



**The Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/04927/2014**

**Appeal number:**

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Determination  
Promulgated**

**On January 8, 2015**

**On January 13, 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**MS F D  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

Representation:

For the Appellant: Dr Mynott, instructed by Latitude Law Solicitors

For the Respondent: Mr Harrison (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Guinea. The appellant entered the United Kingdom on August 27, 2009 and claimed asylum the same day. On February 2, 2010 the respondent refused her application and on April 1, 2010 Judge of the First-tier Tribunal White dismissed her asylum and human rights claims. On September 21, 2010 the appellant made further submissions on her claim and on July 7, 2013 the respondent refused to consider these submissions as a fresh appeal and no right of appeal was offered. The appellant

lodged an application for judicial review and on February 14, 2014 His Honour Judge Stephen Davies sitting as an Upper Tribunal Judge ordered, by consent, that the application for judicial review be withdrawn on the basis the respondent agreed to reconsider the written submissions that had been made.

2. On July 3, 2014 a decision was taken to refuse to grant her asylum under paragraph 336 HV 395 and on July 9, 2014 a decision was taken to remove her from the United Kingdom by way of directions under paragraphs 8-10 of schedule 2 to the Immigration Act 1971.
3. The appellant appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on July 17, 2014 and on August 15, 2014 Judge of the First Tier Tribunal McCall (hereinafter referred to as the "FtTJ") heard her appeal and in a determination promulgated on September 1, 2014 he refused her appeal.
4. The appellant lodged grounds of appeal on September 12, 2014 and on September 22, 2014 Judge of the First-tier Tribunal Kelly gave permission to appeal finding there were grounds that the FtTJ had arguably erred.
5. The matter came before me on the above date and on that date the appellant was in attendance and represented.
6. I reserved my decision to consider the representations.

### **ERROR OF LAW SUBMISSIONS**

7. Dr Mynott adopted the grounds of appeal and expanded on them as follows:
  - a. Ground One This ground concerned the evidence of the witness referred to as FL. He was the lawyer/human rights activist who had provided a witness statement. Dr Mynott submitted that if paragraph [28] of the determination was considered then it could be seen the FtTJ accepted the bona fides of the witness. At paragraphs [9] to [11] of his statement FL explained his visits to the prisons and how he obtained confirmation about the appellant's father's arrest, source of his anonymous informants and how the appellant's father had died as well as the subsequent raid. Whilst there is an inconsistency in paragraph [11] of the statement, the FtTJ failed to identify the consistency of the evidence and in particular the fact the enquiries confirmed the following consistent facts with the appellant's own evidence:
    - i. The appellant's father's name.

- ii. Date when her father was arrested.
- iii. Date when her father died in detention.
- iv. Court hearing of August 17, 2009 at page 172 confirms execution of father and the address of where the father was living.
- v. Page 76 paragraph 10 confirms the camp where father died. This camp was identified previously and confirmed on page 96 in an article. It mentions Camp Koundara as being a military camp where people are detained.

The FtTJ made adverse findings in paragraph [29] and attaches weight to the anonymity of FL's witnesses. However, FL explained why the witnesses were anonymous and the FtTJ accepted the expert's credentials. Dr Mynott submitted the FtTJ's finding in paragraph [29] and [34] is without any foundation.

- b. Ground Two The FtTJ approached witness MK's report with caution. At paragraph [37] of the determination the FtTJ accepted where MK could assist him but in rejecting his evidence Dr Mynott submitted the FtTJ gave insufficient reasons bearing in mind he accepted the expert could give the evidence. He submitted the FtTJ was wrong in paragraph [39] because it can be seen on page 172 of the appellant's bundle (penultimate paragraph) the Court issued this document in place of a death certificate. The FtTJ was critical in paragraph [38] about the writ and why they would get a court order but Dr Mynott submitted the FtTJ had already recorded they were under house arrest. If the FtTJ was going to make an adverse inference then he should have put this to the appellant and because it was not put the FtTJ materially erred. Similarly, the FtTJ asserted inconsistencies but overlooked the fact the evidence corroborated her initial account. Reference should be made to page 170 of the appellant's bundle as this confirms what the appellant claimed had been seized when she was interviewed (see Q22) The FtTJ did not have regard to all of the documents in the round. At paragraph [42] of his determination the FtTJ commented on the "wanted notice (See page 179) but he accepted the expert could assess the format of the documents so it was not open to him to make the findings about the wording of the document without further evidence. Whilst some of his findings were open to him Dr Mynott submitted the FtTJ failed to apply the test set out in HK v SSHD [2006] EWCA Civ\_1037 as set out in paragraph [21] of the grounds of appeal. Dr Mynott submitted this error was material and undermined his determination.

- c. Ground Three This is linked to Ground One. Dr Mynott submitted the FtTJ had misapplied the approach set out in Devaseelan [2002] UKIAT 00702. Judge of the First-tier Tribunal White did not have the supporting evidence when he considered the evidence. It was wrong to look at the previous judge's decision and take it apart which is what the FtTJ did. He erred because he did not look at the evidence afresh.
  - d. There was a material error in law.
8. Mr Harrison adopted the rule 24 response dated October 1, 2014 and responded to Dr Mynott's lengthy submissions and stated:
- a. The weight to be attached to a report was a matter for the FtTJ. The FtTJ gave a detailed determination and considered the evidence against what was already known. He looked at Judge of the First-tier Tribunal White's decision and asked himself whether the new evidence shed light on it. FL's evidence was sourced in vague terms and he concluded that he knew nothing about the people who purportedly provided the evidence. As the witnesses could not be traced and their evidence was of little or no evidential value he reached conclusions for the reasons he gave that he placed little weight on either witness's evidence.
  - b. The FtTJ pointed out that witness MK had been criticised by the Tribunal and that her evidence should be treated with caution.
  - c. The FtTJ looked at the evidence and found the evidence did not make it clearer and he assessed the evidence as he had to and concluded that he could not place great weight on it.

Mr Harrison concluded that all the findings were open to him and the submissions amounted to nothing more than a mere disagreement with the FtTJ's findings.

9. Dr Mynott responded and submitted information was known about the witnesses through the report of FL. He invited me to find an error in law.

### **ERROR OF LAW ASSESSMENT**

10. This was an extremely detailed determination and the FtTJ had to grapple not only with the evidence before him but also have regard to the previous immigration history including the previous determination of Judge of the First-tier Tribunal White.

11. The challenge to the FtTJ's determination is on three grounds but in essence it surrounds the FtTJ's approach to the new witness evidence and documents and thereafter the FtTJ's approach to the previous determination.
12. The FtTJ summarised the appellant's case in paragraphs [7] to [10] of his determination. The evidence given to him is similar to the evidence that was given to the previous judge save on this occasion the appellant had adduced new evidence in the form of witness statements from FL and MK along with a number of documents. Dr Mynott had argued both before the FtTJ and myself that this evidence required the appellant's claim to be considered afresh as this evidence was not available to the original judge.
13. At paragraph [18] of his determination the FtTJ noted both representatives agreed, in accordance with Devaseelan, that the starting point was the determination of Judge of the First-tier Tribunal White. He reminded himself of the correct approach to be taken and at paragraph [19] he noted Dr Mynott's submission that the new evidence would enable him to depart from the original conclusion. The FtTJ helpfully identified Judge of the First-tier Tribunal White's credibility finding.
14. Judge of the First-tier Tribunal White did the following:
  - a. He rejected the appellant's claim as he formed the opinion that if the account were credible then the country reports would have referred to the appellant's father if he had held the position he did and that he had been executed.
  - b. He found the absence of country information demonstrating that family members were persecuted relevant to the appellant's appeal.
  - c. He made a number of significant adverse findings about the appellant's own claim.
15. It is against this background the FtTJ considered the new evidence from paragraph [22] onwards.
16. Ground One of the grounds of appeal surrounds the FtTJ's approach to the witness evidence of FL. The FtTJ deals with this evidence between paragraphs [24] and [30]. He made a number of findings about the new evidence and he accepted the respondent's submissions and rejected those of Dr Mynott. In paragraph [24] he referred to a discrepancy-a discrepancy Dr Mynott accepts but submits should be balanced against those matters that were consistent. The FtTJ made an adverse finding at paragraph [25] in relation to the appellant's knowledge of the

President's date of death. At paragraph [26] the FtTJ noted the new evidence that was produced by the witness and this included death certificate, writ of execution, wanted notice, court summons and birth details and recorded the respondent invited him to find those documents as unreliable for the reasons recorded.

17. Dr Mynott has submitted that the FtTJ failed to give these documents sufficient weight and should have attached more weight to them in light of their consistency with the appellant's claim and because the FtTJ found the witness was recognised in a number of country reports as a "human rights activist and head of a leading organisation in that field".
18. The FtTJ clearly had regard to Dr Mynott's arguments as he set them out in some detail in paragraph [28]. However, at paragraph [29] he noted the account provided by an anonymous witness was inconsistent with the appellant's account (not disputed) and concluded

"...it is not possible to add any weight one way or the other to that statement which on the one hand supports the appellant and on the other hand seriously undermines the appellant's credibility and shows a lack of knowledge as to what happened...."

At paragraph [30] of his determination he made a further adverse finding.

19. Ground Two of the grounds of appeal related to the FtTJ's approach to the other witness. The FtTJ considered this witness and his evidence from paragraph [31] onwards. The FtTJ noted the witness had been criticised by the Upper Tribunal and her evidence was to be treated with caution. The FtTJ commented that the terminology used in the report in that earlier case was strikingly familiar to the extracts of the report that were before him. The FtTJ stated, with reasons, he intended to treat that evidence with a degree of caution. He examined her evidence in more detail from paragraph [33] and made adverse findings and concluded the expert had failed to satisfy him that the appellant would be persecuted because she claimed to carry a family name. He then considered her opinion on the documents and noted both party's representations. The FtTJ's observations on the documents are recorded between paragraphs [38] and [45] and ultimately concluded at paragraph [46] that nothing in the documents undermined Judge of the First-tier Tribunal White's earlier findings.
20. The FtTJ thereafter considered other evidence but ultimately rejected the appellant's claim and in particular he was not satisfied that family members of supporters of the Conte regime were persecuted.

21. Dr Mynott's submissions were lengthy and detailed but the thrust of the first two grounds of appeal was that the FtTJ should have attached more weight to the evidence provided by the witnesses.
22. In R and Others v SSHD [2005] EWCA Civ 982 Lord Justice Brooke summarised the points of law which would be encountered most frequently in practice as follows:
  - a. Making perverse or irrational findings on matters that were material to the outcome.
  - b. Failure to give reasons or any adequate reasons for findings on material matters.
  - c. Failing to take into account and/or resolve conflicts of fact or opinion on material matters.
  - d. Giving weight to immaterial matters.
  - e. Making a material misdirection of law on any material matter.
  - f. Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or fairness of the proceedings.
  - g. Making a mistake as to a material fact, which could be established by objective and un-contentious evidence when the appellant and/or his advisors were not responsible for the mistake and where unfairness resulted from the fact that a mistake was made.
23. I am satisfied the FtTJ had full regard to all of the new evidence and gave reasons why he rejected the evidence or attached little or no weight to it. None of the points made by Dr Mynott amount to an error in law. An expert report or statement is evidence and some reports or statements carry more weight. In this case the FtTJ rejected the evidence of both witnesses and gave his reasons. His conclusions cannot be criticised in light of the reasons given and I am satisfied Dr Mynott's submissions on the new evidence is a mere disagreement with the FtTJ's findings.
24. The final ground of appeal related to the FtTJ's approach to Devaseelan. I disagree with Dr Mynott's submission. The starting point, as both parties agreed, is the original determination. The FtTJ then considered the additional evidence and rejected it for the reasons he gave. He then stated that there was no evidence that altered the original judge's conclusions. Dr Mynott submitted he should have looked at all of the evidence afresh.
25. In Devaseelan 2002 UKIAT 00702 the Tribunal said the first Tribunal's determination stands as an assessment of the claim the Appellant was making at the time of that first determination. It is not binding on the second Tribunal but, there again, the second

Tribunal is not hearing an appeal against it. The Tribunal set out various principles:

- a. The first decision is always the starting point; facts since then can always be considered.
  - b. Facts before then but not relevant to the first decision can always be considered.
  - c. The second Tribunal should treat with circumspection relevant facts that had not been brought to the first Tribunal's attention.
  - d. If issues and evidence on the first and second appeals are materially the same, the second Tribunal should treat the issues as settled by the first decision rather than allowing the matter to be re-litigated.
  - e. The Tribunal said that there would be occasional cases where the circumstances surrounding the first appeal were such that it would be right for the second Tribunal to look at the matter as if the first determination had never been made.
26. I do not find this is one of those cases that required the case to be considered as if the first determination had never been made. Judge of the First-tier Tribunal White gave a number of reasons for rejecting the appellant's appeal. The FtTJ concluded that none of the new evidence altered that position and in fact in some instances raised more questions than it answered.
27. I am satisfied there was no material error on any of the grounds.

### **Decision**

28. The decision of the First-tier Tribunal did not disclose an error. The original decision shall stand.
29. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) an appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order was made in the First-tier and I see no reason to alter that order now.

Signed:

Dated: **January 8, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT



I make no fee award as the appeal was dismissed.

Signed:

Dated: **January 8, 2015**

Deputy Upper Tribunal Judge Alis