



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/10425/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14 February 2019

Decision & Reasons Promulgated  
On 25 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

EN  
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Joseph of Counsel, instructed by Turpin & Miller LLP,  
solicitors

For the Respondent: Ms J Isherwood of the Specialist Appeals Team

**Anonymity Direction - Rule 14 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 the Appellant or any family member. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

**DECISION AND REASONS**

## **The Appellant**

1. The Appellant is a national of Uganda born in 1954. He arrived on 30 May 2015 and on 15 June 2015 applied for international surrogate protection because he feared persecution on account of imputed political opinion, namely involvement with the ADF. He was a half-brother of XY who was prominent in the Allied Democratic Forces (ADF) and had been killed and his wife had shortly thereafter died. He, the Appellant, had taken over the care of his twin children for which the ADF had sent him money. In June 2014 he and his wife had each been detained. She had been released after a month but he had been held in detention for a year, firstly for about three months in a military prison where he had been ill-treated, and subsequently from nine months at Luzira prison.
2. The Appellant was born in Munyarwanda in Kisoro. He received primary education. He married in 1957. He had two children by that marriage which ended in about 2001. He re-married in 2007: his second wife had four children by her previous marriage and all the children lived with the Appellant and his second wife: see paragraph 2 of the Appellant's statement of 6 February 2019 at pages 3-12 of the Appellant's bundle (AB). He worked as a farmer and a screen printer for auto parts: see paragraph 5 of his 2019 statement.

## **The SSHD's decision**

3. Following the compromised judicial review proceedings, on 14 August 2018 the Respondent made a fresh decision refusing the Appellant's claim on subsidiary protection grounds and under Articles 2 and 3 of the European Convention. His claim based on his private life in the United Kingdom was also rejected. There was no claim that he had any family life in the United Kingdom. The Appellant had also based his claim on medical grounds. He had been diagnosed with Post-Traumatic Stress Disorder. The Respondent rejected this claim as well as his further submissions by way of reference to paragraph 353B of the Immigration Rules and proposed to remove him to Uganda.
4. The Respondent referred to the evidence including a country expert report and medical evidence obtained after the decision of Judge Whitcombe was promulgated on 22 June 2016. The Respondent relied on the adverse credibility findings made by Judge Whitcombe.
5. The country expert report was rejected because the fact that the expert "is an expert in Ugandan country conditions does not detract from the fact that his findings are not based on any form of face-to-face interview with you or any new credible evidence that would corroborate your claims". The Respondent did not seek to challenge the expert's conclusions that "general aspects surrounding your claims with respect to the ADF are plausible, it is not accepted that his findings provide credible evidence to show that you personally have been mistreated....".

## **Grounds of Appeal**

6. On 28 August 2018 the Appellant through his solicitors lodged notice of appeal under s.82 Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds assert his fear of persecution on return due to his connection to the ADF and rely on the Refugee Convention and Article 3 of the European Convention.

## **Hearing History**

7. On 25 November 2015 the Respondent rejected the Appellant's application and by a decision promulgated on 22 June 2016 Judge of the First-Tribunal Whitcombe found the Appellant is the half-brother of the late XY and that he had adopted XY's two children. He did not accept the Appellant's claim to have received maintenance from the ADF for the maintenance of the two children or that he had been or would on return be ill-treated by the Ugandan authorities. He dismissed the Appellant's appeal. Permission for the Appellant to appeal was refused and his appeal rights became exhausted on 21 September 2016.
8. On 29 November 2016 the Appellant made further submissions which on 5 December 2016 were rejected with no right of appeal. He applied for judicial review which in April 2018 was withdrawn upon the Respondent agreeing to reconsider the further submissions.
9. On 14 August 2018 the Respondent refused to grant the Appellant any form of leave to remain and on 28 August 2018 the Appellant lodged notice of appeal.
10. By a decision promulgated on 27 September 2018 Judge of the First-tier Tribunal Suffield-Thompson dismissed the appeal on all grounds. On 11 October 2018 Judge of the First-tier Tribunal Dineen granted permission to appeal. He set out the lengthy hearing history and found that the Judge had arguably erred in:
  - (a) failing properly to apply the jurisprudence *in Devaseelan* \* [2002] UKIAT 00702
  - (b) making apparently inconsistent findings whether XY was the Appellant's brother
  - (c) failing to have proper regard to the reports of a country expert and of a Cognitive Behaviour Therapist and
  - (d) assessing why the Appellant failed to claim asylum immediately on arrival.
11. By a decision promulgated on 10 January 2019 I found that the decision of Judge of the First-tier Tribunal Suffield-Thompson contained material errors of law and set it aside in its entirety and directed the appeal be heard afresh with no findings preserved. Further, having regard to the hearing history I directed that the appeal should be heard in the Upper Tribunal. It came before me on 14 February 2019.

### **Burden and Standard of Proof**

12. The standard and burden of proof in relation to claims under the Refugee Convention, for humanitarian protection under the Qualification Directive and under the European Convention are for all material purposes one and the same; that is the Appellant must show there are substantial grounds for believing that if returned to her country of origin he will be persecuted for a Refugee Convention reason or if removed from the United Kingdom will be subjected to treatment which for the purposes of humanitarian protection as defined by paragraph 339C of the Immigration Rules will amount to serious harm or will be subjected to treatment which will violate his rights under the European Convention. This is known as the lower standard of proof. The effective date for assessment of the evidence in support of each claim is the date of the hearing.

### **Documentary Evidence**

13. In addition to the documents already referred to or mentioned, the Tribunal file includes: –
- 1) the record of an initial interview with and Immigration Officer on 15 June 2015
  - 2) the record of a substantive interview with an immigration officer on 6 November 2015
  - 3) statements signed by the Appellant on 12 November 2015, 28 November 2016 and 6 February 2019
  - 4) a statement signed by the Appellant's wife on 22 March 2016
  - 5) documents relating to the adoption and schooling of XY's children
  - 6) a country expert report by Daniel Fahey (the expert report)
  - 7) the GP's medical records for the Appellant
  - 8) and assessment dated 12 December 2016 of the Appellant prepared by Sonia Halliday, a CBT therapist with Oxford Health NHS Trust following an interview of the Appellant with Dr R McKnight.

### **The Hearing afresh**

14. The Appellant attended the hearing accompanied by a friend who took no part. I explained the purpose and procedure to be followed. There was some preliminary discussion whether the Appellant would require the services of an interpreter, particularly in the light of the Appellant's claims about having previously been misunderstood. Mr Joseph took time outside the hearing room to discuss this with the Appellant. He confirmed that the Appellant was content to give evidence in English without the benefit of an interpreter and expressed a view that the claimed misunderstandings were principally not because of any difficulty the Appellant may have had in understanding the English language but because of his difficulties with working out what information the questioner was seeking and how to articulate any

answer. During the course of the hearing the Appellant's responses to questions put, particularly during cross-examination, confirmed Mr Joseph's view.

15. Although it was evident during the hearing that the Appellant had difficulty in coping with some questions and articulating a response, this appeared to be generally in relation to complex questions or questions which were not sufficiently specific. There was no point at which either the Appellant or Mr Joseph indicated that the Appellant did not wish to proceed or that the proceedings were unfair to the Appellant on these or any other grounds.
16. At the outset, both parties agreed that the Appellant is the half-brother of the late XY who had been a senior commander in the ADF.

### **The Evidence**

17. Examination-in-chief comprised the Appellant's adoption of his latest statement signed on 6 February 2019. In a cross-examination he was asked about his wife. He said that he was not in direct contact with her and communicated through a third party with whom his last contact had been some 6-8 months before the hearing. He said he and his wife were not in direct contact because she was under surveillance and subject to a reporting condition. For a similar reason, none of his children were in contact with him: see hearing replies 6-14 and 57-58. He remained in contact with a schoolfriend whose name he would only write down for fear of it becoming known: see hearing replies 20-24. The intermediaries through whom he was in contact with his wife were three different women: see hearing replies 26-28. His wife continued to look after XY's twins as well as their other children. He thought the twins were now about 18: see hearing replies 32-34. He remained in contact with the brother of his first wife but their conversations did not include anything political: see hearing replies 36-40. His escape from Luzira prison was arranged by a brother of his present wife. She has three brothers and he remains in contact with one of them but not the one in the intelligence service who arranged his escape with whom he has not been in touch: see hearing replies 48-51.
18. He was asked why he thought he would be at risk on return. He replied that the Ugandan military had tortured him and having regard to his subsequent escape would remain interested in him. If he returned to his family both he and his family would be in danger.
19. The Appellant was asked about his previous visits to the United Kingdom. He said he had first come in 2005 or 2006 as a business visitor with entry clearance for six months and overstayed. He had left 12-18 months after arriving: see hearing replies 63-69. Ms Isherwood referred to the Appellant's medical history from his GP. She considered this relevant because the records noted on 19 October 2011 the Appellant had an active problem of a benign prostatic hypertrophy but the Appellant had claimed to have left the United Kingdom in about 2006 and not returned until 30 May 2015.

20. The Appellant explained that when he had visited the doctor in 2015 he had reported that he had had trouble with his prostate in Uganda in 2011 for which he had received treatment there. He had been accompanied to the GP's surgery by Dr Barbara Harrell-Bond, a member of the Refugee Legal Aid Information Centre in Oxford. She had been very pro-active during his interview at the surgery. He believes her doctorate is not in a medical field. I noted that the relevant entry about the 2011 complaint was in the section of the GP's records headed "Problems, Active". There was no other record of treatment for a prostate complaint in the United Kingdom referred to in the GP records. The next section in the records is entitled "Significant Past". At the hearing I remarked that it was the obligation of any doctor on seeing a new patient to take a medical history.
21. Ms Isherwood explored the payments which the Appellant claimed had been made by the ADF to maintain XY's children. The Appellant explained his last contact with XY had been in about 1996/7 and that XY's children had been cared for by their mother until she had died in 2007. Thereafter, he had been approached by someone who told him of the death of the children's mother and that he would be given money to pay their school fees which he received until about the time he was arrested in May or June 2014: see hearing replies 83-91.
22. The Appellant was then questioned about the bank account into which the money for the school fees for XY's children had been paid: see hearing replies 92-108. The documentary evidence included statements from two different bank accounts, Opportunity Bank and Crane Bank. I am satisfied that in the course of cross-examination the Appellant became confused into which account this money had been paid. Although initially he was adamant the relevant account was Opportunity Bank, he was clear that the receipts marked "Eria" represented this money and these are to be found in the statements from Crane Bank. The Appellant's evidence was that at around the time he had been arrested, his account at Crane Bank had been frozen. It was only after some further questioning that it emerged that it was not just his account at Crane Bank which had been frozen but that the Government had closed the bank because it had issues with it.
23. Ms Isherwood noted it was not until some seven years after he had taken responsibility for XY's children that the authorities had shown any interest in him. The Appellant stated he had never been politically active and explained the authorities had found documents that the ADF were paying money to him and this had resulted in his being detained by the authorities: see hearing replies 109-111.
24. The Appellant explained his wife had been released from detention after a month and had then sought legal assistance for him. In the meantime, after three months in the custody of Central Military Intelligence where he had been tortured, he had been transferred to Luzira prison. He could not seek further help from the lawyer because his fees had not been paid. The lawyer had not been able to represent him in court in 2014-2015 because the proceedings related to charges of treason: see hearing replies 112-124. There was no re-examination.

### **Submissions for the Respondent**

25. Ms Isherwood relied on the reasons for refusal letter. The Appellant's account was to some degree consistent with his statement but in giving oral testimony he had been contradictory, vague and evasive in his answers.
26. Notwithstanding the Appellant continued to be legally represented, there was no current evidence to show that on return he would be at risk, his witness statement had not been updated. It was not credible that while he remained in contact with people in Uganda he needed intermediaries to contact his wife.
27. The Appellant's wife had referred at page 3 of her 2016 statement at AB p.15 to a second arrest and her subsequent relocation but made no reference to any further difficulties and the Appellant had not said anything about this until this hearing.
28. The Appellant had failed adequately to address the issue of the risk to him on return, claiming that although in the past he had been able to obtain documents from Uganda, he no longer could. He had not known into which bank the school fees money had been paid. There was no statement from the brother-in-law who had enabled his escape from prison.
29. The evidence of torture is referred to or comprised in the letter of 12 December 2016 at AB pp. 57-60 from a Cognitive Behavioural Therapist after an assessment interview of the Appellant with a middle or junior ranking doctor. She criticised the letter as a medical report on the ground it lacked formal structure and did not address any of the usual forensic requirements for medical evidence. Further, it had been based entirely on what the Appellant had said.
30. Turning to the expert report at AB pp. 39-51, Ms Isherwood submitted that there was nothing in the report which specifically addressed the type of money transfer of which the Appellant claimed to have been a recipient, there was nothing to link the arrest of the Appellant to the discovery by the Ugandan authorities of information about ADF agents and money transfers consequent upon Operation Sukola and there was nothing specific on the reasons for the Appellant's claimed arrest. Additionally, it did not address the present situation in Uganda or explain the relevance of the reference at AB pp.50-51 to escape to the DRC.
31. She emphasised the lack of evidence subsequent to 2016, the unsatisfactory manner in which the Appellant had given oral testimony, the lack of evidence subsequent to his arrival in the United Kingdom of treatment for the effects of torture and the lack of contact with any of his immediate or close family in Uganda. She submitted that that the Appellant should be found not credible and the appeal dismissed.

### **Submissions for the Appellant**

32. Mr Joseph confirmed that the Appellant was not making any claim relying on protected rights to a private and family life under Article 8 of the European Convention. The claim was for subsidiary protection based on the Appellant being

the half-brother of XY, a senior ADF commander who had been killed. He referred me to the order of Blake J of 30 April 2018 in the Appellant's proceedings for judicial review in which he had described the expert report as "extremely helpful and careful .... and the anodyne response" in the Respondent's reasons for refusal: see AB p.81. He submitted the expert report should be accepted.

33. In effect, the issues to be determined were those identified at paragraphs 42ff of Judge Whitcombe's decision. The expert report supported the Appellant's claim that he had received money from the ADF by way of bank transfers to pay the school fees for XY's children and included references to Eria Fanta and the ADF policy towards members' children.
34. The Crane Bank statements showed payments every four months and the Appellant had given an adequate explanation for the absence of earlier statements, namely that his house had been raided and the authorities had subsequently closed Crane Bank.
35. The timing of the arrest of the Appellant and his wife dovetailed with the discoveries made by the Ugandan authorities in the course of Operation Sukola, described in the expert report.
36. The Appellant had never relied on any physical scars of torture but on the psychological consequences. In oral evidence he had described the torture as "inside me". The Appellant had described the torture he endured at paragraphs 11-13 of his statement. The expert report referred at AB p.49 to the practice of the Ugandan authorities of torturing people involved with the ADF and at p.50 to the plausibility of the Appellant's account of his escape from Luzira prison.
37. The Appellant's lack of contact with his family was plausible and consistent with his and their fears for their safety. He had given a plausible and credible account of his other contacts with Uganda.
38. The Appellant had given a credible account of previous persecution, of being charged with treason because of his perceived connection with the ADF and of his escape from prison such as to give rise to a real risk to him on return. The passage of time since his departure from Uganda will not have had a material effect on the likely risk to him. The ADF remained active in Uganda.
39. At the close of the hearing I enquired how many years schooling the Appellant had received and he told me that he had spent seven years in primary education. Neither representative had any point arising.

### **Findings and Consideration**

40. The expert report refers to the ADF as a rebel group which has operated along the DRC-Uganda border and the reason given by Uganda for its invasion and occupation of north-eastern DRC between 1998 and 2003 was that this was an act of self-defence against the ADF. It relies extensively on the UN Security Council Mid-term Report of the group of experts on the DRC of June 2014 in the drafting of which the expert was



involved. The Ugandan authorities see the ADF as an Islamist terrorist group. The Ugandan authorities have arrested its leader but it remains active.

41. Subsequent to the decision of Judge Whitcombe, the medical evidence from Ms Halliday and the expert report have become available. While I must take the decision of Judge Whitcombe as my starting point, I may take into account evidence which has subsequently become available which if sufficiently compelling may be justification for departing from the conclusions reached in the earlier decision.
42. The medical evidence is not a formal expert report. It is the record of an assessment at a single interview of the Appellant by mental health practitioners upon referral from the Appellant's GP. The purpose would have been to give guidance to the GP on the future treatment of the Appellant as evidenced by the part headed "Plan agreed..." to be found at the end of the assessment. The assessment notes the Appellant had no psychiatric history prior to his claimed detention and torture and that he exhibited sufficient symptoms of Post-Traumatic Stress Disorder (PTSD) to support a diagnosis of PTSD. The assessment also noted that he has few social contacts and is "socially vulnerable... as he is completely dependent on the refugee resources available for money and food".
43. The expert report corroborates the Appellant's account of receipt of money for XY's children and the manner in which the arrangement for him to look after the children and receive the money was made. It identifies Eria Fanta as an ADF commander in charge of an effort "to exfiltrate the wives and children of ADF commanders from the forest in Beni....." and notes the ADF "had a well-development financial system that used money transfers and personal careers as well as an extensive support network in DRC and Uganda... (and) regularly used Western Union to transfer money for many years, despite the risks of the detection. It also refers to the ADF's support for ADF children": see AB pp.42-44.
44. The expert report explains the timing of the Appellant's arrest at AB p 47. The expert records: -

The timing of (the Appellant's) arrest is noteworthy. Starting in January 2014, the DRC army attacked ADF in Operation Sukola. In mid-April 2014, the DRC army captured ADF's headquarters base..... I personally visited less than a week after its capture and collected hundreds of pages of documents..... In addition, my team had access to hundreds of pages of additional documents collected by the DRC army.

Based on the documents I collected and reviewed.... I was able to identify ADF agents and money transfers..... Moreover, the Ugandan officers.... Were also collecting documents from ADF killed in battle, and from captured ADF camps; that Ugandan officers were also co-operating with DRC army officers. These facts suggest that the Ugandan army was analysing new information obtained during Operation Sukola that helped it to identify ADF agents and money transfers..... The.... arrest is therefore notable, because it took place approximately six weeks after

Uganda authorities collected or had access to a treasure trove of documents about ADF and its networks, including financial networks.

The pattern that emerges is that the Ugandan government has a history of arresting people, alleging their involvement with ADF or other terrorist movements, and then treating these people poorly and even torturing them without credible evidence of violating any laws.

45. The expert report concludes with the view that the Appellant would be at risk on return. I take into account that the expert was at the time of writing the report a doctoral candidate researching the role of natural resources in armed conflict in north-eastern DRC. He has worked as a finance expert and coordinator of the UN Group of Experts on the DRC reporting to the Security Council on amongst other matters the status of armed groups and has spent some 2 ½ years in Uganda and the DRC. Any putative lack of higher academic credentials is more than outweighed by his practical and first-hand experience. I see no reason to depart from Blake J's assessment of the report as "extremely helpful and careful".
46. The Respondent's submissions on the expert report to some extent reflected those criticisms of it made by Judge Suffield-Thompson and for the reasons given in my error of law decision promulgated on 18 January 2019, in particular at paragraph 30, I give little weight to them.
47. The Appellant is a man of limited education and the medical evidence indicates he has had limited social contacts for some time, at least partly on account of his lack of residential status in the United Kingdom. I find that these matters will have resulted in some degree of isolation which will have had some impact on his facility to articulate replies to questions at the hearing. On several occasions I intervened to simplify or to refine the wording or substance of the questions put to the Appellant and found that once he appeared to grasp what information the question was designed to elicit, he was able to give a reasonably clear and, often, confident answer. Examples include ascertaining whether the question referred to the Appellant's first or second wife, to the Appellant's brother-in-law by his first or second wife or the reason for freezing or closure of his account with Crane Bank.
48. Looking at the evidence in the round, the facts which the Respondent has accepted or conceded and taking into account the background evidence contained in the expert report, I find to the lower standard of proof and notwithstanding Ms Isherwood's extensive cross-examination that the Appellant is a credible witness. I therefore accept the core elements of his account, including his claims about his treatment in prison and the lack of representation at the court hearings which is reflected in the background evidence on Uganda.
49. There remains the question whether the Appellant will be at risk on return to Uganda. The expert report concludes that the Appellant "is more likely than not" to be at risk of adverse treatment by the authorities on return. I have given substantial weight to the report and note that "more likely than not" is a higher than the lower standard of proof applicable to subsidiary protection claims. I accept that there is

little or no evidence before me about the current approach of the Ugandan authorities to those perceived to be connected to the ADF. The evidence is that such people have in the past been of interest as outlined in the expert report and there was no evidence before me that there has been any material change in the attitude of the Ugandan authorities towards the ADF. Consequently, I find the Appellant is at real risk of persecution on return to Uganda because of his actual or perceived connection to the ADF. The appeal succeeds on asylum grounds and for the same reasons under Article 3 of the European Convention.

**Anonymity**

50. Notwithstanding the direction made in the error of law decision, there were no submissions whether the anonymity direction previously made should be continued. In the circumstances I direct that it be continued.

**NOTICE OF DECISION**

**The appeal is allowed on asylum grounds.**

**The appeal is allowed on human rights grounds (Article 3)**

**Anonymity direction continued.**

Signed/Official Crest

Date 14. iii. 2019

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT: FEE AWARD**

No fee has been paid so no fee award can be made.

Signed/Official Crest

Date 14. iii. 2019

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal