



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: PA/01840/2018**

**Appeal
PA/01842/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2019**

**Decision & Reasons
Promulgated
On 6 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**D K K
B K K
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan (counsel) instructed by Barnes Harrild & Dyer, solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. To preserve the anonymity direction deemed necessary by the First-tier Tribunal, I make an anonymity order under Rule 14 of the Tribunal

Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellants.

2. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Dhanji promulgated on 12 September 2018, which dismissed the Appellants' appeals.

Background

3. The Appellants are brother and sister. The first appellant was born on 31 January 1996. The second appellant was born on 10 August 1999. Both appellants say they are nationals of DRC. On 22 January 2018 the Secretary of State refused the Appellants' protection claims.

The Judge's Decision

4. The Appellants appealed to the First-tier Tribunal. First-tier Tribunal Judge Dhanji ("the Judge") dismissed the appeals against the Respondent's decision. Grounds of appeal were lodged and on 2 November 2018 Judge Hollingworth granted permission to appeal stating

At paragraph 7.7 of the decision the Judge did not find that the appellants were from the DRC as has been claimed but found it more likely that they were in fact from Angola. The Judge went on to dismiss the appeals. It is arguable that the Judge should have set out an analysis of whether a risk arose in relation to return to Angola given the evidence put forward as to what had taken place as referred to in the permission application. It is arguable that a full analysis was required in the context of concluding whether the appellants came from DRC or Angola identifying the weight to be attached to the evidence of the aunt referred to at paragraph 5 the permission application. At paragraph 7.5 of the decision the Judge states that their aunt was born in the DRC based on her copy passport. The Judge states it is surprising that she did not in fact attend and gives the reasons for that. It is arguable that the degree of weight attached to the aunt's statement required to be set out more specifically in the light of the Judge stating that her attendance at the hearing would clearly have been helpful.

The Hearing

5. (a) For the respondent, Ms Cunha told me that the respondent now accepts that the decision contains a material error of law. She told me that the Judge failed to make findings in relation to the disappearance of the appellant's stepfather and his involvement with FLEC in 2012. In addition, because the Judge reached the conclusion that the appellants are most likely to be Angolan, it was for the Judge to assess risk on return to Angola. The Judge did not carry out that assessment. She told me that that is a material error of law and asked me to set the decision aside and remit this case to the First-tier Tribunal.

(b) Ms Cunha asked me to preserve the Judge's credibility findings between [7.3] and [7.7] of the decision. There, the Judge finds that neither of the appellants is from DRC. She told me that there is nothing wrong with the Judge's reasoning between [7.3] and [7.7] and argued that this case requires to be remitted solely for consideration of risk on return to Angola.

6. For the appellant's, Mr Khan moved both elements of the grounds of appeal. He agreed with Ms Cunha that the failure to assess risk on return to Angola, and the failure to make findings in relation to the events in 2012 there, are material errors of law. He argued that the Judge's findings in the subparagraphs at [7] of the decision are all tainted by the overall errors in fact-finding. He reminded me that the Judge placed emphasis on what was said (or not said) by the second appellant at screening interview, and reminded me that at that time the second appellant was a minor. He argued that the Judge's findings in relation to nationality are not safe and asked me to remit this case to the First-tier Tribunal for a new fact-finding exercise.

Analysis

7. In the reasons for refusal letter the respondent clearly declares an intention to remove the appellants to Angola. At [7.7] of the decision the Judge finds that neither appellant is from the DRC, but that it is more likely that they are from Angola. The Judge does not consider the risk on return to Angola. The Judge summarises the evidence in 29 subparagraphs of section 5 of her decision; the Judge narrates the appellants' claim that their stepfather has a political profile and that the appellants were the focus of unwelcome police interest & brutality in 2012 and 2013.

8. The absence of consideration of risk on return to Angola is a material error of law. I set the decision aside.

9. The Judge's findings of fact are brief. They are found in the seventh section of the Judge's decision where the numbering of the subparagraphs is inaccurate. There is an unresolved conflict in the Judge's findings between [7.3] and [7.7]. The Judge does not carry out an adequate analysis of the relationship between the appellants and their aunt. The Judge does not even attempt to reconcile a finding that the appellants and their aunt have different nationalities.

10. As a result, none of the findings of fact can stand. I cannot substitute my own decision because a further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

11. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

12. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

13. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Dhanji.

Decision

14. The decision of the First-tier Tribunal is tainted by a material error of law

**15. I so
2018.
determ**



**nulgated on 12 September
First-tier Tribunal to be**

Signed
February 2019

Date 4

Deputy Upper Tribunal Judge Doyle