

**Upper Tribunal
(Immigration and Asylum
Chamber)**
AA/00581/2014



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House, London
On 10th June 2014**

Determination Sent

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR PHILIP BANGURA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr G Saunders, Home Office Presenting Officer
For the Respondent: Mr M Murphy of Counsel

DETERMINATION AND REASONS

1. In this appeal the Appellant is the Secretary of State. For the sake of clarity however throughout this determination I shall refer to the Secretary of State "the Respondent" and Mr Bangura as "the Appellant".
2. This is an appeal against the determination of the First-tier Tribunal (Judge Blake) following a hearing at Taylor House, in which the Appellant's appeal on asylum and human rights grounds was allowed.
3. The Appellant is a national of Sierra Leone whose recorded date of birth throughout much of the documentation is 23rd March 1959. However the

following exceptions to this are his copy birth certificate which records it as 23rd March 1960, his passport which records it as 23rd March 1960 and his screening interview in which it is recorded that his date of birth is 1953.

4. It is right to say that the Respondent also initially challenged the Appellant's nationality and removal directions were set for both Sierra Leone and Guinea. The First-tier Tribunal found as a fact that the Appellant is a Sierra Leonean and judging by the grounds seeking permission, this finding is not now seriously challenged by the Respondent.
5. Whilst it is accepted that the Appellant has visited the United Kingdom in the past, so far as these proceedings are concerned, the Appellant is recorded as having entered the United Kingdom in February 2009 travelling here on a Guinean passport. He applied for asylum on 1st October 2009. That application was refused but the Appellant was granted discretionary leave to remain until December 2012 on account of his medical condition. He suffers from kidney failure requiring him to undergo dialysis three times a week. He is also HIV positive. There was no challenge by the Appellant to the Respondent's decision to refuse asylum at that stage.
6. On 12th November 2012, the Appellant applied for further leave to remain. He once more claimed asylum and breach of his Article 3/8 ECHR rights. This is the appeal which came before the First-tier Tribunal and it is this decision that the Respondent now appeals, permission having been granted by First-tier Tribunal Judge Heynes in the following terms;

"The Respondent seeks permission to appeal, in time, against a decision of the First-tier Tribunal Judge Blake who, in a determination promulgated on 18 March 2014, allowed the appeal of the Appellant against the refusal of his asylum claim.

The grounds of appeal complain that the Judge failed to give any or adequate reasons for finding the Appellant credible or that he would be at risk 44 years after his father had been executed, had failed to take background evidence into account relating to the Appellant's medical condition and, in respect of that issue, had reversed the burden of proof.

The grounds reveal arguable errors of law".

7. Mr Saunders on behalf of the Respondent relied on the broad lines of the grounds seeking permission. He observed that there are two components to the First-tier Tribunal's error.
 - (i) The first part is that the present danger to the Appellant was inadequately reasoned. The Appellant's claim is that he would be targeted by the present regime, because he is his father's son. The Appellant's father died 48 years ago and contrary to the First-tier Tribunal's findings, the same party was not back in power in Sierra Leone.

- (ii) The Judge's reasons for his findings on the medical evidence are also inadequate. The latest medical report at paragraphs 32 to 33 of the reasons refusal letter showed that there was nephrology treatment available in Sierra Leone. This was research completed by COIS. The Judge appeared to overlook this crucial point. This was illustrated in [90] of his determination.
8. Mr Murphy on behalf of the Appellant submitted that the grounds seeking permission were advanced as a "reasons" challenge in fact evolve into a rationality challenge based on the premise that the Appellant could not be at risk some 40 years or so after his father had been executed. He submitted that the grounds amounted to no more than a thinly veiled attempt to reargue the case. The Respondent did not like the decision which the First-tier Tribunal had made and the grounds seeking permission amounted to no more than a disagreement with that decision.
9. Likewise with regard to the medical evidence, the Judge had properly directed himself. He noted under the policy in existence in 2009, the Respondent had concluded that the Appellant should be granted discretionary leave because of the lack of available medical treatment in Sierra Leone (and Guinea). By 2012 the Secretary of State was reversing that policy and therefore it could not be claimed as the Respondent had done so, that the burden of proof fell onto the Appellant to prove adequate treatment was available in Sierra Leone.

Has the Judge Erred?

10. I have considered the submissions of the representatives and the documents which the Appellant sought to rely upon at the First-tier Tribunal hearing. The difficulty that I see in the Judge's determination is that his finding on what is the core issue of this claim, amounts to one extremely short paragraph which is contained in [73] of the determination. It amounts to this;

"I noted that the All People's Congress had returned to power in Sierra Leone. I accepted that the Appellant would be identified as a possible threat to the regime by reference to his history and the fact that his father was the former Brigadier General".

The Judge has outlined the Appellant's history and has made a finding that the Appellant is from Sierra Leone and is the son of the late Brigadier General Bangura. What the Judge appears to have overlooked and failed to resolve, are the discrepancies in the Appellant's various accounts. For example the Appellant claims that he cannot return to Sierra Leone because there would be no family there to help support him. His latest witness statement states that he is not in communication with his wife and children. An earlier statement showed that the Appellant's wife and children live in Sierra Leone in the Appellant's father's house and that he (the Appellant) keeps in contact with them by mobile phone. These are matters which must go to the core of the Appellant's claim and must be dealt with.

11. I find that Judge Blake has based his assessment of the risk to this Appellant upon an incomplete and therefore possibly inaccurate factual matrix. The problems with the Judge's assessment of the evidence which I have identified above go to the core of the Appellant's account. Without clear and accurate findings of fact, it is not possible properly to assess the risk this Appellant may or may not face if he returns to Sierra Leone. I also agree with the Respondent that Judge Blake has dealt inadequately with the very serious doubts cast over the Appellant's credibility in the various accounts given by him. A Judge is able to form an assessment that an Appellant is or is not a credible witness (as the Judge has done here) but that assessment must tackle thoroughly any doubts which have been cast over the Appellant's credibility such as those raised by the Respondent against this Appellant.
12. Because I have found that the factual matrix established by Judge Blake is flawed, it is necessary to set aside the First-tier Tribunal's findings of fact. It will be necessary for the case to be heard again afresh and for new findings to be made. I consider that it will be more appropriate, in the light of the quantity of oral and documentary evidence to be considered, for the decision to be remade in the First-tier Tribunal and direct that it remitted to that Tribunal accordingly.

DECISION

13. The determination of the First-tier Tribunal which is dated 13th March 2014 is set aside. I direct that the appeal be remitted to the First-tier Tribunal to remake the decision (not Judge Blake).

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated: 16 July 2014