



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03487/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 19 July 2019**

**Decision & Reasons Promulgated
On 30 July 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR W N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Lams, Counsel, instructed by Leonard Cannings Solicitors

For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 22 May 2019 Judge Swinnerton of the First-tier Tribunal (FtT) dismissed the appeal of the appellant against the decision made by the respondent refusing his protection claim. The appellant a citizen of Cameroon, claimed he would be at risk on return because of his involvement in the fight for the independence of Southern Cameroon and in the Southern Cameroon National Council (SCNC) which had led to him being arrested and ill-treated in October 2011 and October 2012. The appellant had arrived in the UK in March 2013 on a student visa, which

was curtailed in March 2014. He claimed asylum in July 2016. The appellant claimed he would also be at risk because of his sur place activities in support of the SCNC.

2. The judge did not accept that the appellant had given a credible account of his history in Cameroon. The judge also concluded that he could not accept that the evidence demonstrated that “the appellant has been or is committed to the political cause of the SCNC in the UK as claimed.” The judge concluded at paragraph 25:

“25. I must now draw together the various points in this case to arrive at a decision. I have highlighted several aspects of the Appellant’s case which trouble me and which have caused me to exercise caution before arriving at a decision such as the events leading up to the Appellant leaving Cameroon and the absence of any difficulty that he experienced travelling to the UK, the lack of any credible reason for his not having become involved in SCNC activities in the UK earlier, the significant delay in his claiming asylum and the absence of any credible reason for the delay, the lack of reliability of the documents provided in support of his claim, and the absence of any enquiries made about the Appellant by the authorities in Cameroon and the absence of any problems experienced by the family members of the Appellant in Cameroon.”

3. The appellant’s grounds were essentially twofold, the first asserting error in the judge’s treatment of the appellant’s claimed sur place activities, the second raising what Mr Lam described as “a collection of discrete points”.
4. I am grateful to the submissions I heard from both representatives.
5. I find the judge’s treatment of the appellant’s sur place activities vitiated by legal error. There were two aspects to the judge’s error. First, the judge did not make clear whether he disbelieved the appellant’s claimed sur place activities in the UK in their entirety or only in relation to some of them (their “claimed extent”). The appellant had claimed that since 2014 he had attended more than fifteen demonstrations and more than ten meetings organised by the SCNC. At paragraph 23 the judge stated.

“23. I was shown a number of photographs at the hearing on the Appellant’s mobile phone of the Appellant at various SCNC-related activities in the UK. None of the photographs that I was shown were referenced by a date and, during the hearing, I was provided with five copy photographs relating to the Appellant’s SCNC activities in the UK and none of those copy photographs, bore any date and I noted that the copy photographs themselves were all quite unclear. I note also that a number of the demonstrations to which the photographs were claimed to refer related to events that took place in 2018 which was some time after the Appellant had claimed asylum. I attach little weight to these copy photographs because I do not accept that they evidence that the Appellant has been or is committed to the political cause of the SCNC in the UK as claimed. I was also provided with copy documents from a news agency website called Cameroon News

Agency with some of the documents making reference to the Appellant but I was not provided with complete documents and I am not satisfied that the documents derive from the claimed source such that I do not attach weight to them. With respect to the evidence of Mr Tamanji, I found his evidence helpful in respect of the aims of the SCNC but I was not persuaded by his evidence as to the claimed extent of the activities of the Appellant for the SCNC in the UK.”

6. Even though the judge clearly doubted the photographic evidence as to the appellant’s attendance at demonstrations and gave adequate reasons but he was still required to consider whether the other evidence regarding them (in particular the appellant’s own claims and those of Mr Tamanji, the chairman of the SCNC in the UK), were credible. To simply say, in relation to Mr Tamanji’s evidence in particular, that “I was not persuaded by his evidence as to the claimed extent of the activities of the appellant for the SCNC in the UK” was quite inadequate. If believed, Mr Tamanji’s evidence was capable of establishing that the appellant worked in the security department of the SCNC and had attended demonstrations and distributed leaflets. The Home Office Presenting Officer does not appear to have challenged this man’s evidence or submitted that little or no weight should be attached to it (because of, for example vagueness, lack of direct observation etc.). On its face, it provided significant corroboration of the appellant’s claimed sur place activities.
7. If by referring to the claimed “extent” the judge meant (as ordinary meaning suggests) to find that the appellant had participated in some sur place activities but had exaggerated their extent, then he should have identified what level of activity he was prepared to accept the appellant had.
8. The second erroneous aspect of the judge’s treatment is that it appears to be premised on the assumption that the appellant could only succeed on the basis of his sur place involvement if able to show he was “committed to the political cause of the SCNC in the UK” (paragraph 23). Despite noting the reference made by Mr Lams to the principles set out by Sedley LJ in **YB (Eritrea) [2008] EWCA C9iv 360**, the judge nowhere considered whether the appellant’s sur place activities (such as they were) , even if opportunistic and manufactured, could place him at risk on return. There was certainly evidence before the judge indicating that the present Cameroonian regime was repressive and Mr Tamanji’s evidence was that the Cameroonian authorities monitored the activities of the SCNC in the UK. As already noted, the judge failed to give any reason for rejecting Mr Tamanji’s evidence.
9. In light of my finding that the judge erred in his treatment of the appellant’s sur place involvement in the SCNC, it is unnecessary to address the appellant’s second ground, except to note that this included the contention that the judge had failed to give adequate reasons for rejecting the evidence of Mr Tamanji and that in analysing ground 1 I have

already found that the judge failed to give adequate reasons for rejecting the evidence of Mr Tamanji.

10. Once I made clear during the hearing my concerns about the judge's treatment of the appellant's sur place claim, Ms Everett submitted that in the event I found a material error of law in this regard, I should preserve the findings of the judge in relation to the appellant's claimed history in Cameroon. I am unable to accept that submission. For the judge, the concerns regarding the appellant's account generally were largely focussed on his conduct in the UK - in failing to get involved with SCNC in the UK until 2014 and in failing to claim asylum until 2016, for example. I do not consider it is possible to safely demarcate some of the judge's findings and not others.
11. Whilst accordingly the case will be remitted to the FtT for a de novo hearing, my decision is not to be taken as indicating that the appellant is entitled to succeed. Some of the reasons given by the judge for disbelieving the appellant appear to have force, although the proper assessment of the appellant's credibility (having regard to the consistency (internal and external), sufficiency of detail and plausibility of his account) must be entirely for the next FtT judge.

To conclude:

The decision of the judge is set aside for material error of law;

The case is remitted to the FtT (not before Judge Swinnerton).

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 their 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: 28 July 2019