



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

HU/19835/2019 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*  
on 28 April 2021

Decision & Reasons Promulgated  
**On 07 May 2021**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**ABDOU CISSE**

Respondent

**DETERMINATION AND REASONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD was represented by Ms Everett, Senior Home Office Presenting Officer. The appellant was represented by Mr Heeps, of McGlashan MacKay, Solicitors. I am obliged to both representatives for their succinct submissions.
3. The appellant identifies himself as having been born in the Ivory Coast on 28 June 1982, his father (with whom he has lost touch) being from Mali, and his late mother from Senegal.
4. By a decision dated 27 November 2019, the respondent refused the applicant leave as a stateless person, refused his claim on family and

private life grounds, and declined to revoke a deportation order against him.

5. A panel comprising FtT Judges Connal and J C Grant-Hutchison allowed the appellant's appeal by a decision promulgated on 23 April 2020.
6. The SSHD sought permission to appeal to the UT on grounds set out at [1 – 8] of her application dated 14 July 2020.
7. UT Judge Sheridan granted permission on 31 July 2020, on the view that arguably the FtT failed to treat the appellant's claim as a "limbo argument" and failed to analyse it according to the guidance in *RA (Iraq) v SSHD* EWCA Civ 850.
8. The appellant responded to the grounds as set out at [1 – 17] of his communication dated 26 April 2021.
9. I was not referred directly to any passage in *RA*. The present case is not closely analogous to the "limbo" issues discussed there. The grounds rely also on *Patel* [2013] UKSC 72 and on *Shou Lin Xu* [2014] UKUT 375 for the proposition that the SSHD is entitled to proceed on the basis that those unlawfully in the UK will leave of their own accord.
10. The FtT's decision was based on the "significant practical difficulties" – see [36, 38, 40, and 54] – in removing or deporting him to Ivory Coast, or to Mali (or elsewhere; he has indicated in the past that he is from Guinea, although he has since retreated from that). Although Mr Heeps made a subsidiary argument that the outcome could stand on other factors, this was a matter given such significance by the panel that its decision could not withstand its excision.
11. The FtT's decision is detailed and meticulous in all other respects. It is difficult to see that it might rationally have arrived at the same conclusion on very compelling circumstances, over and above the exceptions in statute and in the immigration rules, but for the impracticality of removal.
12. The FtT might have defined the issue more clearly as whether the appellant could not be removed through no fault of his own, in which case the outcome discloses no error; or only because of his non-cooperation, in which case the outcome should have been to the contrary. The SSHD is correct that persons unlawfully in the UK are expected to leave, if they can, and cannot benefit from their own recalcitrance.
13. The FtT says that the "significant practical difficulties" in returning the appellant, "weigh against the public interest in his deportation". Those passages might be read as if he benefits from those difficulties even if he has contrived them. On closer reading, however, I do not consider that is what the FtT found. Although the judges note that the appellant has given conflicting and unreliable information in the past, they accept his account as most recently given to them. At [37-38] and at [39-40] they accept that

he co-operated in procedure respectively with the authorities of Ivory Coast and of Mali.

14. Ms Everett criticised the finding at [41] that there “is no requirement for the appellant to do more than he has done in completing the Ivorian ETD process and attending those interviews arranged by the respondent to date”. She was correct in her submission that the appellant has an obligation to avail himself of any nationality to which he is entitled. However, the finding by the judges, reading their decision as a whole, is that he has done all he can.
15. The grounds found on the conflicting and unreliable information previously given by the appellant, but the judges noted that position. While they might have been more explicit in resolving credibility, they were entitled to accept the evidence they had from the appellant and his witnesses, and they plainly did so.
16. The SSHD’s grounds resolve into insistence and disagreement with the FtT on a matter of fact, rather than identification of error on a point of law.
17. The decision of the First-tier Tribunal shall stand.
18. No anonymity direction has been requested or made.

Hugh Macleman

28 April 2021  
UT Judge Macleman

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent.
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email.

