Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02750/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 11 November 2014	**12 November 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DOMINGOS ORLANDO DE SOUZA LOKO (or TATI MAKAYA)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms N Underdown, of Brown & Co., Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant identifies himself as Tati Makaya. The respondent thinks that identity is false, and that he is Domingos Orlando De Souza Loko. The latter is the identity on an Angolan national passport on the basis of which he made two visa applications. He now appeals against a determination by First-tier Tribunal Judge Burns dated 17 June 2014.

2. The first significant point in the grounds is that although there has never been a question of the appellant being from anywhere but Angola, the judge at paragraph 54 related his case to the Democratic Republic of Congo and to guidance on that country.

3. The next significant point in the grounds is that although the judge referred to the UNHCR handbook on the obligations on an appellant to furnish evidence, there was no consideration of UNHCR guidelines on child asylum claims.

4. Mrs O'Brien observed the appellant has been granted discretionary leave, and this was an "upgrade" appeal only against rejection of the asylum claim in terms of section 83 of the 2002 Act. It did not raise Article 8 issues, but the judge devoted much of the determination to them. The point is not in the grounds (and the judge seems to have been led by the appellant into treating this as a case raising live Article 8 issues) but this was another defect.

5. Mrs O'Brien said that while the reference to the wrong country might not have been fatal on its own, because it comes after comprehensively adverse credibility findings, the determination as a whole was unsafe.

6. Representatives agreed that the case should be remitted to the First-tier Tribunal.

7. Going wrong towards the end of the determination about the country of origin might have been immaterial, if the general adverse credibility conclusion were to stand.

8. While judges do not have to cite all (or any) relevant guidance, it does appear one-sided to mention a UNHCR statement of the obligation on an appellant to establish his case, but not guidance about evidence from minors. (The appropriate reference might have been the Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. It is easily available to parties and to judges on the public website of the HMCTS, Immigration and Asylum Chamber.)

9. The grounds of appeal also allege failure to evaluate the best interests of the appellant, being a child, as a primary consideration. I do not think there could be anything in that, as the appellant has discretionary leave, it is not proposed to remove him as a child, and the grounds of appeal are limited to section 83.

10. The determination of the First-tier Tribunal is **set aside**. No findings are to stand. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The members of the First-tier Tribunal chosen to reconsider the case are not to include Judge Burns.

11. No anonymity order has been requested or made.

12 November 2014
Upper Tribunal Judge Macleman