



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08564/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 29 May 2019

Decision & Reasons

Promulgated

On 10 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**DAVID [P]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Worthington, of Parker Rhodes Hickmotts,
Solicitors

For the Respondent: Mr A McVetty, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Davies promulgated on 5 March 2019, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 27 August 1966 and is a national of Cameroon. The appellant entered the UK in 2005. In 2011 the appellant claimed asylum. The respondent refused his claim and the appellant appealed against that refusal. His appeal was dismissed by the First-tier Tribunal on 9 September 2014, and his appeal rights were exhausted early in 2015. The appellant submitted further submissions on 6 September 2016 and again on 26 February 2018. On 26 June 2018 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Davies ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 1 April 2019 Judge Loke granted permission to appeal stating *inter alia*

"Given that the Judge found at [49-51] that the judgement was genuine, it follows that the appellant was convicted of subversion. That being the case it is arguable the Judge ought to have considered risk of return in that context."

The Hearing

5. As soon as Mr Worthington moved the grounds of appeal, Mr McVetty conceded that the decision contains a material error of law. He agreed that there is a tension between [51] and [52] of the decision which is not reconciled. He told me that the Judge finds that an extract conviction is a genuine document and accepts the expert report prepared by Justice M T Itoe dated 17 December 2018. On joint motion, parties' agents asked me to set the decision aside and remit this case to the First-tier Tribunal for further fact-finding.

Analysis

6. Between [49] and [51] of the decision the Judge accepts the evidence provided in an expert report prepared by Justice M T Itoe dated 17 December 2018. In his report Justice Itoe recounts taking a copy of a document said to be an extract conviction to the court from which it was issued in Cameroon, speaking to the court president and then checking the court records. Having carried out his own investigations, Justice Itoe says that

"Judgement No 759 delivered on 7 February 2003 by the Court of First Instance Douala is genuine, authentic and regularly issued."

7. At [51] the Judge finds that the copy extract conviction relied on is a genuine document. At [52] the Judge considers the contents of the document & finds that the appellant fails to prove the contents of the document. The Judge does not take guidance from Tanveer Ahmed (Starred) 2002 UKIAT 00439. The Judge's findings are contradictory. It is not possible to reconcile the Judge's wholesale acceptance of the evidence contained in Justice Itoe's report with the Judge's rejection of the contents of the document (which the Judge finds is genuine and authentic and regularly issued).

8. The result is that the decision contains a material error of law. The Judge makes contradictory findings. The Judge makes a clear finding that the appellant has been convicted of subversion. That clear finding is not factored into the assessment of risk on return. The Judge does not consider what will happen to the appellant if he returns to Cameroon to face the penalty for his conviction.

9. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

10. I consider whether or not I can substitute my own decision. There is an inadequacy of fact finding in the First-tier's decision. I find that none of the First-tier Judge's findings of fact can be preserved. I am asked to remit this case the First-tier Tribunal. The material error of law in the decision relates to an inadequacy of fact finding. I cannot substitute my own decision. 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 Manchester to be heard before any First-tier Judge other than Judge Davies.

Decision

14. The decision of the First-tier Tribunal is tainted by material errors c

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**ulgated on 5 March 2019.
Tribunal to be determined**

Signed
2019

Date 3 June

Deputy Upper Tribunal Judge Doyle