Upper Tribunal
(Immigration and Asylum Chamber) PA/05262/2019

THE IMMIGRATION ACTS

Heard at Edinburgh
on 16 January 2020

Decision & Reasons Promulgated
on 28 January 2020

Before

Upper Tribunal Judge Macleman

Between

ASSOUA NESTOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: *Mr S Winter, Advocate, instructed by Ethnic Minorities Law Centre, Glasgow*
For the Respondent: *Mr M Clark, Senior Home Office Presenting Officer*

DETERMINATION AND REASONS

1. FtT Judge J C Grant-Hutchison dismissed the appellant's appeal by a decision promulgated on 6 September 2019.

2. The appellant has permission to appeal to the UT on grounds of "errors of law in terms of *sur place* activity in the UK", set out in his application dated 17 September 2019:

   (i) inadequate assessment of a report by a country expert [items 24 – 25, pp 175 – 217 of appellant's FtT bundle 1]; failure to look at the

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evidence in the round and the country situation to which the appellant would return; 6 paragraphs of the expert report are said to disclose real risk, whether or not the appellant continues political activities in Cameroon;

(ii) misunderstanding the evidence, in that the appellant did not claim to have attended only two rallies [in the UK], and had attended a more recent rally, and, re [22] of the decision, the appellant's evidence was that he was no longer in contact with family, and contact with friends was a long time ago;

(iii) re [19 a], the finding of no evidence of attendance at rallies was "not supported or adequately supported by the evidence";

(iv) "even if the FtT was correct in terms of the evidence, the FtT misapplied the law as it is the view of the persecutor which is determinative, in light of the expert report, notwithstanding the objective unimportance of the appellant's activities";

(v) "the FtT has noted that the appellant could not maintain his political activity for the SCNC as it is banned … the FtT misapplied the law as the reason the appellant cannot continue his political activity is for fear of being persecuted".

3. Mr Winter explained that the appellant (who left Cameroon in 1997) advanced two heads of claim in the FtT, the first based on involvement with the SDF in Cameroon 1992, and the second on his *sur place* involvement with the SCNC in the UK from around 2016 – 2019, as set out by the FtT at [18]. He took no issue with the resolution of the first head of claim. His submissions were based on the grounds cumulatively, and were directed against [19] and [21] of the decision, as follows:

(i) The judge said at [19 a] that the appellant by the date of the substantive interview, 24 April 2019, had attended only 2 rallies in 3 years. Evidence in his bundle at [42-43] showed that he attended a rally on 28 June 2019, so he had been to at least 3 rallies in 3 years.

(ii) Also at [19 a], the judge said there was no evidence of attendance at rallies, but there was not only the appellant's evidence, but the statements of his supporting witnesses, [38 – 39] of his bundle, that he had attended rallies.

(iii) Again at [19 a], the judge said there was no evidence of targeting in Cameroon as a result of attending rallies in the UK, but that overlooked the expert report, which was to that effect.

(iv) The judge referred at [22] and [28] to the report, but did not engage with what it said about *sur place* activities.

(v) The relevant paragraphs (misnumbered in the report) were at page 195, 42-43; 200, 29-30; 202, 34; and 205, 43. These referred to the appellant's presence on social media, to the results that might have, and to suspicion being enough to give rise to risk.

(vi) At 19 (d), the judge overlooked that the appellant said not only that he attended rallies, but that he raised awareness, and erred in finding his evidence to be at odds with his witnesses. The judge said he did not give evidence of distributing flyers, but a copy flyer was in his bundle as item 43, pp. 314-55, marked as "distributed by appellant". The attachment of "no weight" to the evidence of the witnesses was undermined by those errors.

(vii) The report, properly considered, might have been found to show that the appellant's political activities, including his expressions on social media, amounted to a real risk.

(viii) The case should be remitted to the FtT.

4. Mr Clark submitted:

(i) The expert report was adequately considered, at [22] and elsewhere. It was based on accepting all the appellant's claims, including detention and the existence of an arrest warrant for activities in 1992, which the FtT rejected; a finding not challenged.

(ii) The judge directed herself correctly at [8 a] on considering the evidence in the round, and her decision showed that she applied that direction.

(iii) The report at 194, 40, 203, 40 - 43 and elsewhere gave examples of SDF associations at home and abroad giving rise to risk in Cameroon, but these were individuals of much higher profile than the appellant, even taking his case at highest.

(iv) The report's examples were all of individuals returning from the USA. There was no example of anyone returning from the UK.

(v) The report held at 185, 10 and elsewhere that all Anglophones and all citizens of Southern Cameroon were at risk of persecution by the authorities. That was not supported by the evidence cited, or by country guidance.

(vi) The report could not take the appellant any further than as found by the FtT.

(vii) The judge's observation about attending two rallies was correct, being specifically directed to the pre-interview period. There was no misapprehension.

(viii) In any event, attendance at three rather than two rallies was immaterial.

5. Mr Winter replied:

(i) The report was not entirely conditioned on taking the account at face value. It provided justification based on the appellant's social media activity.

(ii) There was nothing wrong with the judge's self-direction, but the issue was whether she applied it.

(iii) The presenting officer stressed that the appellant has been out of Cameroon for 22 years, but that strengthened his case, making him more likely to be suspected on return.

(iv) The final example of an expatriate Anglophone arrested on return, at 205, 42, appeared to be a person of no higher profile than the appellant.

6. I reserved my decision.

7. I agree that the *sur place* case is not diminished, and might be strengthened, by having been a long time away from Cameroon.

8. The report's examples are all of return from the USA, where there appears to be a much larger population of expatriate Anglophones from Cameroon than in the UK; but I see no reason why a risk of that nature might not apply equally to return from the UK.

9. There does not have to be country guidance to support a finding of risk to all Cameroonian anglophones; the question is whether there was evidence which might realistically have supported that.

10. The judge's comment of "no evidence" of attending rallies is not well worded, because there was his own evidence; but she knew that.

11. Assertions were made in submissions and in the report of persons being targeted because of social media activity, but there has been no reference, as far as I can see, either in the FtT or in the UT, to any evidence of such a link. The monitoring referred to in the report, even of online articles, is of public sources, newspapers and magazines, not individual social media accounts.

12. There has been no reference to evidence of the Cameroonian authorities searching for opponents amongst the vast mass of personal social media.

13. I was not referred directly to the evidence of the appellant's social media activity. It appears to be documented by copy printouts from "twitter", item 46, pp 310 – 326, which are in terms highly critical of the government; but the appellant has not referred to evidence, in the report or elsewhere, linking "tweets" of that nature to detection and ill-treatment if he were to arrive back in Cameroon.

14. (It is readily ascertainable, and in the public domain, that there are 6000 "tweets" per second, 500 million per day, on "twitter".)

15. For all that is said at 205, 42, the example there may be a person of no higher profile than the appellant; but the surrounding circumstances are unknown. This vague example is not a sufficient basis for attaching real risk to every returning Anglophone.

16. The judge is criticised for not noting that a flyer copied in the appellant's bundle is annotated as having been distributed by him, and for not noting his attendance at a third rally. Those matters are given no particular prominence in a bundle of 48 items over 328 pages. It is not said that in submissions the judge was directed to those points or asked to make specific findings on them. A decision does not have to comment on the evidence page by page and line by line. There is no error of omission.

17. The judge's observation about attendance at rallies was tied to a specific period, and was accurate.

18. Attendance at a third rally, and the note on the copy flyer, were not aspects of the evidence which might have changed the overall decision.

19. The statements of the appellant's witnesses did lend support to his attendance at rallies. However, even if that had been given more credit, there has been no reference to evidence (rather than assertion and opinion) that attendance in a minor role at rallies abroad is reasonably likely to lead to identification and targeting by the authorities on return to Cameroon.

20. The report says at 185, 10 that it "will demonstrate that all Anglophones and Cameroonian citizens from Southern Cameroon … are considered to be potential risks to state security and are being placed under surveillance, harassed, arrested, and / or tortured by the security forces in the current moment". Despite that, it was not advanced for the appellant, either in the FtT or in the UT, that being an Anglophone from Southern Cameroon is enough to qualify him for protection, or that the report succeeds in demonstrating its proposition.

21. On general risk to Anglophone returnees, and on risk from social media activity, the report does not cite evidence which justifies its rather sweeping conclusions.

22. Grounds (i) – (iii) do not show that the report and the rest of the evidence disclosed any better a *sur place* case than was detected by the FtT.

23. Grounds (iv) and (v), in so far as they state the law, are accurate; but they do not illustrate any legal error perpetrated in the decision.

24. The grounds and submissions for the appellant together do not establish that the FtT's decision involved the making of any error on a point of law, such that it ought to be set aside. That decision shall stand.

25. No anonymity direction has been requested or made.

22 January 2020
UT Judge Macleman