Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07677/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 15th November 2018

Decision & Reasons Promulgated
On 10th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR. C T
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr K J Wood, Solicitor, of I A S Liverpool
For the respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has been given permission to appeal the decision of First-tier Tribunal Judge O'Hanlon. In a decision promulgated on 25th July 2018 the judge dismissed the appellant's appeal against the respondent's refusal of his claim for protection.

2. The appellant's claim was that he was politically active in Cameroon, agitating for independence for English-speaking people in his country. He claimed he had been visiting the United Kingdom and when he returned to Cameroon on 2 November 2017 he was arrested and detained by the police. In the course of this he was abused. The claim is that his wife secured his release by the payment of a bribe, whereupon he went into hiding. He then flew to the United Kingdom, making his claim for protection on arrival. He was diagnosed as being HIV.

3. The appellant's credibility was in issue. The respondent questioned his political activity and pointed out that he was able to leave Cameroon by air in October 2017 and again in December 2017. His ability to do so suggested he was not of interest to the authorities. On his account he had no difficulties before. The decision maker referred to photographs he produced showing some altercation with the police but they did not establish a political dimension.

4. The judge referred to Facebook activity produced but saw nothing which supported his claimed political activities. Paragraph 37 refers to the arrest which the appellant said took place on the 25 November 2017. Various inconsistencies in the appellant's account had been raised. The judge mentions that in his supplementary witness statement he referred to four friends being present but this was not in his original witness statement. Paragraph 38 referred to photographs submitted, with the respondent accepting that the appellant may have been arrested but the reasons were unknown. The judge refers to the absence of evidence showing the date of the encounter. At paragraph 39 the judge concluded by finding he had not shown his claim was true. The judge accepted that possibly he was a member of a political group but in itself this would not place him at risk.

5. At the outset of the hearing his representative indicated there was a video which he wanted to show which was described as being short and said to portray the appellant's arrest. The judge noted there had been no advance warning of an intention to show a video and no arrangements have been made for viewing. The presenting officer indicated that the appellant's arrest was not in dispute but there was no evidence other than the appellant's say so as to the reason. The decision records that the appellant's representative then conceded it was not necessary to view the video.

The Upper Tribunal

6. Permission was granted on the basis it was arguable that the judge should have viewed what was described as a short video. It was contended the judge downplayed the significance of the arrest and

referred to the absence of evidence as to when it took place or the reason. The grounds contend that the judge went behind the concession and doubted the arrest.

7. At hearing, Mr Wood indicated he was not pursuing the point raised about the video not being shown. He accepted that the tribunal had not been informed in advance of any such intention nor was it raised at any case management review. He said the materials were contained on a memory stick rather than a disc. He had not viewed the video and confirmed he was not seeking to rely on this point as an error of law.

8. Rather than pursuing this issue he expanded upon the other grounds advanced. He submitted that the judge materially erred in law in his consideration of the appellant's arrest. I was referred paragraph 38 of the decision where the judge said that the appellant had not put forward any evidence to prove the date of the encounter with the police shown in the photographs produced. The judge concluded that this limited the weight that could be attached to the evidence. Mr Wood said this was an error of law because it was incorrect to say the appellant had not put forward any evidence as to the date of the encounter. There was his own oral evidence.

9. He also said there was country evidence to the effect that arrests were taking place against Anglophones. He submitted that the judge had not engage with this.

10. I was in referred to the appellant's evidence about the use of Facebook and the judge's comments at paragraph 34 where he found the posts in the bundle commenced in September 2017 and did not suggest he was an active member of SCNC.I was referred to pages 47, 48 and 54 of the appellant's bundle which includes Facebook postings where he clearly was promoting separatism. Mr Wood submitted the judge had ignored this evidence.

11. He contended that the judge did not engage properly with the background evidence. For instance, this indicated that arrest warrants were not always used and the authorities abused their position. He also pointed out the appellant's evidence was his home had been visited on 3 occasions by the authorities after he left.

12. I was also referred to medical evidence which commented upon the appellant's mental state and he submitted that the judge failed to factor this in relation to apparent inconsistencies. Mr Wood said that a rule 15(2A) application had been made in relation to a supplementary letter from Dr Lazaro dated 20 August 2018.This is at page 32 of the bundle prepared on behalf of the appellant for use in the Upper Tribunal to the effect that his illness affected his recall.

13. In summary, Mr Wood submitted that the points raised indicated the appeal in the First-tier Tribunal had not been given the anxious scrutiny it required. This included the country information provided as well as the medical evidence about his mental state.

14. Mr Tan in response noted that Mr Wood was not pursuing any suggestion of procedural unfairness in relation to the video and described this as a realistic approach. The indications were that had it been available would not have assisted regarding the date and context of the altercation.

15. Mr Tan referred to the argument advanced in relation to paragraph 38 as being a discreet point. He suggested that Mr Wood was placing undue emphasis on the judge's reference to there being no evidence as to the date of the account. Clearly there was the appellant's evidence either orally or in the form of a statement and his comments. That sentence had to be taken in the context of the rest of the paragraph. The paragraph set out the acceptance that the fact of the arrest was not disputed. Mr Tan submitted that the judge's comments referred to evidence beyond that emanating directly from the appellant.

16. Mr Tan said this was only one aspect of the claim and the judge did look at matters holistically in assessing the risk for the appellant on return. For instance, the appellant had claimed the authorities came to his home on 3 occasions after he had left. Paragraph 44 of the refusal letter had referred to this and the question of whether or not an arrest warrant had been issued. Mr Tan acknowledged there was no specific finding on this by the judge. The judge commented again that the only evidence in relation to this emanated from the appellant. He submitted that the judge was not required to engage with every single point made by appellant and can focus upon the material ones. He submitted that the fact the judge did not engage with this point was not material.

17. At paragraph 34 the judge had referred to the absence of evidence of sustained political activity. Mr Tan made the point that the judge, in saying there was no evidence of this, was alluding again to an absence of evidence other than that given by the appellant. This was the same response to the earlier point raised by Mr Wood.

18. Regarding the Facebook evidence, Mr Tan referred to the judge's conclusion that the appellant's Facebook activity amounted no more than relaying on information and sharing posts which the appellant had not produced himself.

19. He also referred to other credibility points taken against the appellant, for instance at paragraph 36.

20. At paragraph 27 and 28 the judge referred to the background information provided.

21. Regarding the medical evidence at paragraph 36 the judge referred to no memory impairments identified as opposed to the general symptoms of his underlying condition. The medical evidence that was before the judge did not specifically indicate issues about his recall of events. The latest medical evidence he submitted was a little more specific but obviously this was not before the judge.

Conclusion

22. I have read the decision in its entirety and have considered the specific points made in relation to the decision and any possible error of law.

23. Permission to appeal was primarily granted on what may have been a procedural unfairness point. However, this issue has not been pursued. For completeness, I do not see any evidence of unfairness. There was no indication in advance to the Tribunal that there would be the need for any facilities were showing a video. This would have been a practical step. Furthermore, the actual arrest was accepted and following discussion it appeared that no useful purpose would have been served by showing a video which may have taken up time and not have advanced matters.

24. Instead, Mr Wood has focused upon the other points in the application. With no disrespect to the skilful way these have been put, my conclusion is that in summary the points are made of straw.

25. When the judge makes the comment that there is no other evidence on a matter then impliedly the appellant's evidence is taken as read. Consequently, I see no error in the expressions used in paragraph 38. The decision has to be considered in its entirety and specific comments placed in context.

26. Country information can place a claim in context and help in the assessment of credibility. The judge does make reference to such material. The fact that political dissidents are arrested without warrant does not make this particular claim true. There were inconsistencies in the account as referred to by the judge. The medical evidence was not so strong as to provide an explanation for such inconsistencies. The judge considered this point and this was a matter for the judge.

27. Overall, I find this to be a carefully considered decision which sets out in detail the proceedings. A detailed summary of the claim is given and the submissions recorded. The judge then made

detailed findings which are sustainable. The judge opens the Finding Section by stating he has looked at all of the evidence in the round and at paragraph 27 and 28 refers to having considered the background information. At paragraph 30 the judge sets out clearly the issue to be determined. The judge then turns to the evidence. The judge acknowledges that it can be difficult to obtain evidence in support of an account in the circumstance. The judge sets out inconsistencies. These are assessed. There is a reference to the photographs produced, with the judge concluding that the circumstances of the encounter cannot be established and this in turn limits the weight attached to the photographs in relation to the claim being made. Ultimately, having considered the decision in its entirety I do not find a material error of law established.

Decision

No material error of law in the decision of First-tier Tribunal Judge WK O'Hanlon has been established. Consequently, that decision dismissing the appeal shall stand.

Francis J Farrelly

Deputy Upper Tribunal Judge