



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10795/2016

THE IMMIGRATION ACTS

Heard at Field House
On 3rd May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[A L]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Walsh (Counsel)

For the Respondent: Ms K Pal (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge E B Grant, promulgated on 18th October 2017, following the hearing at Hatton Cross on 11th October 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Angola, and was born on [] 1999. He appealed against the decision of the Respondent Secretary of State dated 4th March 2016 refusing his claim for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is at risk due to his family connections to FLEC, through his father who disappeared in 2010, and the Appellant's membership of FLEC, which is a proscribed organisation in Angola. He had been apprehended by the police himself. It was thought by them that he was part of a group who killed a soldier. That they found the FLEC membership card in his school bag. He was detained and he was tortured. He was only freed when a friend of his father, Mr [F], was visiting a friend in prison in Cabinda, and saw the Appellant there. In the UK, the Appellant has had some contact with Mr [F] after his arrival here. He has sought Mr [F]'s assistance for his asylum claim.

The Judge's Findings

4. The judge found that the Appellant was not a credible witness and that no reliance could be placed on anything he said. He had claimed to have been in prison in Cabinda. Yet, there was fingerprint evidence from the British Embassy in Luanda on the very date when he was claiming he was in prison. The judge found that at the British Embassy, on that very same day, the Appellant was making a visa application, and a copy passport, is in the Respondent's bundle. The passport is in the name of the Appellant himself. The signature on the passport is not the Appellant's signature, however, but that of the issuing authority official. As the judge noted, "obviously he was at the British Embassy on that date applying for a visit visa then he cannot have been in prison as claimed" (paragraph 19).
5. The judge also noted that there was an explanation forthcoming as to why a visit visa application was being made at the British Embassy on that same date. The explanation given by Mr [F] was that he had a friend who worked at the British Embassy. This friend had attended upon Mr [F] and the Appellant at home with a laptop and a device and he had taken photographs of the Appellant and his fingerprints. This had been done because there had been a young man who had been involved in a serious motorbike accident and had required treatment. The young man had been issued with a visa to the UK but he could not now travel because of his injuries. Mr [F]'s friend said that he would amend the details on the online system. However, he would retain the mother and father's details of the young person that had been injured. This friend, at the British Embassy, then made arrangements for the passport to be amended to bear the Appellant's photograph (paragraph 20).
6. At the hearing, Judge Grant was faced with an explanation about the state of affairs, and there was an account that the passport belonged to Mr [F]'s son, which was

disputed, but the judge rejected this (at paragraph 23). The judge held that the fingerprint match ties the Appellant to an application made at the British Embassy in Angola on 10th December 2014 by the Appellant in his name. The judge held that, “there is no evidence that this passport was used to come to the United Kingdom but I have no evidence it was not used by the Appellant” (paragraph 24). The submission made by Mr Walsh, of Counsel, who also represented the Appellant in the Tribunal below, was that this passport was not used because the Appellant came to the United Kingdom after the visa had expired (paragraph 24). The judge went on to conclude that the Appellant had never given a consistent account of the passport he used to travel to the UK. In one version of the events he states that his father’s friend’s son’s passport had been used and he did not know the name in the passport. In another version he states that, when faced with a photograph and the bio data page, that this contained his photograph and was in his own name (paragraph 27).

7. The judge went on to say that she would find as a matter of fact that the Appellant was not detained and tortured in December 2014 as alleged or at all. He was from Luanda and not from Cabinda (paragraph 30).
8. Finally, the judge went on to say that these were not the only material inconsistencies in the Appellant’s various interactions with the authorities. In the age assessment numerous inconsistencies also were thrown up (paragraph 31). There were also numerous discrepancies with regard to what the Appellant states had happened in detention. One account was that he had been “burned, kicked, stabbed and sexual (sic) assaulted”, whereas another account was that he had not been sexually assaulted. The actual injuries on his body are a small scar on his right ankle and a small scar on his hand (paragraph 36).
9. The judge accepted that there was a psychiatric report diagnosing him with mental health issues, but the judge held that,

“I find that any mental illness has not been caused by being detained and tortured because he was not detained and tortured. He does not seem to get on with Mrs Mbinda and was apparently homeless for a while which cannot have assisted his mental state” (paragraph 37).

The judge did not feel able to place any reliance on a report from cedula pessoal, “as evidence of his alleged date of birth given the obvious propensity of the Appellant to lie about his origins and background” (paragraph 38).

10. The appeal was dismissed.

Grounds of Application

11. The grounds of application states that the judge erred in giving no, or insufficient weight to the medical evidence of Dr Bell, or to the documentary evidence of his FLEC membership card, and in this respect there had been an error which had been identified in **Mibanga [2015] EWCA Civ 367**.

12. On 2nd February 2018 permission to appeal was granted by the Upper Tribunal on the basis that although the evidence of Dr Bell is acknowledged in the decision, it is right that the judge did not consider it before deciding that the alleged assault did not occur (at paragraph 37), because the judge had simply stated that, "I accept that [the Appellant] has a psychiatric report diagnosing him with mental health issues but I find that any mental illness has not been caused by being detained and tortured because he was not detained and tortured".
13. On 8th March 2018 a Rule 24 response was entered to the effect that any error on the Mibanga point cannot be material to this appeal given the incontrovertible evidence from the British Embassy in Luanda that this Appellant made an application at a time when he claims to be in prison in Cabinda, and this matter was dealt with by the judge (at paragraphs 18 to 30 of the determination). The Rule 24 response also states that it would be completely irrational for an appeal to be set aside when such an obvious piece of evidence is weighing against the Appellant's core claim. The judge found that the core claim was completely fabricated in order to concoct an asylum claim which was without merit.

Submissions

14. Mr Walsh, appearing on behalf of the Appellant, had three main submissions before me. First, the judge reached her findings on the Appellant's veracity before hearing the explanation for him. She concluded that, "obviously he was at the British Embassy on that date applying for a visit visa then he cannot have been in prison as claimed" (paragraph 19). The judge after this went on to consider the explanation from Mr [F], "that he had a friend who worked at the British Embassy" and that "his friend attended Mr [F] and the Appellant at home with a laptop and a device and took photographs of the Appellant and fingerprints" (paragraph 20).
15. Second, Mr Walsh submitted that this was a case where there was strong medical evidence. A report by Dr Bell states that "it is clear to me that [AL] suffers from severe psychiatric disorder (see paragraph 30 of the report). Dr Bell goes on to say, "he has suffered from effects of the disappearance of his father aged 11, living for a long period under threat..." (at paragraph 37 of the report). Dr Bell goes on to say that, "his condition also satisfies the diagnostic criteria for severe depressive disorder" (at paragraph 32 of the report). In fact, Dr Bell observes that, "the etiology of [AL]'s condition is complex and multifactional..." (see paragraph 36 of the report). None of this, Mr Walsh submitted, is referred to by the judge. On the contrary, when the judge refers to the psychiatric report that diagnoses him with mental health issues, she finds that, "he does not get on with Mrs Mbinda and was apparently homeless for a while which cannot have assisted his mental state" (at paragraph 37 of the determination).
16. Third, the judge reached a conclusion on the Appellant not being a credible witness (at paragraph 17) at the outset, without making any reference to the medical evidence. The Appellant was a minor when he complained of events taking place. It was when he was a child, that friends of his father, in the person of Mr [F], had

attempted to make a fraudulent application on his behalf, and as a child he could not be tainted with the responsibility for that.

17. For her part, Ms Pal submitted that the passport was not the only issue in this appeal. This is because the judge found there to be other inconsistencies (at paragraph 38) and observed that “there are numerous discrepancies with regard to what he says happened in detention” (paragraph 36). The judge held that no reliance could be placed on the cedula pessoal card and the judge was correct to conclude that the Appellant himself had never been detained. His mental health had been properly considered (at paragraph 37). On balance, therefore, the evidence had been properly assessed and taken into account. There was no error of law.
18. In reply, Mr Walsh submitted that the cedula pessoal was an ID card. The judge was already assuming that the Appellant was not telling the truth, in earlier parts of the determination, before dealing with the authenticity of the cedula pessoal. Moreover, there is no reference made by the judge at all at paragraph 38 to the medical evidence from Dr Bell when the judge concludes that the Appellant has demonstrated that he is “cunning and intelligent and lies with ease”.

Error of Law

19. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law such that I should set aside the decision and re-make the decision (see Section 12(1) of TCEA 2007). I come to this conclusion notwithstanding the judge’s detailed and comprehensive determination.
20. First, the judge reached a conclusion on the Appellant’s credibility, as far as his asylum claim is concerned, which is based upon his family’s connections with FLEC, and his father’s disappearance in 2012, without considering the medical evidence of Dr Bell and the documentary evidence of the Appellant’s FLEC membership card. To this extent, the error here is that which has been identified in **Mibanga [2005] EWCA Civ 367**.
21. Second, there is insufficient engagement with the psychiatric report of Dr Bell, insofar as it includes evidence that the Appellant is severely depressed, suffers from auditory hallucinations, paranoia ideation, and from severe psychiatric disorder. Had this been properly factored into the assessment, rather than an exclusive consideration of the negative aspects of the Appellant’s account, it is arguable that the assessment of credibility would have been more balanced.
22. Third, the correct balancing approach here would have been one to take into account the Appellant’s relatively young age, his medical condition, and the history he advances. There needs to be engagement with the expert evidence conclusion that the Appellant’s account of his treatment in Cabinda was “plausible and consistent” (see paragraph 14 of the expert’s report).

23. In the same way, the conclusion that the Appellant was “cunning and intelligent and lies with ease”, may well have been the right conclusion, but only if the Appellant’s mental illness had also been shown to have been taken into account.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal under Practice Statement 7.2A, to be decided by a judge other than Judge E B Grant.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Juss

Date
16th May 2018