



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

Case No: UI-2024-002765  
FTT No: PA/52585/2022  
IA/06599/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 9 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**MB (Guinea)  
(anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation**

For the Appellant: Ms Blair, Counsel instructed by Southwark Law Centre (remote)  
For the Respondent: Ms Nwachuku, Senior Home Office Presenting Officer

**Heard at Field House on 20 August 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008,  
the Appellant 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 him.  
Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant is a national of Guinea born in 2001. He appeals with permission<sup>1</sup> against the decision of the First-tier Tribunal to dismiss his appeal on protection grounds.

### **Error of Law**

2. The only matter in issue in this appeal is whether the Appellant has been unfairly disadvantaged by the fact that he was unrepresented at the hearing before the First-tier Tribunal. The grounds come at this question from two angles.
3. First, was there a procedural irregularity in the management of the appeal which led to a young, uneducated, unrepresented and illiterate appellant appearing on his own without the benefit of either a representative or an interpreter.
4. Second, did the First-tier Tribunal act unfairly, and so erring in law, when it refused to adjourn the hearing of the Appellant's appeal.
5. I need not engage in a lengthy consideration of either limb of her argument since it is quite plain that they are both made out.
6. At the beginning of the hearing before the First-tier Tribunal the Appellant appeared in person and requested that the appeal be adjourned. He explained that his representative had pulled out and was no longer representing him. He did not know how to prepare the evidence himself and had been unable to get help. He needed an interpreter. In expressing its reasons why it refused to adjourn the First-tier Tribunal said, at its paragraph 34, the following:

“Having considered the application I decided not to adjourn it. Whilst there was no interpreter in court, I found that the appellant's English was quite good. He was given directions to indicate his hearing requirements which would have included a request to ask for an interpreter. He has not indicated that he requires one. The matter has gone on for far too long. I also considered that taken at its highest, the appeal had little merit”.

7. The decision then goes on to summarise the evidence given by the Appellant in his “quite good” English before saying this at its paragraph 38:

“At this stage it became apparent that the appellant was not doing well without an interpreter, so I halted the proceedings and arranged for an interpreter who joined by CVP”.

8. The Appellant gave the remainder of his evidence through this interpreter. The appeal was then dismissed, *inter alia* on the basis that the Appellant's evidence was vague and inconsistent, and because his failure to produce background evidence was determinative of at least one limb of his claim [at 50]:

“He has not produced any background material either that would support the claim. Accordingly, the only aspect of his claim that

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<sup>1</sup> The Appellant's current representatives applied for permission to appeal significantly out of time. Time was extended, and permission granted, by First-tier Tribunal Judge Karbani on the 10<sup>th</sup> June 2024.

engaged the Refugee Convention in terms of a Convention reason has to be decided against appellant”.

9. I am satisfied that several errors are revealed by this short summary.
10. First, there is an error of fact on the part of the First-tier Tribunal. The Appellant had requested an interpreter. He had requested a Fulani interpreter, and the Tribunal had confirmed that one would be provided. Judge Hussain was therefore wrong, or labouring under a misapprehension, when he found to the contrary. There was therefore a procedural irregularity giving rise to a material unfairness.
11. Second, in respect of the Tribunal’s decision to press ahead on the basis of its own assessment of the Appellant’s ability to speak and understand English, it seems to me that the Tribunal has failed to take crucial considerations into account. This was not a case management hearing, nor a matter in which the evidence that the Appellant was to give was uncontentious. He was to be cross examined on matters going to whether he requires protection from serious harm. It was therefore of the utmost importance that his evidence was understood and recorded accurately. Many people may be able to hold a simple conversation in a language other than their own: it does not mean that they would be able to effectively acquit themselves under cross examination, where nuance, tense and accuracy are so important.
12. Third, the interpreter that was eventually provided was a French speaker, which is not the Appellant’s first language, and – as I note above – was not the language that he had requested. In fact, had the Tribunal properly read the papers, it would have seen that the Appellant speaks only a “little bit of French” [Respondent’s bundle C13]. The Appellant is plainly now entitled to challenge adverse commentary about the quality of his evidence.
13. Fourth, it does not appear to have been in dispute that the Appellant’s previous representative had let him down, and had prepared no bundles or statements for the Tribunal. The Appellant, who is illiterate and without access to computers etc was therefore at a serious disadvantage, no matter how long he had been given to prepare. The only question that the Tribunal had to ask itself was whether it could justly dispose of the appeal without adjourning. I can see no evidence that this was the question it asked. That the lack of country background material was subsequently found to be determinative of the Appellant’s claim illustrates how important this evidence potentially was. Nowhere is it apparent that the Tribunal considered this disadvantage.
14. Fifth, the grounds submits that the Tribunal’s remark, at its paragraph 34, “I also considered that taken at its highest, the appeal had little merit”, said in the context of its decision not to adjourn, reveals that the Tribunal had prejudged the outcome of the appeal. I agree that a fair-minded observer, in possession of all the material facts, could not expect the Appellant to have a fair hearing where the Judge has reached that conclusion before the appeal had even begun.
15. For all of these reasons I find that the decision of the First-tier Tribunal is flawed for unfairness and the decision is set aside in its entirety. The decision in the appeal will now need to be remade by a differently constituted First-tier Tribunal.

## **Decisions**

16. The decision of the First-tier Tribunal is set aside.
17. The decision in the appeal will be remade by a Judge of the First-tier Tribunal other than Judge Hussain.
18. There is an order for anonymity in this ongoing protection appeal.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber

20<sup>th</sup> August 2024