Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12509/2019**

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre (remote)	**Decision & Reasons Promulgated**
On: 30th November 2020	**On: 07th January 2021**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

EPS
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Pipe, Counsel instructed by Duhra Solicitors**
For the Respondent: **Mr McVeety, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellant is a national of Cameroon born in 1970. He appeals with permission against the decision of the First-tier Tribunal (Judge A Siddiqi) to dismiss his appeal against the Respondent's decision to refuse him protection.

Anonymity Order

2. This appeal concerns a claim for protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Background and Matters in Issue

3. For the purpose of this appeal the facts can be shortly stated.

4. The Appellant has been in the United Kingdom since November 2002 when he was given leave to enter as a student. He has been an overstayer since 2007. He claimed asylum in February 2019. The basis of the claim is that the Appellant has a well-founded fear of persecution in Cameroon for reasons of his political opinion. He claims that he is an Anglophone who has been accused by the Francophone Cameroonian government of being a member of the Ambazonia Defence Forces (ADF), and that a warrant was issued for his arrest in 2013.

5. The Respondent rejected this account for want of credibility, and although its reasoning was slightly different, the First-tier Tribunal did too. In broad summary the Tribunal drew adverse inference from the very late claim for protection; the Appellant's assertion that he is Anglophone was contradicted by the background material indicating that his home state in Cameroon is in fact French-speaking, and he was himself unable to participate in the hearing without an interpreter; the chronology given was internally inconsistent; his account of his father's political activities was vague; the claim to have been convicted in absentia was unsupported not only by a lack of corroborative documentation but by an absence of country background material showing such prosecutions to be pursued; the claimed conviction had occurred 11 years after the Appellant had left Cameroon. Although certain elements of the account had remained consistent, this was not enough to discharge the burden of proof given these difficulties.

6. A second limb of the Appellant's account was that in recent years (since approximately 2018) he has become involved in Cameroonian politics in the United Kingdom. He claims to have attended a number of events organised by 'West Cameroon Movement for Change UK' and 'BAS UK'. He asserts that this *sur place* activity in the United Kingdom would place him at risk were he to return to Cameroon. The Tribunal appeared to accept that the Appellant had

attended some events, but found his commitment to be in bad faith. The Tribunal did not accept that the Appellant was genuinely committed to Anglophone separatism so there was no risk of him carrying on such activity upon return to Cameroon. Nor was there any evidence capable of demonstrating that the Cameroonian authorities carry out surveillance of the diaspora: there was therefore no risk resulting from the activities here. The Tribunal went on to consider, in the alternative, whether a risk would arise if there was such monitoring, but given that the Appellant was involved with a small group and his claimed activity appeared to be confined to "mobilising Cameroonians in Wigan", the Tribunal was not satisfied that the Cameroonian authorities would be interested in him. The appeal was accordingly dismissed.

The Appeal

7. The first ground concerns the Tribunal's recording, at its §13, that the Appellant gave evidence using a French interpreter. The relevance of this was that his claim is based on his alleged political support for Anglophone separatism. The Appellant disputes that he gave evidence in French: he states that in fact he gave evidence in English. That the Tribunal had plainly drawn adverse inference from its finding to the contrary was an error of fact amounting to an error of law. For the Secretary of State McVeety accepted this ground was made out. The HOPO's note, and the Record of Proceedings, both confirm as much. Whether this error of fact is material to the extent that I must set the decision aside is a matter I must consider in the round with the remaining issues before me: ML (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 844.

8. The central ground concerns the Tribunal's treatment of evidence relating to the Appellant's mental health. At its §14 the Tribunal recorded evidence before it which indicated that it would be appropriate to treat the Appellant as a vulnerable witness in accordance with the First-tier and Upper Tribunal Practice Direction *Child Vulnerable Adult and Sensitive Witnesses* and the decision of the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department & Lord Chancellor [2017] EWCA Civ 1123. It is perhaps evident from this that the Tribunal certainly accepted that the Appellant does have mental health problems: see further its §48. The Appellant takes no issue with any of that. Where he does submit that the Tribunal erred is in the following respects: first in its decision to place only a "little weight" on the medical evidence provided, and second to fail to factor in the Appellant's mental health problems when assessing his evidence.

9. The medical evidence itself consisted of the following material:

    i) A letter dated 30th October 2019 from the Appellant's GP in Wigan. Dr K Finn writes that the Appellant is suffering from "low mood and anxiety following trauma he experienced in

Cameroon. He has features suggestive of Post-Traumatic Stress Disorder";

ii) A letter dated the 7th February 2020 from the same doctor which appears to have been written for the attention of an immigration officer at Dallas Court enforcement office, since it relates to the Appellant having to report to an office in Salford. Dr Finn writes that the Appellant has "significant mental health issues", is "suffering with anxiety and depression" and "may even have a more pervasive mental disorder". Dr Finn also writes that the Appellant is being "assessed by psychiatry" and asks that the frequency of his reporting trips be reduced;

iii) GP records showing the Appellant has been prescribed anti-depressants;

iv) A letter dated 11th February 2020 from Wigan Mental Health Urgent Response Team to Dr Finn. The writer, Jenny Simpson, does not identify her qualifications. She explains that the Appellant has reported feeling depressed for the past two years, but in the last 12 months says that he has started to hear voices – a negative voice which instructs him to harm himself and a positive voice which stops him. The voices argue with each other. The Appellant reported to Ms Simpson that he is unable to concentrate, has poor sleep and feels exhausted and hopeless. Ms Simpson records that the Appellant is a Christian who attends church twice per month but that he feels he has isolated himself from his friends because he is embarrassed about his mental health problems;

v) A second assessment conducted by the same service, this time dated 13th February 2020 and signed by Dr Indu Surendran. The letter is again addressed to Dr Finn. Under the sub-heading "impression" Dr Surendran writes "severe depression with psychotic symptoms (with component of complicated grief). Cognitive deficits due to depression. Significant trauma". Dr Surendran states that he was unable to obtain clear details from the Appellant because of his condition: "suffers from lack of concentration and cognitive difficulties arising from psychomotor retardation due to depression". Dr Surendran gives the example of the Appellant being unable to recall his own telephone number. The letter also records the Appellant's disclosure that he has distanced himself from friends at church and that he was unable to socialise or do routine things;

vi) A final letter from the Wigan Mental Health Urgent Response Team dated 19th February 2020 discharging the Appellant from

their service; it appears that his care was continued by The Crisis Resolution and Home Treatment Team.

10. As I have said, the First-tier Tribunal did not appear to doubt that the Appellant does suffer from some mental health issues. It was not, however, prepared to attach more than "limited weight" to the evidence produced. Neither Dr Surendran nor Ms Simpson had explained what qualifications they had in the diagnosis or treatment of mental health disorders; nor did either refer to any diagnostic criteria. Dr Surendran had not even purported to offer a formal diagnosis: he instead records his "impression" of what the Appellant is experiencing. Further there was a contradiction between Dr Surendran's record of the 13th February that the Appellant was so ill he had lost interest in socialising and what Ms Simpson recorded on two days earlier on the 11th February: the Appellant told her that she is attending church every two weeks and that his friend from Church contacts him if he has not seen him for a while. The Tribunal also regarded the Appellant's claimed social isolation as being inconsistent with his claim to be a political activist, regularly attending demonstrations etc. It was not satisfied that Dr Surendran would have recorded those matters in his letters, and formed the impression that he did, had he been aware of the true picture.

11. The written grounds take issue generally with this analysis by the Tribunal, submitting in essence that the decision reflects a partial reading of the material, with the Tribunal failing to weigh in the balance key elements of it, including the Appellant's reported auditory hallucinations, and Dr Finn's assessment that he "may even have a more pervasive mental disorder". In further written submissions, prepared following *Covid-19* Directions on the 27th July 2020 Mr Pipe expands on that to point out that the letters from Wigan Mental Health Urgent Response Team were written following a "comprehensive assessment" of the Appellant. Mr Pipe highlights the aspects of the medical evidence which offers commentary on the Appellant's ability to recall certain events and contrasts these with the Tribunal's reference [at its §28 and 29] to the Appellant being an intelligent man and to its conclusion [at its §24] that none of his medical conditions would significantly impact on his ability to recall events in Cameroon. I have taken all of the submissions made on the Appellant's behalf into account.

12. I deal first with the submission that there was some contradiction in the Tribunal deciding to treat the Appellant as a vulnerable witness on the one hand, and on placing little weight on the medical evidence on the other. I find no contradiction arises. It was perfectly proper for the Tribunal to have recognised that the Appellant may be vulnerable, and so to enact procedures aimed at ensuring his fair participation in the hearing. That did not mean that the Tribunal was under any obligation to uncritically accept the evidence produced, or to take that evidence at its highest. The deficiencies identified by the Tribunal were perfectly reasonable observations. None of the medical evidence contained a formal diagnosis, made with reference to the diagnostic

criteria in DMS V. It amounted to a series of healthcare professionals recording what they had been told by the Appellant, and in the case of Dr Surendran, what his initial "impression" was. The weight to be attached to that 'impression' was a matter for the Tribunal.

13. Mr Pipe further submits that the Tribunal erred in failing to refer to specific elements of the medical evidence, including the GPs assessment that the Appellant may be suffering from a "more pervasive" mental disorder. I do not accept that the decision of the First-tier Tribunal reveals there to have been a partial reading of the medical evidence, or to suggest that the Tribunal has not read that evidence with care. It is evident from the decision overall that the Tribunal read all of the evidence before it, and was well aware of what the Appellant had told the doctors and the mental health team. In the absence of any formally expressed diagnosis it is difficult to see what a paragraph dealing with Dr Finn's speculation might have added to the Tribunal's analysis.

14. The crux of this ground is however that the Tribunal should have given more weight to the medical evidence when it assessed the Appellant's historical account. Mr Pipe drew particular attention, for instance, to the Tribunal's assessment of the narrative as being "vague", and submitted that this was an unfair criticism given the medical evidence showing the Appellant to have difficulties with his memory. I find no error in the Tribunal's approach for the following reasons.

15. First, I return to the fact that none of the documents before the Tribunal contained a formal diagnosis of the Appellant, nor explored in any detail the nature of his memory problems. In those circumstances the Tribunal was not bound to accept that the Appellant had any such difficulties.

16. Second, even if the Appellant had the worst memory in the world that did not place any obligation on the Tribunal to somehow place weight on evidence that did not exist. The part of the account described as "vague" was the Appellant's claim that 20 years ago in Cameroon his father was an "influential member" of the SCNC. That was all he was able to say about the matter, leading the Tribunal to observe: "it basically amounts to an assertion that he was involved in political activities without any details as to that involvement". An explicit recognition of the Appellant's poor recall would not change that. Medical evidence of the sort alleged to exist in this case can legitimately preclude decision makers from reaching adverse findings – for instance where a chronology has become confused – but it is not logically capable of compelling a Tribunal to "fill in the gaps" in a claimant's case.

17. Third, and perhaps more fundamentally, it is very difficult to see how the political beliefs of the Appellant's father two decades ago might establish a real risk of harm for the Appellant today.

18. This was an account rejected for a number of very cogent reasons. The 'section 8' factors loomed unusually large. It is generally the case that that statutory injunction to diminish the weight to be attached to late claims will be of minimal importance in the overall balancing exercise. Where however, as here, the claim is made some 16 years after the Appellant's arrival in the United Kingdom, it is plainly a matter that the Tribunal was entitled to place considerable weight on. The Appellant failed to seek protection when by his own account close family members were being tortured in Cameroon (in 2008), he and his father were accused of arms trafficking (2010) his father was executed in prison (2012), his uncle and other associates were given life sentences (2013) and then the Appellant himself was handed down a life sentence (2013). Even if one were to accept that the Appellant was relying on his student visa for some protection against return to Cameroon there was still a five year gap before those efforts becoming 'appeal rights exhausted' and the claim being made. It is against that background that the Tribunal made its analysis.

19. The Secretary of State has accepted that the Tribunal erred in fact when it directed itself that the Appellant had used an interpreter, giving evidence in French. That was obviously an error of some significance, given the Appellant's claim be a fighter for the independence of English-speaking Cameroon. I am not however satisfied that it is an error of such magnitude that the decision falls to be set aside. As Mr McVeety observes, it sat alongside the Tribunal's other, unchallenged observations that the Appellant was himself resident in French speaking Cameroon, and in fact needed to attend English language classes when he first arrived in the United Kingdom as a student. Absent that one mistake of fact the remaining credibility findings would stand. There was no support in the country background evidence for the notion that the Cameroonian authorities would pursue, in 2013, a prosecution against a man who had left the country in 2002. Nor was there any credible explanation as to why the Appellant left it a further five years before he made his claim.

20. That leaves the matter of the Appellant's *sur place* activities. Having apparently undertaken no political activity in the years that his family were allegedly facing brutal persecution in Cameroon, the Appellant claims that he embarked on a new phase of political activism in 2016 after he attended a protest in London. Although the Secretary of State challenges this, by my reading of the decision the Tribunal appears to accept that the Appellant has indeed attended various meetings and protests in the United Kingdom, becoming "significantly involved" in 2018-19. What it was not prepared to accept was his claimed motivation for doing so. The delay was one point. Another was the Appellant's inability to provide a consistent explanation for why he felt moved to start his activism. The grounds do not challenge the Tribunal's conclusion that the Appellant is acting in bad faith. What they do challenge is the conclusion drawn, that the Appellant faces no *Danian* risk as a result.

21. At its paragraph 35-37 the Tribunal considers the country background material, including the CPIN *Cameroon: Anglophones* (March 2020). It concludes that whilst there is extensive evidence of human rights abuses being perpetrated against Anglophone separatists, there is no significant evidence of such abuses being targeted at people in the diaspora, nor upon return to Cameroon. Specifically there is no evidence that the Cameroonian authorities are conducting surveillance of diaspora communities abroad. The grounds challenge those findings on the basis that they are contrary to a passage in the CPIN at 2.4.6: "Sources note that Anglophones living in the diaspora who criticize or are perceived to oppose the government and advocate secession may face arrest and detention on return depending on their profile and the nature of their views".

22. I am satisfied that there is no arguable error in the failure of the Tribunal to refer specifically to that passage. In fact the Tribunal gives very careful attention to the possible *Danian* risk, directing itself to the principle in YB (Eritrea) [2008] EWCA Civ 360 that a risk may be found even in the absence of hard evidence if the regime in question is particularly malign. It accepts that there is good evidence of the Cameroonian authorities persecuting Anglophones. But crucially, it does not accept that the Appellant *is* an Anglophone. Nor did it accept that he is a person with a particularly high profile, nor that his purported political views are genuine. In those circumstances the passage cited from the CPIN offers no assistance to the Appellant. The Tribunal was rationally entitled to reach the conclusion that it did: the opportunistic involvement of this Francophone was not of the level that he would be reasonably likely to have come to the attention of the Cameroonian government.

23. The appeal is therefore dismissed.

Decisions

24. The determination of the First-tier Tribunal contains no material error of law and it is upheld.

25. There is an order for anonymity.

Upper Tribunal Judge Bruce
27th December 2020