Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01483/2017

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 25 September 2017	**On 9 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

BIZ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S. Alban, Fountain Solicitors
For the Respondent: Mr. K. Hibbs, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by BIZ against the decision of First-tier Tribunal Judge Trevaskis, promulgated on 20 March 2017, in which he dismissed BIZ's appeal against the Secretary of State's decision to refuse to grant asylum.

2. As this is an asylum appeal, I make an anonymity direction, continuing that made in the First-tier Tribunal.

3. Permission to appeal was granted by the First-tier Tribunal as follows:

"In relation to Ground 1, it is clear that the Judge was referring to "implausibility" as in reality meaning "incredibility". His finding at [41] is sustainable. In terms of Ground 2, such Ground has arguable merit. With reference to Ground 3, it is arguable that the Judge failed to take into account material evidence which was before him, as referred to. Permission is granted on Grounds 2 and 3 only."

4. On a renewed application, permission to appeal was granted on all grounds by the Upper Tribunal as follows:

"It is arguable that the First-tier Tribunal may have erred in its approach to the plausibility of the appellant's account, when viewed together with the other findings of fact (to which grounds 2 and 3 relate) and it is appropriate for permission to be granted on all grounds."

The hearing

5. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

6. Ms Alban relied on the grounds of appeal and the skeleton argument. This contained a fourth ground, "failure to consider the objective evidence". Ms Alban submitted that this ground merely embellished Grounds 1 to 3.

7. Mr. Hibbs relied on the Rule 24 response. He submitted that the grounds were no more than a disagreement with the findings of the judge. In relation to Ground 1, the judge was not comparing what happened in the UK to what happened across the rest of the world but was saying that he did not find it credible that the photograph, if fake, would have been uploaded onto the website. It was not a case of the judge applying UK or western standards. He did not find it credible that an NGO would allow its website to be corrupted. He questioned why, if the agent had been so good that he had uploaded the photograph, the Appellant had not mentioned it. At [41] the judge was not saying that he found it unbelievable that an NGO could have an element of corruption and facilitate a fraudulent application. He did not make such any comment about the NGO and this was to misconstrue what the judge had said.

8. Regarding the Appellant living close to the border he questioned why, if it had been safe at the border, the Appellant had left. In this respect, the judge had given full consideration to the background evidence. I was referred to page 140 of the bundle before the First-tier Tribunal. Looking at the Appellant's case in the round, the Appellant had left Burkina Faso on his own passport without any issues. He had lived in Burkina Faso for some time without encountering any problems.

9. In relation to Ground 2 and the payslips, without more, the judge's findings were open to him. He commented that they were generic [37] but could not be held to be in error in making this finding. Further there was no evidence before the judge as to how the payslips and the contract had come into the Appellant's possession. He questioned why the Appellant would have had a formal contract if he were being asked to smuggle arms.

10. In relation to the point about the Appellant's refusal to arm his employer's supporters [39] this was a minor point with no bearing on the decision as a whole.

11. I was referred to [43]. The judge had made a finding regarding the Appellant's answers at his interview. At Q55 the Appellant had said he had lived in two places. The judge had carefully considered the background evidence and made his finding at [43]. At [45] the judge considered the delay in claiming asylum. He questioned why the Appellant had been to the games in Glasgow if he were not part of the team, and why he had then travelled from Glasgow to Swansea to claim asylum.

12. In response, regarding Ground 1 Ms Alban submitted that the judge had used the word "plausible" and in the context it did not equate to "credible". The judge was saying that he did not find the Appellant's account "possible", and that it was not plausible that an NGO would be corrupt. She submitted that it was possible for an NGO to put players in a team who were paying to leave the country. They would have to put photographs up on the website and ask the Appellant to attend the tournament in order that they were not found out. Following the case of HK [2006] EWCA Civ it was inappropriate to consider the plausibility of the account by UK standards. Corruption was wide in Africa.

13. Regarding the fact that the Appellant was able to remain in Burkina Faso until 2016, the judge failed to have regard to his account that first he moved to another city, and then moved to a village near the border. The president had tried to change the constitution in 2014 and the Appellant had moved to another city under the protection of the guards. When the presidential guards were disbanded he had moved to the village. The objective evidence supported his account. It was consistent that he could have stayed near the border.

14. Regarding Ground 2, the original documents had been provided. This included two court summons. The judge had failed to give them adequate weight. He had attached limited weight to them at [37] and [44]. Burkina Faso was a very small country and it was not possible to get an expert to authenticate the documents. I was referred to the case of JK v Sweden 59166/12 23 August 2016 (CG), [91] to [98]. The documents were significant in proving his account, and therefore the burden shifted to the Respondent to show that they should not be relied on. The Respondent had not attempted to do this.

15. Further, the judge had said that limited weight should be attached to the documents, not no weight. However, he failed to place any weight on the documents at all. He

had not considered whether the Appellant would be at risk because of the documents.

16. Regarding Ground 3, the errors of fact were material. The judge had relied on them and they had affected his credibility finding. He had erred at [38] in finding that the Appellant's tasks were "largely menial". It was the Appellant's evidence that he was highly involved in political activities. I was referred to Q13, Q46, Q47, Q49 and Q50 of the asylum interview. This made a big difference. If the Appellant's tasks had been only menial he would not be at risk, but he had been highly involved in political activities.

17. At [39] the judge had erred in finding that, if the Appellant had refused to carry out a task, he would not have continued to live with his employer. This was not his account at all. I was referred to Q50 of the asylum interview, and to [6] of his witness statement.

18. Regarding Ground 4 as set out in the skeleton, the objective evidence supported the Appellant's account regarding why he left the city, and when he left the city to go to the village. The judge had not accepted the Appellant's account, but the objective evidence supported the account given at interview. The judge had failed to have regard to this objective evidence.

Error of law decision

19. I will turn first to Ground 3. At [38] the judge states:

"He describes the nature of the tasks undertaken by him, which were largely menial, and which do not indicate a high level of involvement in the political activities of his employer."

20. I was referred to the asylum interview, Q13, Q46, Q47, Q49 and Q50. At Q13 the Appellant stated that his employer was using young people for his political campaign. The Appellant used to arrange events where his boss could meet these young people. He used to get the young people together, and to give people bribes. At Q46 he described how he had been asked by his boss to go to various districts and speak to the young people that his boss wanted to meet. At Q47 he said that he started doing more than just organising the youth for his boss in 2012 or 2013. At Q49 he described how he used to "take an envelope with 2 million CFA francs and a new motorbike and give it to the youth leader in that district and get him to see François". He explained how the money was to buy the youth because "the young generation until 2013 didn't like François". At Q50 he was asked how often he would carry out these errands and he described how once the link was established, the group would come back with further demands.

21. The judge has described the Appellant's claim as being that he was employed doing "largely menial" tasks for his employer. However, I find that the judge has erred in

stating that the tasks undertaken by the Appellant were "largely menial". The Appellant has not described them as such. In his asylum interview the Appellant described how he was involved in arranging youth meetings, and how he would pay bribes in order to get people to attend these meetings. The judge has not stated that he does not find the account set out in the asylum interview credible, but has characterised the tasks undertaken by the Appellant as "largely menial" which is not the account as set out by the Appellant. Given that the judge has not rejected this account, I find that he has erred in this finding that the tasks did not indicate a high level of involvement in political activities. The Appellant's account is that he was involved in mobilising the youth, including bribing them to attend political meetings.

22. The second mistake of fact to which Ground 2 refers is at [39]. The judge states:

"He has claimed, and later denied, that he left his employment because he refused to arm supporters of his employer. He then said that he went into hiding in 2 properties owned by his employer; I find this to be inconsistent with his claim to have disobeyed an order from his employer."

23. At Q50 of his asylum interview, the Appellant said that his employer had asked for some batons and machetes to be bought to attack the population. He was asked whether this materialised, and his reply is recorded as "no I didn't do that. I switched off my phone and went back home." At paragraph 6 of his statement, in reply to the reasons refusal letter, he stated:

"With regards to paragraph 20, I didn't say that the reason I stopped running the errands was because I was told to buy machetes and batons. I didn't have to run the errands because people started to come to listen to Blaise. The reason I left my residence and went to stay in Bobo Dioulasso was because the public were getting aggressive against people associated with François and Blaise and houses were getting burnt so I wanted to protect myself. I didn't refuse to run this errand. When I was asked, I didn't say anything and I went home and didn't do anything and turned my phone off. Following this, the vote for the referendum was on the 30 October 2014 so I didn't see François so he could not ask me whether I bought the batons or not."

24. The judge has made a finding that the Appellant's claim is inconsistent on the basis that, had he refused to carry out an order from his employer, he would not then have gone into hiding in two properties owned by his employer. However, the Appellant's evidence at his asylum interview was not that he had refused to carry out this order, just that he had not done it. He then expanded on this in his witness statement. The Appellant has provided an explanation to address the Respondent's allegation that he stopped running errands when he was asked to buy batons, but the judge has made a finding that the Appellant "claimed, and later denied" that he left his employment because he refused to arm supporters. I find that the Appellant

never claimed to have left his employment because he refused to carry out this order. I find that the judge has misstated another part of the Appellant's evidence at [39].

25. It was submitted by Mr. Hibbs that the point regarding the refusal to arm his employer's supporters was a minor point, with no bearing on the decision as a whole. I have considered whether the two mistakes of fact in [38] and [39] are material. I find that at [38] the judge has made a mistake of fact in relation to the basis of the Appellant's claim. The Appellant claimed at his asylum interview that he was politically involved arranging meetings on behalf of his employer and bribing people to attend them. At [39] the judge has made a mistake of fact which has led to a finding that the Appellant's claim is inconsistent.

26. I find that these mistakes of fact are material. I find that the nature of the tasks which the Appellant claimed to have carried out are material to his claim. There is a significant difference between a claim to have carried out largely menial tasks, and a claim to have been involved in arranging political meetings and bribing people to attend them. Further, I find that a finding of inconsistency in the Appellant's evidence is material to a finding as to the Appellant's overall credibility, especially given the judge found that this evidence was relevant to the Appellant's ability to remain in Burkina Faso. In paragraph [40] the judge finds that it is not plausible that the Appellant was being protected in hiding. This finding must necessarily relate back to the finding of inconsistency at [39].

27. In relation to Ground 2, it was open to the judge to decide what weight should be given to the documentary evidence but, although he has attached limited weight to the documents, he does not appear to have taken this limited weight into account when assessing the risk on return to the Appellant. If he has given limited weight to summonses requesting him to attend the police, it is incumbent on him to explain why, despite having attached some weight to these documents, they do not create a risk on return.

28. In relation to Ground 1, while the judge has not stated that it is "unbelievable that an NGO could have an element of corruption and would facilitate a fraudulent visa application", he has found that it is not plausible that a fake photograph would be uploaded from a website of a bona fide NGO. Even if he meant "credible" when he states "plausible", he has failed to explain why it is not plausible that a fake photograph would be uploaded from the website of the NGO. He has simply stated that it is not plausible without giving reasons.

29. I find that the judge failed to take into account the Appellant's evidence given at his asylum interview and in his statement. If he did take it into account, he has failed to give reasons for why he has rejected that evidence, and why he has found that the Appellant's tasks were largely menial, or why he has found that the Appellant refused to carry out an order. He has stated that he is attaching limited weight to the documents, including police summonses, but then in the overall assessment he has failed to attribute any weight to them. Further, he has failed to give reasons for why

it would not be plausible for a fake photograph to be uploaded from the website. Even if this was a finding that it was not credible, he has failed to give reasons why. I find that these errors are material.

30. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given that the credibility findings are infected by the errors, and therefore given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

31. The appeal is allowed. The decision involves the making of a material error of law and I set the decision aside.

32. The appeal is remitted to the First-tier Tribunal for rehearing.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed Date 8 October 2017

Deputy Upper Tribunal Judge Chamberlain