
**Upper Tribunal**

**(Immigration and Asylum Chamber)** **Appeal Number: PA/11211/2018**

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre** **Decision & Reasons Promulgated**
**On 22 August 2019** **On 2 September 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**SHEKU PAUL KARGBO**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Sachdev for Bury Law Centre

For the Respondent: Mr Tan Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. An 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 A Davies promulgated on 9 April 2019, which dismissed the Appellant's appeal against a refusal of protection on all grounds.

3. Grounds of appeal were lodged arguing that the Judge's decision was perverse in relation to his rejection of the expert report of Dr Bolton; he failed to have regard to the background material; made contradictory finding.

4. There is a Rule 24 notice from the Respondent dated 16 July 2019 arguing that the Judge directed himself appropriately as to the correct standard of proof; that it was open to him to conclude that while he had a genuine subjective fear it was not objectively well founded; that the Judge took the correct approach in assessing whether internal relocation was reasonable

5. On 3 July 2019 Upper Tribunal Judge Kebede gave permission to appeal.

6. At the hearing I heard submissions from Ms Sachdev on behalf of the Appellant that:

   (a) Given those matters that were accepted in the refusal letter the two relevant issues were sufficiency of protection if the Appellant were to return to his home area and the reasonableness of relocation.

   (b) The Appellant relied on an expert report I relation to the newspaper report and the conclusion of that was that the record was genuine. The conclusions were based on articles that were all fully sourced.

   (c) In relation to the second report of Dr Bolton she accepted that it was set out unusually in that she answered the questions posed by the Solicitors and then set out the background material leading to those conclusions, she put the cart before the horse. In the report she talks of the culture of rumours and how they become legitimised in the society of Sierra Leone.

   (d) The Judge made no reference to the background material which showed the antipathy of AML and the local community and the Tribunal made up its mind before looking at the authentication of the article.

   (e) In relation to the Appellants witness the Tribunal focused on whether there was a risk to him not on the evidence he gave in respect of the risk to the Appellant.

   (f) In relation to the standard of proof the Judge referred to 'hard' evidence or 'concrete' evidence but this was the wrong standard. The evidence before the Tribunal was that of the Appellant. The Appellant accounted for the fate of the others in his team, one killed, one fled to Dubai and he could only talk about them not what happened to others.

   (g) The focus was on events in Sierra Leone but no recognition that the Appellant gave evidence in the UK, AML lost the case but the company collapsed and could no longer protect him if he returned. The antipathy from the community was huge and this had an impact on the risk to him.

(h) In relation to sufficiency of protection the refusal letter did not reflect the reality of the situation and this was addressed by the expert in her report.

7. On behalf of the Respondent Mr Tan submitted that:

(a) The first ground of appeal was a rationality challenge and the threshold for that was a high one.

(b) The Judge took into account the expert evidence but had before him other evidence that the Judge had not seen or heard.

(c) In relation to the witness Mr Daboh the Judge recognised that the information the witness could give about the threats to the Appellant was limited and he was entitled to conclude that his evidence was vague and lacking in detail.

(d) The Judge also considered the Appellants evidence in the context of the expert evidence and did not accept his case about the threats. The weight he gave to the evidence of the Appellant and the expert was a matter for him.

(e) The Judge applied the correct standard of proof and set it out in the decision and the use of the words ‘hard’ and ‘concrete’ in respect of the evidence was merely a reflection of the nature of the evidence.

(f) The Judge did not focus on events in Sierra Leone. At paragraphs 7 and 23 he set out the claim including the fact that the Appellant was a witness for AML although he did not give evidence at the trial in London but he recognised this did not lessen the hostility of the local community. He was entitled to note that there was a period of time after which the Appellant made clear he was a witness and before he left for London and yet nothing happened to him.

(g) In relation to the authentication of the newspaper report the Judge identified the key issue at paragraphs 40-43 that while the report may have been genuine that did not mean the contents of the report were true and the Judge was required to assess that in the context of all of the evidence.

(h) The Judge set out the issue of state protection at 60-62 but also looked at relocation

8. In reply Ms Sachdev on behalf of the Appellant submitted

(a) There was no requirement for corroboration in an asylum claim.

(b) In relation to the trial in London the Judge did not assess the impact of the loss of the High Court case and the fact that the company had ceased trading and would not have Government support.

**The Law**

9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him.

10. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

**Finding on Material Error**

11. Having heard those submissions I/we reached the conclusion that the Tribunal made no material errors of law.

12. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging findings in the way that is outlined in the grounds of appeal in this case:

> "*Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have taken a different view of the matter from that that appealed to the adjudicator."*

13. In a detailed and carefully analysed decision the Judge set out a succinct but accurate summary of the Appellants case at paragraphs 5-9 and he sets out at paragraph 7 the further developments that had occurred since his arrival in the UK that the Appellant claimed added to his risk so I do not accept that the Judge failed to take into account both the risk arising out of events in Sierra Leone or what happened after the Appellant left the country.

14. As to the application of the standard of proof the Judge set out the law at 10-18. In a lengthy decision I do not find that the use of the words 'hard' or 'concrete' in relation to the nature of the evidence suggests that the Judge has lost sight of the standard of proof particularly when the context in which those words are used. In relation to the first the Judge notes that while a number of other people in AML were witnesses on behalf of the company '*there is no hard evidence*

*that I have seen to suggest that any came to any harm.*' He is entitled to note that while the Appellant asserted another member of his team was dead there was no evidence of this in the form of for example a death certificate. The fact that corroboration was not required did not mean that a Judge is required to leave out of account the absence of documentary evidence, which could reasonably be expected. While the use of the words hard or concrete may be colloquial and inelegant it would have been open to him to note the absence of other documentary evidence of events that might reasonably be expected to be provable in a document.

15. The context in which the Judge used the word 'concrete' in paragraph 54 was that the Appellant had given no concrete evidence of any specific threats or attacks on him. Given that the issue of risk both subjective and objective was at the heart of the case this was a finding that was open to the Judge.

16. In essence the Judge acknowledged that the Appellant was a reluctant witness for AML and this led to the local community being very unhappy with him .He found that the Appellant had a subjective fear that he was at risk he concluded that this fear was not objectively well founded and he gave numerous reasons for that finding including that the nature of the threats even on the Appellants account was vague and unspecific (paragraphs 26,27,37,38) and that it public knowledge that he had made a statement on behalf of the company and while the community were 'angry' nothing was done to him (paragraph 25)

17. He took into account the evidence of Mr Daboh in detail (paragraphs 28-35)He was entitled to note that Mr Daboh was a poor witness who was equally vague about the nature of the threats (paragraph 29) and to find it incredible that although he claimed that his home was attacked by stone throwers he had not sought to move his family from their home (paragraph 33) and that after his involvement as a witness became known and he had continued to work for 3 months for AML nothing happened to him (paragraph 33) and he was entitled to note that when he moved to Freetown he was not traced there and had no more problems(paragraph 35) He was entitled to conclude that in relation therefore to the risk faced by the Appellant he placed little weight on this witnesses evidence and weight is a matter for him in the absence of irrationality.

18. In relation to the article in a national newspaper suggesting the Appellants life was under threat. It was open to the Judge to draw a distinction between the article being a genuine article in a 'real' newspaper which he appears to accept taking into account the evidence of Dr Bolton but he is right to point out that she conflates that with the question of whether the article had any basis in truth(paragraph 42-43). It was open to him to find that this had to be looked at in the context of all the evidence : in that context he was entitled to take into account the absence of evidence of the source of the information in the article and why such an article was reported on the front page of a national newspaper in the middle of a national crisis (paragraph 40) ; that while others provided witness statements on behalf of AML it was incredible that there was no suggestion of anyone else being threatened (paragraph 41) and the Appellants own evidence was that no threats or attacks had been directed at him when he was in Sierra Leone.

19. The Judge also assessed the case on the basis that he could not return to his home area, looking at internal relocation as he accepts that given community feeling he would be unwelcome. I do not accept he reached conclusions before looking at Dr Bolton's evidence as he states quite clearly at paragraph 48 that the conclusions he reached were made having read Dr Bolton's report. He was entitled to note that Dr Bolton, who is being advanced as an objective expert, should not respond to the question about the reasonableness of internal relocation or state protection by stating 'Honestly I laughed when I first read this question.' He notes that in expressing her opinion about state protection she showed no awareness of the Horvath test. These are matters which he is entitled to take into account in determining the weight he gave her opinions. He dealt with her report in detail at paragraphs 48-61. Ms Sachdev criticises the Judge for suggesting that she makes no reference to source material but acknowledges that this may have arisen because of the unhelpful way the report was written in that she answered a number of questions posed by Ms Sachdev and then at pages 264-346 attaches a number of articles she wrote about issues that appear to be unrelated to internal relocation but which contain references to sources. If Dr Bolton's evidence is unpersuasive because it is in parts unprofessional and poorly presently the Judge cannot be criticised for giving it less weight. The Judge himself assessed the issue of internal relocation by reference to all of the issues relevant to the test of whether it was reasonable in the context of the opinions expressed : his lengthy work experience; the fact that the threats even on his evidence were from members of a small local community and he could move to Freetown which was 175km away; that Mr Daboh moved there and was untraced.

20. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

> *"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."*

21. I am satisfied that when this decision is read as a whole reached conclusions that were reasonably open to him based on a careful assessment of all of the evidence including that of the Appellant, Dr Bolton and Mr Daboh and his approach to that evidence was justified based on the reasons he gave.

## CONCLUSION

22. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## DECISION

23. **The appeal is dismissed.**

Signed Date 24.8.2019

Deputy Upper Tribunal Judge Birrell