



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case Nos.: UI-2024-002618

First-tier Tribunal No:
PA/53657/2023
LP/00336/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1 August 2024**

Before

UPPER TRIBUNAL JUDGE L SMITH

Between

O M A
[ANONYMITY ORDER MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS
[MADE WITHOUT A HEARING PURSUANT TO
RULE 34 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES
2008]

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant (OMA) is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

1. The Appellant appeals against the decision of First-tier Tribunal Judge Sweet promulgated on 15 April 2024 ("the Decision") dismissing the

Appellant's appeal against the Respondent's decision dated 8 June 2023 refusing his protection claim. The Appellant's protection claim is based on a fear of [OK], [AK] and [KO] who are card-carrying members of the People's Democratic Party and of others because the Appellant claims to be a police informant in the cases of [TA] and [OK].

2. The Respondent rejected the Appellant's claim. Although accepting the material facts put forward, the Respondent concluded that there would be a sufficiency of protection and option internally to relocate within Nigeria on return.
3. Judge Sweet found the Appellant's account not to be credible. The Judge found that the arguments regarding sufficiency of protection had "no merit" because he had found that the Appellant's claim lacked credibility.
4. The Appellant appeals on two grounds. First, it is said that the Judge had found the Appellant's account not to be credible when the material facts underpinning the claim had been accepted by the Respondent. It is argued that this was procedurally unfair. Second, the Appellant argues that the Judge has in any event failed to provide adequate reasons for finding the Appellant's claim not to be credible.
5. Permission to appeal was granted by First-tier Tribunal Judge Cox on 5 June 2024. However, he granted permission only on the first ground and not the second. His reasons are as follows (so far as relevant):
 - ..2. The grounds are separated by headings, unfortunately each heading encompasses several different elements.
 3. Contrary to the assertion in the grounds, it appears that the judge was entitled to assess the credibility of the Appellant's account, especially as the grounds do not set out what the agreed issues.
 4. However, in not finding any aspect of the appellant's account credible (18), the judge arguably erred in law. Since the Respondent had accepted some aspects of the account (that the appellant witnessed and submitted a report to the police regarding the attack on [TA] in 2007 and that he acted as a police informant in the case of [TA] and PDP member [OK] (see page 6 of the refusal letter).
 5. Arguably, these matters ought to have been the judge's starting point, when assessing the overall credibility of the claim. It is also arguable that the judge acted unfairly, in not raising with the appellant their concerns about the information recorded on the screening interview record.
 6. As to the issues raised by 'ground 2', it was open to the judge to take into account the absence of any supporting evidence from his spouse or family members (15).
 7. If the appellant did not make an admission that the Ghanaian stamp was counterfeit, then counsel ought to have provided his notes of the hearing.
 8. Permission to appeal is granted in respect of ground 1 only."
6. Following receipt of the appeal in this Tribunal, Upper Tribunal Judge Perkins gave directions on 11 June 2024. He granted the Appellant anonymity on the basis that this appeal involves a protection claim. I have

continued that anonymity order. He indicated that he thought it possible that the Respondent might be prepared to concede that there was an error of law in the Decision but that there might be a dispute between the parties as to the extent of any such concession given the limited grant of permission. He therefore directed a case management review which is listed for hearing before the Tribunal (myself and Upper Tribunal Judge Bulpitt) on Monday 5 August 2024.

7. In response to the directions, the Respondent filed a Rule 24 Reply on 13 June 2024 which reads as follows (so far as relevant):

“...(1) Having reviewed the grounds of appeal the respondent does not oppose the appellant’s appeal.

(2) In summary, the respondent accepts that First-Tier Immigration Judge (FTTJ) Sweet’s determination dated 15 April 2024 contains a material error of law at paragraph 10, as it fails to accurately record accepted material facts in relation to the appellant’s credibility within the RFRL dated 08 June 2023

(a) [Para 14] *‘I am satisfied that you witnessed and submitted a report to the police regarding the attack on [TA] in 2007’.*

(b) [Para 15] *‘I am satisfied that you were a police informant in the case of [TA] and PDP member [OK]’*

(3) As the appellant’s credibility was not in dispute, FTTJ Sweet was erroneous to conclude at paragraph 18 that *‘I do not find any aspect of the appellant’s account credible ...’*

(4) It is accepted that any assessment of sufficiency of protection and internal relocation is likely to have been adversely impacted as a result.

(5) The respondent requests that the decision of FTTJ Sweet be set aside in its entirety and remitted to the First-Tier Tribunal.”

8. In response to the Rule 24 Reply, on 28 June, the Appellant’s representative asked for the CMR to be vacated and signalled the Appellant’s agreement to the course proposed by the Respondent. Although the Respondent has now made clear her position that credibility is no longer in issue, given that the Appellant’s first ground turns on procedural unfairness, the fairest course for the Appellant would be to remit the appeal as the Respondent requests. I therefore agree with the course proposed by the parties.

9. In accordance with the Respondent’s concession, I therefore find there to be an error of law in the Decision, I set that aside in its entirety and remit the appeal to the First-tier Tribunal (Hatton Cross) for re-hearing before any First-tier Tribunal Judge other than Judge Sweet. The CMR on 5 August is hereby vacated.

NOTICE OF DECISION

The Decision of Judge Sweet promulgated on 15 April 2024 involved the making of an error of law. I therefore set aside that Decision in its entirety. I remit the appeal to the First-tier Tribunal (Hatton Cross) for re-hearing before any First-tier Tribunal Judge other than Judge Sweet.

L K Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
31 July 2024