Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA057232015
AA057242015

THE IMMIGRATION ACTS

Heard at Stoke (Bennett House)	**Decision & Reasons Promulgated**
On 18 May 2016	**On 23 May 2016**

Before

Upper Tribunal Judge Southern

Between

N.G.L (1) & S.C.A.N. (2)
(Anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms G. Thomas of Compass Immigration Law Ltd
For the Respondent: Ms C. Johnstone, Senior Home Office Presenting Officer

DECISION

1. The second appellant, born on [ ] 2012, is the minor dependent child of the first appellant, who arrived in the United Kingdom in December 2011 and was admitted as a student with leave to remain until 29 July 2013. Both are citizens of Cameroon. The first appellant claimed asylum on 17 February 2014. The second appellant's claim is wholly dependent upon

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that of her mother and so in this decision references to the appellant are to the first appellant, as was the case in the decision of the First-tier Tribunal.

2. The appellant has been granted permission to appeal against a decision of First-tier Tribunal Judge Lever who, by a decision promulgated on 26 November 2015, dismissed her appeal against the decision of the respondent, made on 17 March 2015, to refuse her claims advanced on asylum and human rights grounds. The main thrust of the challenge now pursued is that the judge had misunderstood the evidence before him provided by the appellant. An important part of the reasoning leading the judge to reach adverse credibility findings was his conclusion that there was an inexplicable inconsistency in the appellant's evidence as to whether or not she had attended a demonstration in 2008 at which she had been arrested and detained. In granting permission to appeal, Designated First-tier Tribunal Judge Macdonald summarise the grounds as follows:

> "It is said that the judge erroneously concluded that it was the appellant's evidence that she had not been arrested in 2008 but, according to the grounds, the judge overlooked the corrections made by the appellant to her witness statement. The judge made no reference to this evidence and concluded, wrongly, that she had not been arrested in May 2008. As a result the judge then misunderstood the evidence from the National Chairman of the SCNC.
>
> Furthermore, given the medical evidence, it is said that the judge failed to make a clear finding on why he rejected the appellant's claimed detention and torture in 2010 which is plainly a material matter. "

3. The case advanced by the appellant before the First-tier Tribunal is, of course, well known to both parties and summarised in considerable detail in the decision of the First-tier Tribunal now under challenge. It has to be said that the appellant's evidence has been presented in a way that requires some considerable concentration to understand it correctly. In order to make sense of that which follows, it is important to recognise that the appellant's evidence of her experiences in Cameroon discloses an account of two demonstrations in 2008, one in May and one in October, as well as one in October 2010. The appellant's evidence, it is submitted on her behalf, when correctly understood, is that she was arrested at the May 2008 demonstration as well as the October 2010 demonstration but that she did not attend the demonstration in October 2008.

4. At paragraph 17 of his decision, Judge Lever observed that:

> "The appellant's claim for asylum is essentially based upon two factors, firstly her involvement with the SCNC for some years in Cameroon that involved her detention and ill-treatment at some point and secondly the fact that she has been disowned by her father and family".

And, having recorded her evidence of being arrested and detained as a result of her participation in a demonstration on 1 October 2010, during which detention she was raped by soldiers, the judge said, later at paragraph 24:

> "The issue is whether, when judging all the evidence in the round and paying careful regard to the medical evidence her account of detention and ill-treatment in 2010 because of her SCNC activities is credible and if so whether there is a risk on return."

5. The judge identified a number of difficulties in the appellant's evidence. This had to be seen in the context of her being, plainly, a capable and intelligent woman. The judge noted that:

> "… she was educated to university level, gaining a degree in law from the University of Yaounde in Sao in 2006 and further obtaining a master's degree in business law in 2007…
>
> The appellant applied successfully to come to the UK as a student in 2011, and entered the UK in December 2011. Her claim for asylum was only made in 2014 over three years later. However, the political involvement, detention and fears of persecution that allegedly form the basis of her asylum claim were events that took place prior to her arrival in the UK and her lengthy delay in claiming asylum needs to be considered against that fact."

The judge noted significant contradiction disclosed in the account of her domestic circumstances as they were described in her application for entry clearance as a student, made on 16 November 2011. That application had failed to disclose that she had then one child and gave also an incorrect address. She had said also that she was single and made no reference to her relationship with her partner who was the father of her child. The judge rejected her explanation that she was not responsible for these errors because she had paid someone to complete the application on her behalf because the judge was not able to accept that a person such as the appellant, a well-educated lady who was being sponsored by her father to pursue further studies in the United Kingdom, would not have personally checked the accuracy of the information set out in her application. The judge noted also that the appellant, who has described having attracted adverse attention from the authorities on account of her politically motivated activities, had been able to obtain a passport on 8 February 2010 on the basis of which she was able to leave Cameroon on 11 December 2011 despite having been arrested, detained and ill-treated in October 2010.

6. As we shall see when I examine below the grounds of appeal now pursued before the Upper Tribunal, the reasoning of the judge set out at paragraphs 27 and 28 of his decision is of central importance to the challenge to his decision now brought before the Upper Tribunal:

> "It was said by the appellant's solicitor in their letter dated 28 April 2014

> that the appellant had been arrested in 2008 and held for a few hours following a demonstration implying her involvement. The appellant made no reference to being involved in a demonstration in 2008 and indeed in oral evidence specifically stated that she had not taken part in that demonstration. It is difficult to know therefore the source of that assertion by solicitors.
>
> The appellant had her first child with Stephen born on 18 September 2009. In evidence to the doctor she stated that her involvement with the SCNC was less following the birth (paragraph 18). There is no evidence therefore that up until October 2010 the authorities had ever arrested, detained or questioned the appellant regarding any alleged SCNC activities. Indeed, there is no evidence that she was known adversely to the authorities. Although the appellant claims she had been involved in demonstrations in Yaounde, there is no evidence in support of that either in evidence given in her interview record or to the doctor. I find no credible evidence therefore in relation to any involvement in demonstrations prior to October 2010."

It should be noted that references to "the doctor" are to the author of the Medical Foundation report, a 23 page long document written by Dr Rosemary Lennard containing an extremely detailed account of the appellant's experiences, after series of interviews lasting a total of 9 hours over six days.

7. The grounds assert that the judge was simply wrong to say that the evidence of the appellant was to the effect that she had not been arrested in 2008 and that she had not told the doctor who prepared the report that she had attended the demonstration in 2008. Ms Thomas submitted that the error fed into the assessment made by the judge of documentary evidence relied upon by the appellant, which on that account had been rejected, and into the assessment made by the judge of the credibility of the appellant's account of the event at the core of her claim to be at risk on return to Cameroon, that being the claimed arrest and detention in 2010.

8. The grounds draw attention to the appellant's witness statement and to an amendment she made to it at the beginning of the hearing. Paragraph 12.(a) of that statement, as typed, stated that SCNC demonstrations were usually held once a year on 30 September or 1 October but would be held on other dates if events arose to require that. The statement continued:

> "… However I only attended the 2 that I have mentioned. That notwithstanding, a proactive activist like myself do not limit their activities just to such demonstrations but also show their commitment to the cause by constantly propagating the cause of the movement. This is exactly what I was doing in 2008 during supposed national day celebrations to sensitise the students of the truth behind this history. So I did contribute in 2008 despite not attending the demonstration."

That paragraph, like much of the appellant's written evidence, is not altogether easy to follow because it is not immediately apparent what are the "two that I have mentioned". The amendments, in manuscript are to the final sentence which as a consequence now reads as follows:

> "This is exactly what I was doing in 2008 during supposed national day celebrations to sensitise the students of the truth behind this history. So I did contribute in May 2008 despite not attending the demonstration, in October 2008."

In her submissions, Ms Thomas said that the comma immediately before "October 2008" was inserted in error so that the appellant is saying that she did not attend the demonstration in October 2008. She said also that when the appellant said that she did "contribute" in May 2008 that should be taken to mean that she did attend the demonstration in May 2008.

9. That should be read together with the account of events in May 2008 provided by the appellant to the doctor who prepared the report. At paragraph 12 of the report:

> "… [the appellant] did not take part in the procession, but stood at the end of the march route talking to students as they stopped and fell out of the procession…"

After which an account is set out of her being arrested and detained before released about an hour later. Names of those arrested were not taken.

10. For the respondent, Ms Johnston submitted that the judge was entitled to make of the evidence what he did. She points to the inconsistent and contradictory account of events the appellant has put forward. In particular she referred to what had been said at paragraphs 30/31 of the witness statement; paragraph 12 of the Medical Foundation report and what was *not* said in the SCNC letter, all of which I have considered.

11. Despite that, there is some difficulty with the judge's understanding of the evidence as set out at paragraph 27. It is not hard to see why the appellant considers that in saying that she was not "involved" in the May 2008 demonstration and had not been arrested the judge had a mistaken understanding of her evidence, even if the judge was correct to say, given that the appellant's own account was that her name was not taken and there was no formal interview or investigation carried out that she had not been "questioned" about her SCNC activities on that occasion. Further, the grounds assert that in cross examination the appellant spoke of the encounter with police in May 2008, Ms Thomas pointing to the contemporaneous note taken by the appellant's representative at the hearing. There is, though, no mention of that in the decision of the judge. Having said that, it is not hard either to have sympathy for the judge as he had to navigate his way through the written evidence that had been prepared in a way that seemed almost bound to

confuse the reader. As Ms Johnston has pointed out, immediately after the paragraph of the witness statement I have just set out, speaking of the appellant standing at the end of the march route and being arrested when speaking to those "falling out" of the procession, the appellant said this at 31.12.b of her statement about that very event:

> "... in fact it was not a demonstration at all. It was my personal conviction and initiative to go out and propagate the cause of the SCNC..."

12. The significance of this apparent misunderstanding is reinforced because the judge went on to reject as unreliable a letter from the SCNC Council dated April 2015, relied upon by the appellant in support of her claim to be at risk on return, because:

> "... it refers to the appellant being arrested and detained in May 2008 which again is not the appellant's evidence..."

Once again, although the written evidence of the appellant has been assembled and presented in a clumsy and unhelpful manner, it appears tolerably clear that the appellant's evidence before the judge was to the effect that she *had been* arrested and detained in May 2008 and so the judge was not correct to reject the SCNC letter for that reason. Although he did give another reason for doubting the reliability of the letter, being that it made no mention of an arrest warrant or summons claimed to have been issued in respect of the appellant, it cannot be assumed that he would have rejected it for that reason alone.

13. Drawing all of this together, I am persuaded that the judge proceeded upon a mistaken understanding of the evidence given and relied upon by the appellant in respect of events in 2008 and, although he was entitled to conclude that the central question was whether the appellant had been arrested and detained in 2010, his findings in respect of that were informed by his mistaken view of the evidence concerning the events in 2008. For that reason alone, his decision to dismiss the appeal is not a safe one and so cannot stand. The determination of an appeal on the basis of a mistaken understanding of the evidence offered is such as to disclose an error of law and it is impossible to say that such error must necessarily have been immaterial to the outcome.

14. A further challenge raised in the grounds is pursued by Ms Thomas, that being a complaint that the judge:

> "fails to make a clear finding on whether accepts or rejects that appellant's claimed detention and torture in 2010"

However, the judge has in fact made a clear finding of fact that he did not accept to be true the account of the appellant that she was detained and raped by soldiers in 2010, saying at paragraph 38:

> "... when balanced with all of the evidence in the round does not lead me

> to conclude that the totality of evidence points to the detention/rape in October 2010 as claimed…"

Although, therefore, that ground considered alone does not succeed, the finding made is itself infected by the misunderstanding of the evidence relating to the 2008 arrest, discussed above.

Summary of decision:

15. The First-tier Tribunal made an error of law material to the outcome of the appeal.

16. The decision of First-tier Tribunal Judge Lever is set aside.

17. The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed

Date: 19 May 2016

Upper Tribunal Judge Southern