



**Upper Tribunal
(Immigration and
Asylum Chamber)
Appeal Numbers PA/08001/2018**

THE IMMIGRATION ACTS

**Heard at Manchester
On the 21st September 2021**

**Decision and Reasons
Promulgated
On the 20th October 2021**

Before

**Upper Tribunal Judge Hanson
Deputy Upper Tribunal Judge Sills**

Between

**MLS
ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW DECISION

Representation:

For the Appellant: Mr Holmes instructed by Citizens Advice Bureau (Bolton)
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

Introduction

1. The Appellant (A) appeals against the determination of First-Tier Tribunal Judge Holt (the FTT Judge) dated 4 December 2019, dismissing his appeal against the refusal of his protection claim.

Factual Background

2. A is a citizen of Guinea, born on 12 December 1999. The basis of A's protection claim as summarised by the FTT Judge is as follows. A claimed that his father had been a high-ranking official in the army in Guinea who died in 2013. There had been problems between A's family and his uncle when his father was alive, and after his father's death his uncle had sought to take control of the family's property. A's mother took legal action against A's uncle and the court confirmed that she and A were the owners of the property. Thereafter, A's mother continued to receive threats and was attacked by men she thought were acting on A's uncle's behalf. A and his mother left their home and went to live in Kindia. A then left Guinea and claimed asylum in the UK fearing his uncle in Guinea.
3. A's protection claim was refused on 8 June 2018. His appeal was dismissed by Judge Parker in a determination dated 23 August 2018. A successfully appealed against that determination to the Upper Tribunal and his appeal was remitted to the FTT for a fresh hearing. The FTT Judge again dismissed the appeal on 15 November 2019 finding that A's account was not credible. The FTT Judge also found that A would be able to relocate safely and reasonably to Kindia and to live there again.
4. A applied for permission to appeal arguing *inter alia* that the FTT Judge had failed to take account of A's age in assessing credibility, conducted a deficient assessment of the credibility issues under s8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, gave inadequate reasons in relation to findings on family tracing, developed her own theory of the appeal without putting this to A, and failed to consider relevant material in relation to sufficiency of protection.
5. Judge Keane granted permission to appeal to the Upper Tribunal highlighting the following. The FTT Judge arguably did not consider what weight to attach to A's age at material times, arguably acted unfairly by making findings on s8 issues not raised by or before the parties, and engaged in speculation. The Respondent (R) did not file a Rule 24 response.

The Hearing

6. At the hearing, Mr Bates accepted that the FTT Judge had erred in law in the credibility assessment. In particular, Mr Bates accepted that the FTT Judge had erred at para 22 of the determination in considering s8 of the 2004 Act. The FTT Judge states that A's failure to claim asylum in Tunisia, Ecuador or Mexico had 'all the hallmarks of someone making a deliberate choice about where to live, perhaps with an eye on a sporting career, rather than the behaviour of someone being desperate to flee danger and find refuge in the first safe country that they arrived in.' As the FTT Judge makes clear, this was not raised at the hearing. Further, R had not taken this point against A in the reasons for refusal letter. Mr Bates agreed that it was procedurally unfair for the FTT Judge to take this point against A in these circumstances. Mr Bates accepted that this formed part of the FTT

Judge's assessment of credibility in the round, and so this procedural unfairness undermined the overall credibility assessment.

7. However, Mr Bates argued that the error was not material as the FTT Judge found in the alternative that A could safely and reasonably relocate to Kindia at para 23. It was on this issue that we heard submissions at the hearing. Mr Holmes argued that as there had been procedural unfairness, the Tribunal should be slow to find that there was no material error of law. He went so far as to say that as there had been procedural unfairness, the Tribunal did not need to consider whether this error was material in deciding whether to set aside the determination, and relied on the case of Wagner (advocates' conduct – fair hearing) [2015] UKUT 00655 (IAC). Further, the Tribunal could not be satisfied that the FTT Judge had taken A's case at its highest. Mr Bates pointed out that the internal relocation consideration was not challenged in the grounds of appeal. He argued that if A's case had been taken at its highest then the unfairness in the credibility assessment, even if procedural, was not material. The case of Wagner related to the conduct of representatives and was far removed from the present context. The reasons showed A's case had been taken at its highest in relation to the assessment of internal relocation.

Findings

8. We find the legal error in relation to the assessment of credibility is a material error of law requiring the determination to be set-aside. This is because we are not satisfied that the FTT Judge took A's case at its highest in considering internal relocation for the following reasons. First, the FTT Judge does not at any point in para 23 actually state that A's case is taken at its highest in relation to the assessment of internal relocation. Para 23 begins as follows:

On the basis of my findings of fact it follows that the appellant will not be at risk of serious harm. But, in relation to my alternative findings, I also conclude that the appellant will not be at risk of serious harm of the kind set out in paragraph 339C of the Immigration Rules.

9. Mr Bates was not able to take us to any part of the determination where the FTT Judge made clear what these 'alternate findings' were. Having considered the determination we are satisfied that the FTT Judge does not make this clear.
10. Second, we have gone on to consider whether the FTT Judge's reasons for finding that A could safely and reasonably relocate show that the FTT Judge did indeed take A's case at its highest in considering this issue. The FTT Judge states as follows again in para 23:

His personal circumstances are not such that it would inhibit his relocation. This is demonstrated by the fact that he lived safely in Kindia with his mother safely and without problems before leaving to go to Tunisia. No detailed reasons were given for him

not being able to live there, apart from vague interference with his footballing activities...

11. Hence the FTT Judge's reasoning on internal relocation, by reference to the facts of A's case, are that A previously lived safely in Kindia, and the only reason he claimed he could not live there was the impact on his football career. We do not consider that this shows that the FTT Judge took A's case at its highest. A's first witness statement at para 27 stated that his mother continued receiving threats while they were in the village outside Kindia. A's second witness statement at para 33 states that he stayed in hiding while at his grandmother's house for 2 months. This is in line with A's answer at AI100. If the FTT Judge were to have taken A's case at its highest in considering the safety and reasonableness of internal relocation, we consider the FTT Judge would have needed to take account of the fact that A's case was that the two months he spent in Kindia were spent in hiding, and that during this time his mother continued to receive threats. The FTT Judge does not do this. For these reasons, we are not satisfied that the FTT Judge took A's case at its highest in considering internal relocation. It follows that the flawed credibility assessment also contaminates the assessment of internal relocation, and that the accepted error of law is a material error of law requiring the determination to be set-aside. In view of this finding, it is not necessary to consider the other argument put forward by Mr Holmes as to why the determination should be set aside in the light of R's concession. The Tribunal therefore sets aside the decision of the First-tier Tribunal with no findings preserved.
12. The Tribunal has considered whether to re-make the decision or remit the case to the First-tier Tribunal. Both parties submitted that it was appropriate for the appeal to be remitted in view of the fact that a fresh hearing was required with no findings preserved. We have had regard to para 7 of the 2014 Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal. While taking account of the fact that this is the second time the determination of the First-tier Tribunal has been set aside in these proceedings, as there are no preserved findings and significant fresh fact finding is required, it is appropriate to remit the appeal to the First-tier Tribunal.

Notice of Decision

The determination of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal sitting at Manchester to be considered afresh (de novo) by a judge other than First-tier Tribunal Judge Holt or Judge Parker.

Signed

Date 22 September

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2021

Deputy Upper Tribunal Judge Sills

Direction regarding anonymity - Rule 14 of the Upper Tribunal Rules

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

Signed

Date 22

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September 2021

Deputy Upper Tribunal Judge Sills