IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001107

First-tier Tribunal No: PA/52359/2021
IA/07291/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7 November 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SD
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARMENT

Respondent

Representation:
For the Appellant: Mr K Forrest, counsel, instructed by Gray & Co, solicitors.
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer.

Heard at 52 Melville Street, Edinburgh, on 26 October 2023

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 the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. We make an anonymity direction because this appeal arises from the appellant's protection claim.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cowx promulgated on 25/01/2022, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 11/05/1979 and is a citizen of Guinea. The appellant entered the UK on 23/03/2020 and claimed asylum on 06/10/2020. On 11/05/2021 the respondent refused the appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Cowx ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged, and on 30/05/2022 Upper Tribunal Judge Kamara gave permission to appeal stating

> 1. The appellant seeks permission to appeal, in time, against the decision of First-tier Tribunal Judge CJ Cowyx promulgated on 25 January 2022.
>
> 2. It is arguable that the judge erred in finding that the risk to the appellant had abated owing to regime change without having sight of any evidence nor submissions from the respondent to that effect.
>
> 3. Permission is not refused on any ground.

The Hearing

6. For the appellant, Mr Forrest moved the grounds of appeal. He told us that there were two errors of law in the Judge's decision. He said that the first error was that the Judge found that the change of government in Guinea in September 2021 removed any risk to the appellant on return. The second error of law (he said) was a failure to give adequate reasons for finding that the appellant's evidence of arrest and detention was not credible.

7. Mr Forrest emphasised the appellant's position is that the change in regime following a coup in Guinea is irrelevant because the appellant says that he is at risk both from the deposed regime and from the successor regime. He told us

that a fair reading of [2.1] to [2.8] of the decision makes the appellant's position clear.

8. Mr Forrest said that the Judge acted correctly when he asked the appellant's solicitor if the appellant's position changed because of the change in regime in September 2021, but argued that the regime change is a matter which should have been raised with both parties, and was not because the respondent was not represented. Mr Forrest conceded that no application was made for an adjournment and argued that there was no need to ask for an adjournment because the appellant still had a well-founded fear of the successor regime.

9. Mr Forrest said that the Judge made an error of law by simply finding that the removal of President Conde's regime in September 2021 ended the appellant's claim because the tribunal should have considered the appellant's alternative position, which is that the appellant still fears the successor regime. He argued that the Judge had mischaracterised the appellant's case, and so fallen into an error of law,

10. Mr Forrest told us that the second ground of appeal is a reasons challenge. He said that the Judge did not give adequate reasons for finding that the appellant has not been arrested and tortured and that the Judge was not entitled to find that the appellant's evidence is not credible. He took us to section 7 of the Judge's decision.

11. Between [7.7] and [7.9] the Judge discusses the evidence of the appellant's witnesses. Mr Forrest said that the Judge failed to deal with the evidence that the appellant had been tortured because the Judge makes a finding that he does not believe that the appellant was ever arrested. He argued that the Judge failed to give reasons for not believing the appellant. He said that the reasons that the Judge gave are irrational. He took us to the witness statements of the appellant's witnesses.

12. We mentioned to Mr Forrest that his criticisms of [7.7] to [7.15] of the decision are not raised in the grounds of appeal. He responded by (incorrectly) saying that the grounds say that it is not rational for the Judge to make a finding that the appellant has not previously been arrested. When prompted, Mr Forrest considered the terms of the grounds of appeal and said that he wanted to exchange the word "*adequate*" where it is used in the grounds of appeal and replace it with the word "*rational*".

13. Mr Forrest turned to consideration of the objective evidence. He referred us to an Amnesty International report dated 02/02/2021. He told us that is objective evidence which is broadly consistent with the appellant's claim, and

argued that it was a strand of evidence that the Judge had ignored. He concluded by telling us that risk on return has not been addressed by the Judge and asked us to allow the appeal and set the decision aside.

14. For the respondent, Mr Diwnycz relied on the respondent's rule 24 response. He told us that the Judge's credibility findings were sustainable and that the Judge's clear finding that there is no risk on return to Guinea for this appellant means that his protection claim could not succeed. He told us that the Judge was correct to find that the witness statements from the appellant's witnesses did not form credible or reliable evidence. He told us that the Judge reached conclusions well within the range of reasonable conclusions available to the Judge. He asked us to dismiss the appeal and allow the decision stand.

Analysis

15. Mr Forrest submissions extended far beyond the grounds of appeal. The grounds of appeal are directed only at [7.1], [7.2] and [7.5] of the Judge's decision. The Grounds of appeal specify three arguments:

> (i) that the Judge failed to provide adequate reasons for finding that the appellant no longer has any cause to fear persecution now that President Conde has been deposed
>
> (ii) that the Judge failed to provide adequate reasons for rejecting the reliability of the appellant's three witnesses
>
> (iii) that the Judge erred in failing to accept the appellant's credibility, or that he would be at real risk of persecution if returned to Guinea.

16. The grounds of appeal raise a challenge to the adequacy of reasons, not a challenge to the rationality of the Judge's reasons. The grant of permission to appeal might be interpreted as a procedural fairness challenge.

17. Both Mr Forrest's submissions and the terms of the grant of appeal say that the respondent should have had the opportunity to address the change in regime in Guinea. At [2.8] of his decision the Judge records that he raised the change of regime with the appellant's solicitor, and the response he received was that the appellant's case

> essentially remains the same and that he is in genuine fear of the new military regime.

18. No application was made for an adjournment or to adduce further material. The respondent was not represented. It is not suggested that the respondent

suffered any prejudice as a result of the Judge's decision to proceed with the hearing.

19. This is the appellant 's appeal. The respondent accepts the Judge's decision and opposes the appellant's appeal. The respondent does not argue procedural unfairness to her, and the decision discloses that the appellant wanted to proceed with the appeal on the evidence available in light of the Judge's knowledge of the change in regime four months earlier.

20. There is no merit in a suggestion that an unfair procedure was followed. The grant of permission to appeal and the submissions made (which do not form part of the grounds of appeal) try to borrow from what the appellant wants the respondent's position to be, rather than what the respondent's position actually is.

21. In truth, the respondent's position is that this appeal is opposed, and the Judge's decision should stand.

22. Section 7 of the Judge's decision is headed "*assessment of the evidence*". In the first two sentences of [7.1] the Judge clearly records that the appellant said that he feared the old regime and still fears the new regime. In the third sentence the Judge records

> he said he would always be persecuted in Guinea.

23. From the very start of the assessment of evidence the Judge factors in the appellant's claim not just to fear the deposed regime but to fear the successor regime also.

24. At [7.2] the Judge explains his logic. He says that the successor regime has achieved the very political aims which the appellant espoused, and which the appellant said drew him to the hostile attention of the deposed regime. The appellant's asylum claim was made on the basis of his political opinion. The Judge makes clear findings that the appellant's political opinion is at one with the political opinion of the regime which deposed the claimed agent of persecution.

25. The only finding of fact focused on within the grounds of appeal is the first sentence of [7.5]. The grounds of appeal say that there is no adequate reasoning given for the finding that the appellant has not previously been arrested and imprisoned in Guinea.

26. Throughout section 7 of the decision, the Judge gives adequate reasons for rejecting the appellant's account. The Judge analyses the evidence of the appellant, and his three witnesses, then gives cogent reasons for finding that

neither the appellant nor his three witnesses are credible or reliable witnesses. Because the Judge finds that the appeal is not supported by credible or reliable evidence the Judge finds that the appellant has not been arrested and imprisoned in Guinea, or, for that matter, tortured.

27. That fundamental finding can only draw the Judge to the conclusion that the appellant has not established that he was of interest that President Conde's regime. That finding is a clear finding that the appellant does not have a well-founded fear of persecution because of his political opinion. As there has been no past persecution there cannot be any substance in an argument that the appellant has an objectively well-founded fear of persecution on return to Guinea.

28. There are nineteen subparagraphs to section 7 of the Judge's decision. The grounds of appeal raise a specific challenge to [7.1], [7.2], [7.5] and implicit challenge to [7.6] only.

29. When the nineteen subparagraphs of section 7 of the decision are read in their entirety, it can be seen that the Judge carefully considered each strand of evidence and then gave sustainable reasons for finding that the evidence of the appellant and his three witnesses could not be relied on. The Judge gives sustainable reasons for finding that the witness statements of the appellant's three witnesses are not statements of truth. The Judge gave adequate reasons for rejecting the appellant's credibility.

30. McCombe LJ in VW(Sri Lanka) C5/2012/3037 said

> Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact.

31. It was noted in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.

32. As Warby LJ put it in AE (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 948:

> Commonly, the suggestion on appeal is that the FTT has misdirected itself in law. But it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT

disagrees. The temptation to dress up or re-package disagreement as a finding that there has been an error of law must be resisted.

33. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

34. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

35. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 25 January 2022, stands.

Signed Paul Doyle Date 1 November 2023
Deputy Upper Tribunal Judge Doyle