & Baig Solicitors Ltd
For the Respondents: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 11 April 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Respondent, likely to lead members of the public to identify the Respondent. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. To avoid confusion, I shall refer to the parties as they were before the First-tier Tribunal i.e. to the Secretary of State for the Home Department as the 'Respondent' and LS as the 'Appellant'.
2. This is the remaking of part of the First-tier Tribunal's decision in the Appellant's appeal against the Respondent's decision letter of 7 July 2022. The Respondent has refused the Appellant's protection and human rights claim made on 12 December 2020.
3. The basis for the Appellant's claim is that he fears persecution from his father and stepmother in Guinea, having been subjected to violence and abuse from them. He also relies on his relationship with his British partner, and the child they have had together, [R] who was born in November 2022.
4. The Refusal Letter accepted the Appellant's nationality and account of having issues with his family in Guinea, having provided an internally and externally consistent account. However, it said he would be able to internally relocate to avoid the risk. The Appellant's behaviour had also engaged section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as he had failed to claim asylum in France and Belgium. He was not married or engaged to, or in a civil partnership, with his partner; they did not live together and the Appellant had not said (prior to the letter) that he was a parent. There would be no significant obstacles to integration on return to Guinea and there were no exceptional circumstances.
5. The Appellant appealed the refusal decision, relying in his skeleton argument on his relationship with [R] (who, like their mother, was a British citizen) in addition to the factors previously raised.
6. The Respondent undertook a review of the matter. The review said the relationship with [R] was a new matter, to which consent was granted. It maintained the refusal of the protection claim but accepted that there would be a breach of article 8 ECHR on the basis of the Appellant's relationship with [R]. The Appellant's claim made under 8 was therefore conceded at this point.
7. His appeal was heard by First-tier Tribunal Judge Cole ("the Judge") at Manchester on 8 March 2023. The Judge subsequently allowed the appeal on humanitarian protection and human rights grounds in his decision promulgated on 24 March 2023.
8. The Appellant applied for permission to appeal to this Tribunal on one ground headed "Misdirected in law/inadequate reasons". Permission to appeal was refused by First-tier Tribunal Judge Aziz on 24 April 2023. The Respondent applied in time to this Tribunal for permission to appeal on the same, renewed, grounds, submitting that Judge Aziz did not engage with the entirety of the grounds. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 12 October 2023.
9. Following a hearing on 5 December 2023, I set aside the Judge's decision, finding he had erred in his assessment of internal relocation. However, I found this error did not infect the Judge's findings beyond this issue such that all other findings were preserved. Those preserved findings are contained in paragraphs [10] to [23] (inclusive), and [29]-[30] of the Judge's decision and can be summarised as follows:

- (a) As accepted by the Respondent, the Appellant has had issues with his family in Guinea and is at real risk of serious harm in his home area as a result;
 - (b) the Appellant's fear is not for a convention reason such that the Appellant cannot be a refugee;
 - (c) it would be safe for the Appellant to relocate to somewhere outside his home area;
 - (d) As accepted by the Respondent, the Appellant is in a relationship with a British citizen and together they have a British child [R]; the Appellant has a genuine and subsisting parental relationship with [R] who is a qualifying child and it would not be reasonable for [R] to leave the UK; due to this, the removal of the Appellant would result in a disproportionate breach of Article 8 of the ECHR.
10. I otherwise set aside the Judge's decision for a fresh decision as regards the reasonableness of internal relocation, which question would determine his claim for humanitarian protection.
11. I regarded it as appropriate for this Tribunal to remake the decision concerning the Judge's erroneous findings, noting the narrowness of the issues and limited extent of fact finding required. In my decision I made directions, including that:
- (a) Any additional material on which either party seeks to rely must be served on the other party and on the Upper Tribunal at least 10 working days before the hearing (i.e. by 28 March 2024).
 - (b) The parties must prepare and serve 5 working days before the hearing (i.e. by 4 April 2024), brief skeleton arguments in electronic form addressing the single issue to be determined.

The Hearing

12. At the resumed hearing before me on 11 April 2023, I dealt, as a preliminary issue, with the parties' failure to comply with my directions.
13. I noted that the Respondent had filed its updated skeleton argument on 10 April 2024, the day before the hearing, with no additional evidence being served. The reason for the lateness was stated to be that the Respondent could not comply any earlier due to the Appellant only have filed his skeleton argument and additional evidence on 9 April 2024.
14. I noted that the Appellant had indeed filed his skeleton argument and additional witness statement on 9 April 2024. As such, his witness statement was 12 days late and his skeleton argument was 5 days late. No explanation or request for relief from sanctions had been provided; Mrs Johnrose could not provide me with any information as to why this was the case. I also noted that the Appellant's witness statement was erroneously dated 4 May 2024; Mrs Johnrose again did not know why this was the case and assumed it was intended to say 4 April 2024. She confirmed that, in terms of oral evidence, the intention was that the Appellant would only need to confirm the contents of his witness statement. Mr Tan confirmed he did not have any questions for the Appellant.

15. I adopted the approach to relief from sanctions as identified in Mitchell v News Group Newspapers Ltd [2013] EWCA Civ 1537, [2014] 1 W.L.R. 795; Denton v White [2014] EWCA Civ 906, [2014] 1 W.L.R. 3926 and R (Hysaj) v SSHD [2014] EWCA Civ 1633, [2015] 1 W.L.R. 2472 which requires a three-stage approach.
16. Firstly, I considered the breach of directions by the Appellant to be both serious and significant given that my error decision was issued four months ago with clear directions as to timescales contained within it. The notice of hearing has been posted out on 12 March 2024 which meant the Appellant had over two weeks in which to file any further evidence, having already been on notice from the error decision. Secondly, I considered there was no good reason, or in fact any reason, given for the delay. Thirdly, I evaluated all of the circumstances of the case in order to deal justly with whether or not I should admit the Appellant's new witness statement. I was conscious that particular care needed to be taken, given the matter is a protection appeal to ensure that the appeal was not frustrated by a failure by the Appellant's legal representatives to comply with time limits, albeit that I had not been told whose fault the failure was. I bore in mind that the new witness statement was only two pages long, with a mere five paragraphs going to the sole issue remaining in dispute. I was also conscious that the Respondent had been able to consider the statement and updated skeleton argument in order to be able to produce his own updated skeleton argument prior to the hearing. As such, no prejudice had been caused to the Respondent. I considered the Respondent could not be blamed for his own breach of the directions, given he was dependant on the Appellant's preceding compliance.
17. I therefore granted a retrospective extension of time for the Appellant filing his updated witness statement and skeleton argument, and for the Respondent filing its own updated skeleton argument. I asked Mrs Johnrose to take note that non-compliance with directions is something to be taken very seriously in order to avoid wasting time and resources and it could not be guaranteed that in future every judge would similarly grant relief in allowing late material.
18. The parties confirmed that all the necessary papers were contained in Parts A-D of the Respondent's bundle for the error hearing.
19. In terms of objective evidence in relation to Guinea, I noted this appeared to be:
 - (a) a link to Google Maps in the Respondent's updated skeleton argument
 - (b) a link in the Refusal Letter to 'Guinea the world fact book, Guinea - The World Factbook' (cia.gov)
 - (c) a reference in the Refusal Letter to the 'US state 2021 country report on human rights practices: Guinea'.
20. The representatives had no objection to me finding and looking at any of these things given the Appellant discusses the size of Guinea concerning internal relocation.
21. The Appellant gave oral evidence to confirm that the contents of his updated witness statement were true and accurate, had been signed by him, and could be relied upon as his evidence in chief. Neither representative had any questions. I asked for clarification as follows:

- (a) In his previous witness statement he said that if he returned, his only means of contacting his partner and child in the UK would be using a phone which would be limited; was that still the case? The Appellant said yes, he did not know how he would find a job or where he would be or how he would contact his family from there.
- (b) I asked whether he would have access to the Internet. He said he did not know how he would get it, sometimes in Guinea there is no Internet as “they will block it” so it would be hard to contact his family there.
22. The representatives then made their respective submissions.
23. Mr Tan said he relied on the updated skeleton argument which he would not repeat; as regards contact, there are preserved findings as to the Appellant’s ability to obtain employment and if he can obtain it, he would have the resources to sustain himself and obtain/use a phone and have access to the Internet.
24. Ms Johnrose said that she relied on the updated skeleton argument; the salient points concerning the consequences/impact of internal relocation are in paragraphs 29-31 of the Appellant’s first witness statement; there would be a lack of contact between him and his partner/child by modern means and physical contact i.e. visits with them, the financial impact on the partner and the fact that the child will grow up without his father; it is for the Tribunal to determine whether these factors breach the threshold of unreasonableness in terms of relocation.
25. I asked where the Appellant’s initial evidence was of his family having contacts with the police. Ms Johnrose said there were preserved findings made concerning this but she did not have any reference for where they came from. Mr Tan said he assumed it arose from the oral evidence given in the First tier-hearing given the findings made in relation to it.
26. At the end of the hearing, I reserved my decision.

Discussion and Findings

27. As above, it is a preserved finding that the Appellant does not qualify as a refugee, and that there would be a breach of article 8 ECHR if he were removed.
28. The only question remaining to be determined is whether it would be reasonable for the Appellant to relocate within Guinea, outside his home area, in order to escape the risk found to be posed to him by his family.
29. As stated in my error decision, there are two limbs to the assessment of internal relocation; the first is whether the Appellant would have a well-founded fear of persecution or a real risk of suffering serious harm in the place of proposed relocation, the second is whether it would be reasonable for the person to relocate to that place - see AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC), at [23]).
30. As stated in SSHD v SC [2018] WLR 4004, [2017] EWCA Civ 2112 at [39]:
- “The tribunal only reaches the [reasonableness] stage of the test if it is satisfied that the person would not be exposed to a real risk of serious harm.”

31. In AS this Tribunal referred to Article 8 of the Qualification Directive (substantially reproduced in the Immigration Rules at Rule 339O(i)), in saying that when dealing with internal relocation:

“Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.”

32. It also referred to the then-applicable 2003 UNHCR Guidelines which stated:

“II. The Reasonableness Analysis

a) Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there.”

33. Paragraph 44 of AS sets out in full the relevant test and summarises it at paragraph 45 as requiring “a holistic assessment, encompassing all relevant considerations pertaining to the appellant” in the country of return.

34. This approach was endorsed by the Supreme Court in SC (Jamaica) v SSHD [2022] UKSC 15, paragraph 95:

“The correct approach to the question of internal relocation under the Refugee Convention is that set out in Januzi at para 21 and in AH (Sudan) at para 13 (see paras 58 and 59 above). It involves a holistic approach involving specific reference to the individual’s personal circumstances including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual “can reasonably be expected to stay” in that place. It does not take into account the standard of rights protection which a person would enjoy in the country where refuge is sought.”

35. It is a preserved finding that the Appellant would not be exposed to a real risk of serious harm outside his home area by reason of his family/account of past events.

36. I must therefore turn to the second limb of the test and undertake an holistic assessment of whether it would be reasonable for the Appellant to relocate elsewhere within Guinea, looking at whether he would be able to lead a relatively normal life without facing undue hardship.

37. Relevant preserved findings from the First-tier Tribunal’s decision are as follows:

- (a) the Appellant’s father has some connections with the local police and the local prefect but these are limited and do not mean that the father has any sort of influence or connections making it reasonably likely he would be able to locate the Appellant in another part of Guinea [17]
- (b) the Appellant’s mother lives in Conakry and he could regain contact with her. However, he is an adult and does not require family support in order to cope [21]
- (c) the Appellant had some education in Guinea and went to college in Italy; he speaks a number of languages; he has sufficient education to enable him to find work [22]

- (d) he has work experience through working on his father's farm and as a labourer in Libya which would be of some assistance in finding employment [23].
38. I shall not reiterate the evidence going to those particular factors covered in the preserved findings, even though I have taken everything into consideration in the round.
39. The Refusal Letter says:
- (a) it would be reasonable for the Appellant to relocate to Conakry or Labe, for example
- (b) the Appellant was in good physical health, of employment age and spoke the national language of Guinea; he received primary education in Guinea and further education in Italy; there were no reasons why he could not return and seek meaningful employment
- (c) he could relocate to Conakry and seek emotional support from his mother who lives there.
40. The Refusal Letter contained a link to the world Factbook on Guinea which confirms that the country has a total land area of 245,717 sq km with an estimated population in 2023 of 13,607,249. Languages spoken include French (official), Pular, Maninka and Susu and Muslims form 89.1% of the population; the economy is primarily agrarian.
41. The Refusal Letter also relies on the 2021 Country Reports on Human Rights Practices: Guinea in suggesting Conakry and Labe as possible areas of relocation, but does not cite any specific provisions. I cannot see that this report particularly discusses either place in terms of its viability as a destination for internal relocation. Most of the topics discussed in this report have not been touched upon by either party. The Appellant does not appear to seek to rely on it in any way.
42. The Respondent's review did not add anything further to the question of internal relocation beyond saying it did not accept that the Appellant was uneducated.
43. I note the Appellant's answers in his substantive asylum interview confirmed that: he does not suffer from any physical or mental health issues (Q7-9); neither he or his family members have any ties or links to the government or police in Guinea because the village they live in is very isolated (Q28); he knows every bit of the country in Guinea due to his knowledge and studies of geography (Q68); his father and family do not have the financial means to get in touch with him (Q85); he could not live with his mother because with her, he "could not do anything" whereas in the UK he feels free (Q95).
44. The Appellant's witness statement dated 16 December 2022 stated:
- (a) to his knowledge, his parents were in Guinea but he is not in contact with them (para 6)

- (b) he is not in contact with any of his siblings and does not know where they are (para 9)
 - (c) he was unable to relocate to any of the larger cities as he was uneducated and did not have any family in any other area; he would be left destitute due to his lack of education and would only be able to find a low income manual job; he would not be able to afford rent or food and would be destitute on the street where he would be vulnerable to traffickers and criminal gangs (paras 17 and 28)
 - (d) in the UK he lived in shared accommodation separately from his partner and child; they visited regularly and he helps change and feed the baby and buys things for her (para 26); he loves his partner and child and wants to take an active part in his child's life (para 27)
 - (e) in Guinea he would not be able to contact his partner and child as he would struggle to afford a phone and telephone cards to call them; his partner needs his support to help care for the baby, the partner is currently unemployed and cannot work with the child (para 29)
 - (f) his partner would not be able to afford a flight to see him and he would not be able to afford a visit Visa to the UK; his only means of contacting them would therefore be by phone which is limited (para 30).
45. The Appellant's 'rebuttal statement' dated 16 December 2022 did not add anything further of substance concerning internal relocation.
46. The undated handwritten statement of the Appellant's partner does not discuss what the impact on her or the child would be if the Appellant were to return to Guinea. I cannot see that there is any formal witness statement from the Appellant's partner. I cannot see any sign that the partner provided oral evidence at the First-tier hearing and she also did not do so at the hearing before me.
47. The Appellant's most recent witness statement (erroneously dated 4 May 2024) says the following:
- "a. The problem is I cant go and live in another part of my country because the internet is everywhere now. If I go and live in another part of my country what will happen if my father put my picture on social media saying that he has lost son help me and someone find me and tell him.
 - b. In my village now everyone go and travel to work. If one of them see me in another City and call my father I don't what I will do. Its not really safe for me to go and live in another part of my country.
 - c. My father has relationship with the Police so what happen if go Police and tell them that I have lost my son I need help. I cant guarantee anything for myself I am not safe. Its not safe for me to go anywhere. I cant take the risk to go and live there and out my life in danger or my daughter life in danger so not safe to go anywhere.
 - d. It's a small country its not like UK if you move to London. Guinea is not like that it's a small country with small region. One region have one hospital. Imagine if you go to hospital of course they will find you, If you have problem you go to the police station and they call my father saying we fiund [sic] your son what will happen.

e. Nobody can guarantee nothing will happen to me or my father will not find me so I cannot take any risk and go down there. Guinea is small anyone can find you. It would take time 2-3 day or even years but in the end they will find you and I for the worst”.

48. His updated skeleton argument says that:

“The Appellant has explained that he still fears his father and that his whereabouts will become known. His father has connections with the police and therefore would be able to target the Appellant with impunity.

It is submitted Guinea is a small country and therefore the Appellants fears are well founded. The tribunal is invited to find that relocation would be unduly harsh and to allow his appeal under HP”.

49. The Respondent’s updated skeleton argument says that a Google Maps search shows the Appellant’s home area is, depending on the route taken by vehicle, between 800-900 km away from Conakry, which is considered to be a significant distance when considered in the context of the preserve findings. The Appellant has not challenged this assertion. Having accessed the link to Google Maps provided, I note the time estimate for travelling this distance by car is 16 hours and 56 minutes. I therefore accept that the distance between the Appellant’s home area and Conakry is significant.

50. The Respondent’s skeleton argument refers to the preserved finding that the Appellant’s family are not inclined to look for him, and that his ‘limited local connection to the authorities’ was restricted to the local area. It refers to the Appellant’s interview evidence detailed above that his family have no links or ties to the government or police in Guinea (Q28) and that there is no police presence in the village where his father resides (Q66). It submits that any contact with the police would therefore have to be made in another location and such effort requires an inclination to do so in the first instance.

51. Finally, the Respondent says the Appellant speculates that his father may put his picture on social media asking for help to find him and this has no credence, given the undisputed facts that the Appellant has not had any contact with his father and family in the home area for a significant period (Q25), and he left Guinea in November 2016 (Q37) at 19 years of age; there is no evidence before the Tribunal that the father uses social media, or that he would have an up to date and recognisable image of the Appellant to upload it to a potential social media post; such speculation ignores the preserved findings that the father does not have any inclination to look for the Appellant, and therefore enlist the assistance of the police, plus that any connections held do not extend beyond the local area.

52. Having taken everything into account in the round and bearing in mind the lower standard of proof, I make the following findings.

53. Whilst it is accepted that the Appellant suffered harm at the hands of his family previously, there is nothing to indicate that he suffers from any long-term psychological or physical consequences (save for scars) as a result, or that this experience would prevent him from living a relatively normal life in Guinea again. He does not say this would be the case, and there is no medical evidence which could support this. The Appellant was able to organise leaving the country and

make the journey to the UK where he has been able to make a life of sorts for himself.

54. Given I have found above that the distance between Conakry and the Appellant's home area is significant, I find Conakry is a reasonable place to which the Appellant can relocate without being in danger from his family. There are preserved findings that they are unlikely to have any sort of influence or connections in order to find the Appellant and there is nothing indicating that this father would be interested in finding him. The Appellant has said his family do not have the financial means to get in touch with him such as it appears unlikely they would have the means to undertake the journey to Conakry. The Appellant now questions what would happen if his father put his picture on social media. I do not accept this is likely to happen. The Appellant's account is that he has been on social media for some time, having met his partner through it in 2021. There is no indication that this father has so far tried to use social media to locate him. There is also no indication that this father has reported him (to anyone) as missing. If the father did not have the means to get in touch with him previously, and he lives in an isolated village, I do not find it proved that the father would have access to the Internet now. Even if he does, I do not find it proved that he would be interested in regaining contact with the Appellant.
55. Whilst it is a preserved finding that the Appellant's father had some connections with the local police and local prefect, these were found to be limited. I do not know the nature of such connections (which appear to have been discussed in oral evidence, the nature of which has not been recorded) and there is no evidence before me that any such connections would enable the Appellant to be found in Conakry or anywhere outside his home area. The Appellant says that Guinea is a small country and everyone in his village now travels to work. It is unclear how he knows everyone 'now' travels to work if he has not had contact with anyone for several years. The population of the country is well into the millions of people and so I find it unlikely that the Appellant would be recognised in a city which is over 16 hours away by car.
56. No real argument has been made that the Appellant would not be able to gain sufficiency of protection but given the above findings, I find that protection would not be needed were the Appellant to internally relocate.
57. Whilst not knowing the depth of his knowledge, he said he knows every area of the country. He said his mother lived in Conakry and he previously spent his holidays with her. There is a preserved finding that he can regain contact with her. There is nothing to indicate that she no longer lives in the property where she previously lived. If the Appellant were to seek her out, he would have a potential support network which is likely to include accommodation if he was able to stay with her previously. However, he has also been found not to require family support in order to cope as he is an adult.
58. There is nothing before me to indicate that the Appellant suffers from any physical or mental health conditions which would prevent him from returning to Guinea, and establishing himself there. As previously found, he has sufficient education to enable him to find work and he has previous work experience in Guinea which would assist him. He appears to admit that he could obtain at least low-paid manual labour. I have not been provided with any objective information to demonstrate that he would struggle to obtain this or any other kind of employment, or the amount of wages he would receive in any particular role.

There is no evidence before me that he has researched the possibility of obtaining work. Overall I do not find it proved that he would not be able to obtain employment sufficient to sustain himself in order to avoid being destitute and I do not find it proved that he would need to sleep on the streets.

59. I note the Appellant is a Muslim (SCR 1.12, Q30 AIR), which is the religion of the majority in Guinea and he speaks the official language of French (which he spoke at the First tier hearing), and Susu (Q32 AIR) which is another language of Guinea according to the Factbook mentioned above. He is 27 years old and he left the country in 2016 when he was an adult of 19, having spent his formative years in Guinea. There is nothing to indicate he will have lost familiarity with the country's societal and cultural practices.
60. The Appellant appears to argue that he would not be able to cope without having regular physical contact with his partner and child. It is accepted that it would not be reasonable for the child, who is a British citizen, to leave the UK. The only scenario under discussion is that of the Appellant returning to Guinea alone.
61. The Appellant has not provided any real evidence as to the likely impact on him, his partner or his child if he were to return to Guinea. Having found he has not shown he would not be able to obtain employment, I also do not find it proven that he would be unable to afford to contact his partner and child regularly, by phone and/or Internet. Although I do not have any information before me as to the cost of flights, I accept that, given the distance to Guinea from the UK these are likely to cost several hundreds of pounds and may well not be affordable for the Appellant in the short term after arrival in Guinea. But it would be speculation for me to find how long this would likely continue. I have no information as to the financial position of the Appellant's partner and so cannot make any findings as to her ability to afford visits to Guinea for her and the child, other than to say there is nothing to show she could not afford them.
62. It is difficult to see how the Appellant's partner's ability to cope without him is relevant to the question of his ability to internally relocate; rather that is something to be discussed in terms of article 8, and the Appellant's claim under article 8 has already been conceded.
63. Overall, it has not been argued in any coherent way why separation from his partner and child would mean the Appellant would suffer undue hardship by returning alone to Guinea. Whilst it is accepted that there are genuine and subsisting relationships between them, there is nothing before me to show that the bond between the Appellant and his partner and/or child is particularly strong, nor even to really detail his current involvement in their lives. Whilst it is accepted that it would be in the child's best interests to be with both of her parents, this interest is a primary rather than paramount consideration and so does not trump all other considerations (and I have already discussed several factors indicating that relocation would be reasonable). The child would remain with her mother, who is the primary carer, in the UK where she has always been. Having only been born in November 2022, the child is less than two years old and unlikely to be aware of much beyond her immediate circumstances. Accepting that the Appellant returning to Guinea would deprive the child of having ongoing physical/proximate contact with her father at least in the short term, other than bare assertion, there is no real evidence showing that there would be a detrimental impact on the child as a result of the separation.

64. Overall I find the Appellant has not shown that he would be unable to live a relatively normal life in Guinea without facing undue hardship.
65. Based on both the preserved findings and all of my findings above, I find that the Appellant does not qualify for humanitarian protection and there would be no breach of articles 2 or 3 ECHR (insofar as they are argued) if he were to return to Guinea.
66. It follows that I remake the remaining part of the Judge's decision, dismissing the Appellant's appeal.

Notice of Decision

1. I remake that part of the decision of the First-tier Tribunal which was set aside due to error, and remake it dismissing the Appellant's appeal concerning humanitarian protection.
2. Due the nature of the proceedings, an anonymity direction is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 April 2024

ANNEX: ERROR OF LAW DECISION



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2023-001470
First-tier Tribunal Nos: PA/53143/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**LS (GUINEA)
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Aziz, Lei Dat & Baig Solicitors Ltd
For the Respondents: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 5 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Respondent, likely to lead members of the public to identify the Respondent. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. To avoid confusion, I shall refer to the parties as they were before the first-tier Tribunal i.e. to the Secretary of State for the Home Department as the 'Respondent' and LS as the 'Appellant'.
2. This matter concerns an appeal against the Respondent's decision letter of 7 July 2022, refusing the Appellant's protection and human rights claim made on 12 December 2020.
3. The basis for the Appellant's claim is that he fears persecution from his father and stepmother in Guinea, having been subjected to violence and abuse from them. He also relies on his relationship with his British partner, and the child they have had together, [R] who was born in November 2022.
4. The Respondent refused the Appellant's claim by letter dated 7 July 2022 ("the Refusal Letter"). The letter accepted the Appellant's nationality and account of having issues with his family in Guinea, having provided an internally and externally consistent account. However, it said he would be able to internally relocate to avoid the risk. The Appellant's behaviour had also engaged section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as he had failed to claim asylum in France and Belgium. He was not married or engaged to, or in a civil partnership, with his partner; they did not live together and the Appellant had not said (prior to the letter) that he was a parent. There would be no significant obstacles to integration on return to Guinea and there were no exceptional circumstances.
5. The Appellant appealed the refusal decision, relying in his skeleton argument on his relationship with [R] (who, like their mother, was a British citizen) in addition to the factors previously raised.
6. The Respondent undertook a review of the matter. The review said the relationship with [R] was a new matter, to which consent was granted. It maintained the refusal of the protection claim but accepted that there would be a breach of article 8 ECHR on the basis of the Appellant's relationship with [R]. The Appellant's claim made under 8 was therefore conceded at this point.
7. His appeal was heard by First-tier Tribunal Judge Cole ("the Judge") at Manchester on 8 March 2023. The Judge subsequently allowed the appeal on humanitarian protection and human rights grounds in his decision promulgated on 24 March 2023.
8. The Respondent applied for permission to appeal to this Tribunal on one ground headed "Misdirected in law/inadequate reasons" alleging that:
 - (a) The Judge finds at [19] that internal relocation for the Appellant would be safe but goes on to find in [25] that it would not be reasonable. This is apparently due to the sole factor of the Appellant's relationship with his partner and child given he would be separated from them. The Judge allows the appeal on humanitarian protection grounds/article 3 on this basis.
 - (b) This is an erroneous approach to an internal relocation assessment. Such an assessment should be holistic, in line with the balance sheet approach described in SSHD v SC (Jamaica) [2017] EWCA Civ 2112.

- (c) There are a number of factors given by the Judge as to why internal relocation is found 'safe', such that it is difficult to discern why those factors are outweighed by the single issue of separation. The Judge's approach implies that in any instance where internal relocation arises and an Article 8 assessment is found to be in the Appellant's favour, this is determinative of an internal relocation assessment. The Judge fails to reason why that is the case, or appropriately apply a balance sheet approach.
- (d) The Appellant's protected rights/circumstances in the UK play no part in the assessment of reasonableness of relocation. Para 13 Januzi v. Secretary of State for the Home Department & Ors [2006] UKHL 5 as summarised at para 95 of SC (Jamaica) v Secretary of State for the Home Department [2022] UKSC 15 relied on.
- (e) Overall the Judge has misdirected himself and failed to provide adequate reasons, which errors are arguably material to the outcome of the appeal.
9. Permission to appeal was refused by First-tier Tribunal Judge Aziz on 24 April 2023, stating:
1. The application is in time.
 2. The appellant is a national of Guinea. At the appeal hearing the Respondent accepted that the appellant would be at real risk of serious harm in his home area. Consideration was therefore given to whether internal relocation was a viable option (paragraphs 10-12 of the Decision and Reasons). The Judge came to a conclusion that although internal relocation would be safe for the appellant (paragraph 19), that it would not be reasonable. The appellant's personal circumstances were that he had a genuine and subsisting relationship with his British partner and child. It was unreasonable for the child to leave the United Kingdom (paragraph 26). Therefore, the hypothetical scenario for the Judge was whether it would be reasonable for the appellant to relocate to a part of Guinea where he would be adequately able to support himself, but in circumstances where he would be separated from his child. Making a holistic assessment of all the appellant's circumstances, the Judge came to a conclusion that it would be unreasonable to separate the appellant from his partner and child and that this would be unduly harsh (paragraphs 27-28).
 3. At paragraph 6 of the grounds, the respondent argues, "On any reading given the number of factors given by the FTTJ as to why internal relocation would be 'safe', through the lens of a balance sheet assessment, it is somewhat difficult to discern why those factors within a reasonableness assessment are outweighed by the single issue of separation. On this approach, the FTTJ would appear to apply a rule that in any instance where the internal relocation arises and an Article 8 assessment is to be found in the appellant's favour, that this would be determinative of an internal relocation assessment."
 4. There is no merit to the grounds, the Judge looked at all the facts and came to a conclusion that applying the balance sheet approach that it would be unduly harsh for the appellant to internally relocate in the circumstances of this appeal. This was a finding that was reasonably open to the Judge on the facts before it (even if another judge looking at the same facts might have come to a different conclusion). In coming to the conclusion that this Judge did, the Judge was not seeking to apply or create a rule that in instances where an Article 8 assessment is found to be the appellant's favour, that this is determinative of the internal relocation assessment.
 5. There is no arguable material error of law."

10. The Respondent applied in time to this Tribunal for permission to appeal on the same, renewed, grounds, submitting that Judge Aziz did not engage with the entirety of the grounds.
11. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 12 October 2023, stating:

“1. Arguably, the appellant’s relationships in the UK (even if protected by article 8 ECHR) are not relevant to whether he can be expected to relocate internally to avoid the risk in his home area. It is therefore arguable that the judge erred by finding that internal relocation would be unduly harsh because the appellant would be separated from his child and partner in the UK.”
12. The Appellant file a rule 24 response submitting that the Judge did not materially err in law and his findings were open to him, because:
 - (a) it was accepted that the appeal should be allowed under Article 8 of the ECHR on the basis of the Appellant’s parental relationship with [R] such that the question of relocation in respect of the Article 3 claim was a hypothetical one;
 - (b) the Judge directed himself to all the relevant issues on return, including employment, education and work experience in finding internal relocation would be reasonable for the Appellant [16] –[19];
 - (c) at [27] and [28] the Judge considered whether the Appellant’s separation from his child would make internal relocation unduly harsh and, having undertaken a holistic assessment, gives adequate reasons for finding that it would;
 - (d) the Judge would have had the Appellant’s individual circumstances in mind, including his previous ill-treatment by his family and his current stable relationship;
 - (e) the Judge correctly considers the question of relocation having regard to the Appellant relocating in the absence of support from his partner and child, which would clearly have an impact on him.

The Hearing

13. The matter came before me for hearing on 5 December 2023 at Manchester Civil Justice Centre.
14. Mr Aziz attended for the Appellant and Mr Tan attended for the Respondent.
15. Mr Tan took me through the grounds of appeal, adding nothing further of substance.
16. I asked whether, given the appeal succeeded on article 8, this appeal was about the type of leave to be granted; Mr Tan said yes. He confirmed it had been accepted by the Respondent before the Judge that it was unreasonable for [R] to be expected to leave the UK; this was contained in the Respondent’s review and is recorded at [13] of the Judge’s decision.

17. Mr Aziz responded and took me through the rule 24 response. He sought to expand on this somewhat, submitting that the Judge at [17] records the Appellant claiming, for the first time at the hearing, that his father had connections with the local police. Mr Aziz submitted the Judge had new evidence at the hearing which he was willing to accept despite its lateness; relying on that live evidence, he makes a conclusion as to credibility which is a key factor in finding that relocation will not be viable due to threats made against the Appellant. Mr Aziz confirmed that, by this, he was saying that the Judge found in favour of the Appellant on relocation for reasons more/other than separation from his child.
18. I asked Mr Aziz where in the decision the Judge considers the impact on the Appellant having to relocate in the absence of his partner and child; he said the impact of separation is discussed at [26], then again at [27] and [28].
19. I asked Mr Aziz where in the decision the Judge can be seen to take into account the Appellant's history of ill-treatment when considering relocation. He said at [17] the Judge accepts the Appellant's father had connections with local police, which connections would have put him at risk outside his home area as well.
20. Mr Tan replied to say a full reading of [17] shows the Judge finds the Appellant can relocate despite the connections with the police. He reiterated that the Judge finds in [24] that internal relocation is reasonable for the Appellant and whilst the Judge discusses the separation of the Appellant from his partner/child, there is nothing to indicate the level of impact of that separation as part of the unduly harsh assessment; it is the simple fact of separation which is relied upon.
21. At the end of the hearing, I reserved my decision.

Discussion and Findings

22. I remind myself of the important guidance handed down by the Court of Appeal that an appellate court must not interfere in a decision of a judge below without good reason. The power of the Upper Tribunal to set aside a decision of the First-tier Tribunal and to proceed to remake the decision only arises in law if it is found that the tribunal below has made a genuine error of law that is material to the decision under challenge.
23. It is well established that the decisions of judges should contain sufficient explanation and reasoning, including as to the origin of a point or evidence on which findings are based so as to avoid both confusion and further dispute in any onward appeal - see, for example, the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC). This also necessitates a judge having regard to all of the relevant evidence before them.
24. The Judge records at [11] the Respondent's acceptance of the Appellant i) having had issues with his family in Guinea and ii) being at real risk of serious harm in his home area as a result.
25. The Judge further records at [13] the Respondent's acceptance that:
 - (a) the Appellant is in a relationship with a British citizen and together they have a British child;

- (b) the Appellant has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable for [R] to leave the UK; and
 - (c) the removal of the Appellant would result in a breach of Article 8 of the ECHR.
26. At [14] the Judge finds that the Appellant's fear is not for a convention region such that the Appellant cannot be a refugee, and at [15] that the question is whether internal relocation would be safe and reasonable.
27. At [19] the Judge finds that internal relocation would be safe for the Appellant because:
- (a) his family live in a remote village in Guinea [16];
 - (b) his father's limited local connections to the authorities do not mean that the father has any sort of influence or connections that would make it reasonably likely he would be able to locate the Appellant in another part of Guinea [17];
 - (c) it is not reasonably likely that the Appellant's father would even want to find the Appellant in another part of Guinea to harm him [18].
28. Having made this finding, the Judge turns at [19] to the question of whether relocation would be reasonable for the Appellant. At [24], the Judge finds it would be reasonable because:
- (a) it was likely the Appellant could regain contact with his mother who lives in Conakry [21];
 - (b) the Appellant is an adult and does not require family support in order to cope [21];
 - (c) he speaks a number of languages and has sufficient education to enable him to find work if returned [22];
 - (d) his previous work experience would be of some assistance in finding employment [23].
29. The findings that have caused dispute in this appeal are those contained in [25] - [28] as follows:

"25. However, it is essential for me to assess all of the Appellant's personal circumstances in a holistic manner in order to decide whether internal relocation would be reasonable. In this specific case, this is more difficult as the Appellant is not returning to Guinea as it has been accepted to remove him there would breach his right to respect for family life. Thus, this is a purely hypothetical assessment and I find that it is material that the Appellant has a family in the UK.

26. The Appellant's British partner and child would not be returning to Guinea with the Appellant. The Appellant's British child lives with their British mother and it is accepted that it would be unreasonable for the child to leave the UK. It is accepted that the Appellant has a genuine and subsisting parental relationship with his child.

27. Thus, the hypothetical scenario for me to consider is whether it would be reasonable for the Appellant to relocate to somewhere such as Conakry where he would be able to adequately support himself but where he would be separated from his child with whom he has a genuine and subsisting relationship.

28. Having assessed all the evidence in the round and making a holistic assessment of all the Appellant's personal circumstances, I find that, in the exceptional circumstances of this case, it would be unreasonable for the Appellant to relocate internally within Guinea. I find that to be separated from his child and his partner is sufficient to show that internal relocation in this case would be unduly harsh".

30. There are two limbs to the assessment of internal relocation; the first is whether an applicant would have a well-founded fear of persecution or a real risk of suffering serious harm in the place of proposed relocation, the second is whether it would be reasonable for the person to relocate to that place – see AS (Safety of Kabul) Afghanistan CG [2020] UKUT 00130 (IAC), at [23]).

31. As stated in SSHD v SC [2018] WLR 4004, [2017] EWCA Civ 2112 at [39]:

"The tribunal only reaches the [reasonableness] stage of the test if it is satisfied that the person would not be exposed to a real risk of serious harm."

32. In AS this Tribunal referred to Article 8 of the Qualification Directive (substantially reproduced in the Immigration Rules at Rule 3390(i)), in saying that when dealing with internal relocation:

"Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

33. It also referred to the then-applicable 2003 UNHCR Guidelines which stated:

"II. The Reasonableness Analysis

a) Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? If not, it would not be reasonable to expect the person to move there."

34. Paragraph 44 of AS sets out in full the relevant test and summarises it at paragraph 45 as requiring "a holistic assessment, encompassing all relevant considerations pertaining to the appellant" in the country of return.

35. This approach was endorsed by the Supreme Court in SC (Jamaica) v SSHD [2022] UKSC 15, paragraph 95:

"The correct approach to the question of internal relocation under the Refugee Convention is that set out in Januzi at para 21 and in AH (Sudan) at para 13 (see paras 58 and 59 above). It involves a holistic approach involving specific reference to the individual's personal circumstances including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual "can reasonably be expected to stay" in that place. It does not take into account the standard of rights protection which a person would enjoy in the country where refuge is sought."

36. The Judge clearly finds at [19] that the Appellant would not be exposed to a real risk of serious harm outside his home area, for the reasons I have set out above. These reasons are sound and the finding was one open to the Judge to make.
37. As set out in the cases cited above, the question is whether the Judge properly undertook a holistic assessment of whether it was reasonable for the Appellant to relocate elsewhere within Guinea, looking at whether he would be able to lead a relatively normal life without facing undue hardship.
38. I do not consider that the Judge has undertaken this required holistic assessment.
39. Rather, he looks in [21] - [24] at one set of factors appertaining solely to the Appellant's individual characteristics, to arrive at the finding that relocation would be reasonable. This assessment appears to fulfil the requirement of looking at whether the Appellant would be able to lead a relatively normal life without facing undue hardship. However, it is not holistic because it does not take into account the factor of any impact on the Appellant of separation from his partner and son, to the extent it was said that this was relevant.
40. As regards this additional factor, the Judge appears to undertake a second assessment, looking only at the Appellant's relationship with his family in the UK and his hypothetical separation from them. In this assessment, he appears to find relocation would be unreasonable based on the sole factor of separation. Although the Judge refers in [28] to it being a holistic assessment, he has not set out the factors in a way in which one can see what has been taken into account as against this factor of separation.
41. I do not understand why the Judge has undertaken (what are apparently separate) assessments in this way. If they are a single assessment, it is unclear why the single factor of separation is considered sufficient to make relocation unreasonable, when all of the other factors appertaining to the Appellant did not make it so.
42. I agree that there is no analysis of the actual impact of separation on the Appellant, his partner or his child and the Appellant's ability to cope without them. I also do not understand why the single factor of separation would have been sufficient to outweigh all other factors given the Judge's earlier finding in [21] that "the Appellant is an adult and does not require family support in able to cope". Certainly no evidence of any impact is referred to. In light of these factors, I consider the Judge's findings concerning the reasonableness of relocation were made in error.
43. I do not accept the submission that the Judge had in mind the Appellant's previous ill treatment by his family when conducting the assessment of the reasonableness of relocation. He had already found relocation was safe as set out above, thus fulfilling the first limb of the assessment, such that I do not understand why this factor would have come into discussion of the second limb. If it did, there is no indication that the Judge considered it therein.
44. The Judge's summarised conclusions are contained in [29]-[35] of his decision.
45. The Judge states at [29-30] that the Appellant does not qualify as a refugee as there is no reasonable degree of likelihood of persecution. This is not challenged.

46. He goes on to state:

“Humanitarian Protection

31. For the reasons given above, there is a real risk that the Appellant will face serious harm in Guinea.

32. Therefore, the Appellant does qualify for humanitarian protection.

Human Rights

33. For the reasons given above, there is a real risk that the Appellant would face inhuman or degrading treatment if returned to Guinea. Therefore, his removal to Guinea would breach Article 3 of the ECHR.

34. The Respondent accepts that “there would be breach of article 8 on the basis of his parental relationship with his child.

35. Therefore, removal of the Appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998.”

47. I find there is a lack of reasoning shown in [31] – [33]. It does not follow that, because the Judge has found separation would result in internal relocation being unduly harsh, this equates or would lead to the Appellant facing serious harm or inhuman or degrading treatment on return. The Judge here appears here to conflate the two limbs of the internal relocation assessment as set out in AS and his findings here are in contradiction to his earlier (unchallenged) finding that internal relocation would be safe for the Appellant.
48. The statements in [31], [32] and [33] appear to flow from the Judge’s finding in [28], as, having found the Appellant not to be at risk outside his home area, there is nothing else they can be based on. There is therefore a direct link between the erroneous finding in [28] and the Judge’s overall conclusions on the Appellant’s claims as set out in [31]-[33], thereby infecting the latter. It cannot be said the Judge would have reached the same conclusion without the error(s) having been made.
49. As above, the only issue for the Judge to resolve was the question as to internal relocation. There was no issue left as regards article 8 given the Respondent’s concession recorded at [13]. This was accepted in the grounds and again by Mr Tan before me.
50. I have found that the findings made in error informed and led to the Judge’s overall conclusions, save as to article 8 which was in any case conceded. I therefore find the errors are material.

Conclusion

51. I am satisfied the decision of the First-tier Tribunal did involve the making of errors of law.
52. I find that the errors are confined to the Judge’s findings contained in [24]-[28] concerning the reasonableness of internal relocation (being the second limb of the assessment as set out in AS), as well those in [31]- [33] concerning the

Appellant's related/resulting success in his claims for humanitarian protection and article 3 CHR.

53. The Judge's findings contained in the paragraphs from [10] to [23] (inclusive), and [29]-[30] are preserved. To summarise these findings:
- (a) As accepted by the Respondent, the Appellant has had issues with his family in Guinea and is at real risk of serious harm in his home area as a result;
 - (b) the Appellant's fear is not for a convention reason such that the Appellant cannot be a refugee;
 - (c) it would be safe for the Appellant to relocate to somewhere outside his home area;
 - (d) As accepted by the Respondent, the Appellant is in a relationship with a British citizen and together they have a British child [R]; the Appellant has a genuine and subsisting parental relationship with [R] who is a qualifying child and it would not be reasonable for [R] to leave the UK; due to this, the removal of the Appellant would result in a disproportionate breach of Article 8 of the ECHR.
54. I otherwise set aside the Judge's decision for a fresh decision as regards the reasonableness of internal relocation.
55. In the circumstances, and given the single issue and limited extent of fact finding required, I consider that the appropriate course of action is for appeal to be listed to be remade in the Upper Tribunal on a date to be fixed.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside for remaking only as regards the single issue identified in [54] above.
2. Reminding the parties of the importance of procedural rigour and the corresponding expectation of compliance, I make the following directions:
 - (a) Any additional material on which either party seeks to rely must be served on the other party and on the Upper Tribunal at least 10 working days before the hearing. Such material must be set out in a properly indexed and paginated bundle, in electronic form.
 - (b) If an interpreter is required, this must be requested in writing at least 2 working days before the hearing.
 - (c) The parties must prepare and serve 5 working days before the hearing, brief skeleton arguments in electronic form addressing the single issue to be determined.
3. Due the nature of the proceedings, an anonymity direction is made.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 December 2023