



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03712/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 24 July 2018

Decision & Reasons Promulgated
On 30 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

D. S.
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel instructed by Genesis Law Associates
For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Cote d'Ivoire, who entered the UK lawfully by air on 31 May 2013, having been granted a tourist visa on 21 May 2013. He claimed asylum on 14 June 2013. That protection claim was refused on 31 March 2017 because the Respondent was satisfied that he fell to be excluded from the protection of the Refugee Convention under Article 1F(a), and from Humanitarian Protection pursuant to paragraph 339D of the Immigration Rules.
2. The Appellant's appeal against that refusal came before the First-tier Tribunal at Bradford when it was heard by First-tier Tribunal Judge Moxon. The appeal was dismissed on asylum and humanitarian protection grounds, but allowed on Article 3 grounds, in his decision promulgated on 13 July 2017.

3. The Respondent's application for permission to appeal was granted by First tier Tribunal Judge Brunnen on 8 October 2017 on the Respondent's sole complaint that there was no evidence before the Judge that would allow him to make the key finding of fact that the Appellant faced a real risk of prosecution in the event of return to Cote d'Ivoire.
4. No Rule 24 Reply has been lodged by the Appellant. No application has been made by either party to rely upon further evidence. Thus the matter comes before me.
5. As Ms Pettersen accepts, the Respondent's case before me is that since the Appellant denied to the First tier Tribunal ["FtT"] that he faced any outstanding charges in Cote d'Ivoire, and since the Respondent did not allege before the FtT that the Appellant had himself committed any criminal acts in Cote d'Ivoire, there was no evidential basis upon which the Judge could have concluded that the Appellant faced a real risk of prosecution upon return. That case faces the significant difficulty that in the letter giving the Respondent's reasons for the refusal it was asserted that;

The subject was a long term and senior member of X and it is therefore considered that he would have been aware of the violence committed by pro-Gbagbo forces including X during this time. The subject at no point has attempted to dissociate himself from Gbagbo regime and has remained a committed supported in his exile from the Ivory Coast.

The subject was part of a joint criminal enterprise as a senior member of X during a period when they and other pro-Gbagbo organisations participated in International crimes, using these crimes as part of a policy to maintain power in the Ivory Coast.

6. In the course of finding that the Appellant was indeed excluded from the Refugee Convention pursuant to Article 1F(a), (a conclusion that has not been the subject of any challenge by the Appellant) the Judge rejected as untrue the Appellant's attempts to dissociate himself from X, the regime, and from Gbagbo himself. The Judge made trenchant, and clearly well founded, adverse findings upon the Appellant's credibility. He concluded that the Appellant did hold a leading role within X, and was a senior and influential figure within the regime, as the Respondent had alleged [84]. That role within X was held at a time when the organisation was responsible for crimes against humanity, again, as the Respondent had alleged [86]. Thus the Judge concluded that there were serious reasons to consider that the Appellant had individual responsibility for acts within the scope of Article 1F(a), since he was an adviser to those who were perpetrating them.
7. It has never been in dispute that both Gbagbo himself, and Ble Goude, have been prosecuted for war crimes at the International Criminal Court. Gbagbo was arrested in April 2011, and shortly before that the Appellant claimed to have fled Cote d'Ivoire himself for Ghana. At his screening interview the Appellant had said that Ble Goude was arrested in Accra, Ghana on 17 January 2013, where the Appellant was also living, having by then claimed asylum in Ghana. It was this arrest of Ble Goude within Ghana which prompted him to leave that country and travel to the UK [24].
8. Although the Judge accepted that the Appellant would receive a fair trial in the event that he was prosecuted, it was the real risk of prosecution in Cote d'Ivoire that the

Judge concluded meant there was (even if acquitted) a necessary risk of a lengthy pre-trial detention during which he would be subject to prison conditions that would breach his Article 3 rights. In so saying the Judge was clearly not considering any pre-trial detention at the Hague, but rather pre-trial detention in Cote d'Ivoire [93-6]. He relied upon the 2017 Human Rights Watch report placed in evidence before him which noted that 40% of the prison population remained in pre-trial detention, often for several years. Whilst 100 pro-Gbagbo detainees arrested for their alleged role in the events that occurred after disputed elections between December 2010 and May 2011, had been released in December 2015, more than 200 were said to continue to be held in pre-trial detention. Most prisons were overcrowded, and detainees lacked adequate nutrition, sanitation, and medical care.

9. The grounds do not suggest that the Judge mis-represented the content of the 2017 Human Rights Watch report placed in evidence before him. Nor do they suggest that other compelling evidence that presented an alternative view on pre trial detention, or, prison conditions, had been overlooked.
10. Before me Ms Pettersen accepts that there is no suggestion that the Appellant faces a warrant of arrest issued by the ICC, or an application to extradite him to stand trial at the ICC.
11. In the circumstances, upon reflection, Ms Pettersen accepted that the Respondent's complaint in the grounds that the Appellant faced no risk of prosecution upon return to Cote d'Ivoire was inconsistent with both the Respondent's case before the FtT, and, the Judge's findings that he was involved in a joint criminal enterprise in Cote d'Ivoire. Since there appears to be no prospect of the Appellant standing trial at the ICC for his actions, then the focus is entirely upon whether he would be required to do so if returned to Cote d'Ivoire. The Judge concluded that there was a risk that he would be required to do so, and that finding was plainly open to him. If he were arrested and/or prosecuted to trial for his past actions then the Judge's findings that his circumstances would be a breach of his Article 3 rights were also plainly open on the evidence, and indeed lie unchallenged before me.
12. In consequence Ms Pettersen confirmed that the Respondent was content for me to record, notwithstanding the terms in which permission to appeal was granted, that the Judge's decision discloses no material error of law. I therefore dismiss the Respondent's challenge to it, and confirm the decision to dismiss the appeal on asylum and humanitarian protection grounds, but to allow it on Article 3 grounds..
13. The anonymity direction previously made is continued.

Notice of decision

The decision promulgated on 13 July 2017 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to allow the appeal on Article 3 grounds is accordingly confirmed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 24 July 2018