IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002228
First-tier Tribunal No:
PA/51702/2023
LP/00375/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 September 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

DK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Richardson, Counsel
For the Respondent: Mr E Terrell, Senior Presenting Officer

Heard at Field House on 12 September 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, a citizen of Guinea, appeals against the decision of First-tier Tribunal Judge Forster promulgated on 20 February 2024 ("the decision").

2. By the decision, the Judge dismissed the appellant's appeal against the respondent's decision dated 28 February 2023, refusing his further submissions seeking asylum and international protection. The appellant first arrived in the UK on 01 August 2008, and claimed asylum upon arrival. His claim was refused and his appeal against that decision was dismissed by First-Tier Tribunal Judge Cruthers in a decision promulgated on 26 November 2010. The appellant made various further submissions after this, all of which were refused. Then on 21 March 2022, he again made the further submissions which the respondent refused and this refusal is the subject of this appeal.

3. In summary, the appellant claimed to be politically opposed to the Guinean government and that he would be at risk as a result of his activities. He comes from a family with a history of political activism. He claimed to be wanted by the Guinean regime. He claimed he was arrested, detained and tortured. He managed to escape and fled Guinea. He claimed he has continued his political activities in the UK, and that for many years he has been an active member of the National Front for the Defence of the Constitution (FNDC). The appellant also claimed that removal would breach his Article 8 ECHR rights.

The Hearing

4. The hearing was conducted with myself sitting at Field House, whilst the representatives attended via Cloud Video Platform.

The Grounds

5. The first of the three grounds raised challenging the decision are that the Judge had erred in his assessment of the risk faced by the appellant. This included his failure to consider a medical report and by setting a test of 'significant political profile' that was unsupported by the evidence, and his failure to consider whether the Guinean authorities would impute political opinion.

6. The second ground averred that the Judge erred by failing to consider or address the question of **HJ (Iran) [2010] UKSC 31,** given that the appellant was/is politically opposed to the regime and comes from a family with a history of political activism, alongside the fact that he has demonstrated in the UK and in Guinea where demonstrations are banned. It was therefore necessary for the Judge to consider what the appellant would do if returned and if he refrained from any political activity, why this was so.

7. The third ground was that the Judge erred in his consideration of (the now defunct) Immigration Rule 276ADE(1)(vi) and Article 8 ECHR. This included noting the appellant as a person who was fifty years of age when he is fact aged thirty four years. There was also a failure to consider under this heading that the appellant had been detained and tortured in Guinea before he escaped, and this was all material to the question as to whether there would be very significant obstacles to reintegration if he went back there now.

8. Permission to appeal was granted by First-tier Tribunal Judge Pickering on 11 June 2024, in the following terms:

> "1. The grounds are in time.
>
> 2. In relation to ground one and two it is arguable the Judge focussed on the risk of detection of the appellant's sur place activities [§38] rather than directing himself to the guidance in HJ which encompassed the appellant's background and his evidence about why he did not engage in certain activities in the UK. Ground three is indivisible from ground one and two.

3. Permission is granted".

9. There was no Rule 24 response from respondent.

10. That is the basis on which this appeal came before the Upper Tribunal.

Submissions

11. Both representatives made submissions which I have taken into account and these are set out in the Record of Proceedings.

Discussion and Analysis

12. The Judge at [10] under the heading 'Findings' stated the respondent had accepted the appellant had continued his political activities in the UK, and that he was a member of the FNDC. This was an error as the parties before me both agreed that there was no such acceptance of membership in the respondent's decision letter of 28 February 2024.

13. Mr Richardson expanded on this arguing that either way, whether or not the respondent had accepted the appellant's claim to be a member of the FNDC, the Judge was required to make a finding on this, especially given that the respondent had accepted that the appellant had continued some political activities in the UK. This went to core of the appellant's claim and it was therefore necessary for the Judge to consider **HJ Iran** principles, in particular, on how the appellant would conduct himself in Guinea in the light of his political beliefs and concomitant activities in the UK.

14. Mr Terrell stated the Judge had found at [36]-[37] that the appellant's activities in the UK were, in the main, social rather than political. There was therefore no requirement for the Judge to consider **HJ Iran** principles as it did not cover activities deemed to be of a social rather than those of a political nature.

15. Grounds one and two - The respondent at [38] of the decision letter of 28 February 2023, acknowledged a document submitted by the appellant in support of his further submissions referred to as an 'Attestation' purporting to evidence active FNDC membership in the UK. The respondent considered this and other documents relied upon the appellant as part of his further submissions, under **Tanveer Ahmed (documents unreliable and forged) Pakistan [2002] UKAIT 00439**, although there was no unequivocal acceptance as to whether the appellant was a member of the FNDC. The Judge did however, make reference to the earlier appeal decision by Judge Cruthers in 2010, following the refusal of the appellant's original asylum claim, where that appeal was also dismissed.

16. In that decision Judge Cruthers accepted at [42] that the appellant's claim was likely to be true even though he ultimately dismissed the appeal. The appellant maintained in this appeal that he was a member of the FNDC, and the expert report upon which he relied from Dr K Dupuy at [13(a)] discusses both his past and current political activities alongside his association with the political opposition in Guinea.

17. I therefore agree with Mr Richardson that the Judge was required to make a clear finding on whether the appellant was a member of the FNDC, and to then consider **HJ Iran** principles in the context of the appellant's return to Guinea. It was a material error of law not to make clear findings on this core issue given the nature of the appellant's claim, and in the light of the previously accepted facts upon which the Judge makes reference when purporting to apply **Devaseelan (Second Appeals - ECHR - Extra-Territorial Appeal Number: Effect) Sri Lanka * [2002] UKIAT 00702**, in considering Judge Cruther's decision from 2010.

18. Ground three – Mr Richardson argued that the Judge's findings on Rule 276ADE(1)(vi), was flawed owing to noting the appellant's age as being much older than he actually is. He stated that the assessment by the Judge on very significant obstacles to reintegration was premised on an erroneous understanding of the appellant's age being fifty years. Therefore, such consideration would have been based on a false understanding that the appellant came to the UK after spending a number of years as an adult in Guinea.

19. This was wrong as the appellant had not spent any real time in Guinea as an adult as he was aged 18 years when he arrived in the UK in 2008. Consequently, any assessment on the false premise that the appellant had spent time living as an adult in Guinea would go against him whereas this would not have been so from the correct standpoint that the appellant had never lived in Guinea as an adult.

20. It was said by the Court of Appeal in **Kamara EWCA Civ 813** [**2016]**, at [14] of the judgment.

> *"The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."*

21. I accept that the Judge fell in to error in his assessment here. Firstly, it is not apparent that the Judge carried out a broad evaluative judgement of the appellant's claim either on the protection or the non-protection grounds at [40]-[46], despite this being raised in the skeleton argument at [25]-[29] which was relied upon in the appeal before the Judge, where specific argument was made on the protection grounds in the skeleton at [25] under this heading.

22. The error is further compounded by the Judge's failure to consider here in particular, the detailed up to date medical report relied upon by the appellant from Dr Turvill where the Judge makes no findings on this whatsoever either in the protection and/or the linked and separate human rights claims, despite acknowledging the report at [5] of his decision.

23. Mr Richardson argued that this was a '*Robinson'* obvious point, and I again agree with him. The Judge's findings at [40]-[46] cannot be said, for these reasons, to be a broad evaluative judgement of the relevant factors he was required to consider in his assessment of the appellant's case under Article 8 ECHR, in accordance with **Kamara**, both within and outside the framework of the Immigration Rules. This was a further material error of law.

24. The Upper Tribunal interferes only with caution in the findings of fact by a First-tier Judge who has heard and seen the parties give their evidence and made proper findings of fact. Unfortunately, that is not the position here. The Judge's findings were vitiated by material errors in the way that he approached the evidence in this matter. These amounted to material errors of law.

25. I have accordingly considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

26. The decision of the First-tier Tribunal sent to the parties on 24 April 2024, involved the making of a material error of law. It is set aside in its entirety.

27. The appeal is remitted back to the First-tier Tribunal sitting at Manchester to be heard by any Judge other than First-tier Tribunal Judge Forster.

Anonymity

28. The Anonymity Order made by the First-tier Tribunal is maintained.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 September 2024