

**Upper Tribunal  
(Immigration and Asylum  
Chamber)**  
AA/09605/2013



Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 12<sup>th</sup> March 2014**

**Determination Sent**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MR AMADOU DIALLO  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer  
For the Respondent: Mr Ahmed

**DETERMINATION AND REASONS**

1. The Respondent, Amadou Diallo was born on 19<sup>th</sup> March 1987 and claims to be a citizen of Guinea. For the remainder of this determination I shall refer to the Respondent as "the Appellant" as he was before the First-tier Tribunal and refer to the Secretary of State as "the Respondent".
2. The Appellant arrived as a visitor in the UK on 30<sup>th</sup> June 2013. He claimed asylum on 21<sup>st</sup> August 2013. This application was refused and on 4<sup>th</sup> October 2013 a decision made to remove him from the UK under Section

10 of the Immigration and Asylum Act 1999. The Appellant appealed that decision to the First-tier Tribunal (Judge Hindson). In a determination dated 29<sup>th</sup> November 2013 the Judge allowed the appeal on asylum/Humanitarian Protection and human rights grounds. The Secretary of State now appeals, with permission to the Upper Tribunal.

3. Judge Hindson found the Appellant to be a national of Guinea and not Sierra Leone as the Respondent believed. In paragraph 24 of his determination the Judge set out that the Appellant fears that if he returns to Guinea he will be killed by the government because of his father's involvement with the late President Conte. It is correct to say therefore, that the Judge was aware that he had to be satisfied, that the Appellant had demonstrated (to the lower standard of proof) the two strands to his claim.

- (i) That he was a national of Guinea.

- (ii) As a national of Guinea he feared to return to that country on account of his fear that he would be killed because of his father's involvement with the late President Conte.

4. The grounds seeking permission assert that the majority of the Judge's findings concentrate on the nationality claim without giving sufficient reasoning for what appears to be a comprehensive rejection of the Respondent's claim. Permission to appeal was granted by IJ Plumptre in the following terms.

"It is arguable that if the judge concentrated on the issue of disputed nationality and failed to make sufficient and fully reasoned findings on the substantive claim since these were limited to 2 paragraphs in the determination whereas the reasons for refusal letter dealt with this from paragraphs 23-50".

5. Before me Mrs Pettersen essentially followed the lines of the grounds seeking permission. She drew my attention to paragraph 33 of the Judge's determination and submitted that the paucity of reasoning meant that the determination was seriously flawed, because the Judge had failed to engage with the issues raised by the Respondent.
6. Mr Ahmed on behalf of the Appellant relied on his Rule 24 response. He submitted the Respondent's argument that the Judge did not engage with the issues raised in reasons for refusal letter were not borne out. He referred to paragraphs 25 and 26 of the determination where the Judge states:-

"In undertaking this assessment I have taken full account of all of the oral evidence I have heard and on the written testimony and other documentation that has been placed before me. I have taken account of what was said in submissions regarding credibility. I have considered all if (sic) the evidence together".

7. Mr Ahmed then referred me to *Shizad (Sufficiency of reasons: set aside)* [2013] UKUT 00085 (IAC) and submitted as per the head note of that case reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge. He urged upon me, that the determination, of Judge Hindson was sustainable and should stand.

### **Consideration of Error of Law**

8. I find that Judge Hindson has based his assessment of the risk to this Appellant upon an incomplete and possibly inaccurate factual matrix. I say this for the following reasons. The Judge's determination focuses heavily on deciding the Appellant's claimed nationality. In this he has made an error which may have resulted in an incorrect assessment. In paragraph 28 for example the Judge says:

“The respondent points out that the official language of Guinea is French. The appellant does not speak French. His explanation is that he was not formally educated and therefore never learned French. He is a member of the Fula tribe and speaks that language. He also speaks some of the Susa language. The respondent has made a bare assertion that the official language of Guinea is French. She has provided no evidence to support that contention. (My emphasis) In addition, the fact that a language is the official language of the country does not necessarily mean that it is spoken by all, or even most, of the citizens. Clearly Guinea was a French colony and the use of French is a legacy of that era. The respondent has provided no evidence about the extent, geographical, demographical or on any other basis, that French is actually spoken”.

9. Contrary to the above if one looks at any Country Information Fact Sheet relating to Guinea it will confirm French is the official language. Furthermore, the Appellant in interview (Question 17) offers the same information.
10. Having spent the greater part of the determination in focussing on the nationality issue, the Judge has failed to carry out the core exercise required in any claim to asylum, which is would the Appellant be at risk if returned to his home country?
11. The Respondent says that the Appellant would not be at risk in either Guinea nor Sierra Leone and sets out five headings for consideration. It is not possible to see from the determination what facts the Judge accepts or does not accept in order to ascertain firstly whether he has adequately considered those headings or secondly how he has arrived at the decision he has.
12. I keep in mind *Shizad* which tells me that reasons pertaining to the central issue need not be extensive, but there is a duty to give adequate reasons so that it can be seen that the decision made by the Judge is one that was

open to him on the evidence available. This has not happened here and the determination is incomplete and therefore flawed.

13. Because I have found that the factual reasoning established in Judge Hindson's determination is flawed, it is necessary to set aside the first Tribunal's findings of fact. The case will need to be heard again and new findings made on the whole case. No findings are preserved. I consider that it would be more appropriate in the light of the amount of oral and documentary evidence which has to be considered, for the decision to be remade in the First-tier Tribunal and direct that it is remitted to that Tribunal accordingly.

### **DECISION**

14. The determination of the First-tier Tribunal which is dated 29<sup>th</sup> November 2013 is set aside. I direct that the appeal be remitted to the First-tier Tribunal to remake the decision (not Judge Hindson).

No anonymity direction is made

**Signature**

Judge of the Upper Tribunal

**Dated**