



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003006

First-tier Tribunal No: PA/00012/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 23rd of February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

BC
(anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer of Counsel

For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 20 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant was born on 4 June 1993. He is a citizen of Senegal. He appealed against the decision of the Respondent dated 30 November 2022, refusing his protection and human rights claim. That appeal was dismissed by First-tier Tribunal Judge O'Hanlon in a decision promulgated on 5 June 2023.

Permission to appeal

2. Permission was granted by Judge Boyes on 28 June 2023 who stated:

"2. The grounds assert that the Judge erred in reaching the conclusions that he did. The appellant argues that the positive grounds decision and the conclusive grounds decision impact his ability to internally relocate and/ or seek the protection of the authorities. The appellant argues that neither of these aspect received sufficient consideration or attention in the judgment which causes an error.

3. Secondly, the appellant argues that the Judge erred by failing to consider how the fact of Modern slavery which exists in this case would or could impact on his ability to seek protection of the authorities.

4. The matters raised by the appellant are arguable in that the Judge may have been better served by considering the impact of these matters on the conclusions reached.

5. Permission is thus granted on all the matters raised by the appellant."

The grounds seeking permission to appeal

3. The grounds state;

"1. The First-tier Tribunal Judge (Judge) has erred in concluding (paragraph 47) that it would not be unduly harsh for the Appellant to relocate within Senegal:

- a. The Judge has failed to take into account evidence which was before him, namely:
 - (i) Confirmation that the Appellant had received a positive reasonable grounds decision from the Competent Authority indicating that he was a potential victim of modern slavery (paragraph 25); and
 - (ii) Letter from West End Refugee Service (WERS paragraph 26).

b. The Respondent, prior to the hearing, issued a conclusive grounds decision, dated 28 April 2023, accepting that the Appellant was an actual victim of modern slavery; regardless of the Respondent's failure to notify the Tribunal of this conclusive decision, it was incumbent on the Judge to take into account the impact on the Appellant's ability to relocate within Senegal as a person who had potentially experienced modern slavery.

c. The Judge limited his consideration of the Appellant's state of mind to the letter from the GP (paragraph 46) and did not make any finding on the letter from WERS which, whilst not medical professionals, had known the Appellant since November 2021 and spoke, from their experience, that he was "*noticeable withdrawn and subdued*", "*feels highly anxious and fearful*", "*endures persistent nightmares, sleeping issues, reoccurring flashbacks*" and that he had been referred for "*trauma-focused counselling*".

d. Furthermore, the Judge failed to apply the findings of fact that the Appellant had been subjected to forced labour for two years in Libya (paragraph 9) and three years in Italy (paragraph 12) and the implications of that for his ability to relocate

e. Therefore, the Judge has failed to apply anxious scrutiny to the totality of the evidence before him.

2. In concluding that there would be sufficient protection available for the Appellant (paragraph 48), the Judge has erred in failing to take into account the ability and willingness to access such protection given his experiences in Senegal, Libya and Italy and the necessity of him receiving support to even attend a hearing before the Tribunal (a representative from WERS was present at the hearing and, at one point, was allowed to clarify a point of evidence during the hearing, an intervention which was not recorded in the determination)."

The First-tier Tribunal decision

3. Judge O'Hanlon summarised the Appellant's claim as follows;

27. ... (a) In 2007 armed rebels in the Casamance region of Senegal entered the Appellant's village and forcibly recruited him. He was taken to the bush and trained by the rebels. One night the Appellant was sent to a village to steal cows and sheep. The villagers fought back and when they did so, the Appellant took the opportunity to escape. The Appellant stopped a truck driver who took him to Tamba where he stayed for one week before clandestinely entering Mali by lorry.

(b) The Appellant fears that in the event of return the armed rebels in Casamance region will kill him because he escaped from them after they had forcibly recruited him.

(c) In the event of return to his home village the people in the village would know that he worked with the rebels and would be afraid of him. He would be in danger of being killed by the rebels as he had escaped from them. Police and government would not protect him or help him in his home area which is very rural and out of their reach.

(d) If the Appellant were returned to Dakar he would not know anybody there. He has no connection with anybody there. He has never been to Dakar. He had no formal education and does not have any family that could assist the Appellant find work.

(e) The Appellant's only experience of work in Senegal is in agriculture which would be of no assistance to him in Dakar.

(f) The Appellant would be unable to find accommodation in Dakar, he would be homeless and at risk.

(g) The Appellant suffers from mental health issues as a result of what happened to him in Senegal and Libya where he was detained and forced to work. Return to Senegal would worsen his mental health and he would be unable to thrive or cope. (h) The Appellant's mental health is very poor. He suffers from anxiety and sleeplessness and often has nightmares. The idea of returning to Senegal makes him contemplate suicide..."

4. Judge O'Hanlon made the following findings:

"44. The Appellant has suggested that his lack of education and lack of combined experience of anything other than cattle herding would cause difficulties in him being able to obtain employment in the event of internal relocation to a place such as Dakar. I have taken this into account as I have taken into account the Appellant's evidence that he has never been to Dakar and does not know anybody there. It would not be the case that the Appellant would have any family support available to him in Dakar or indeed anywhere other than his home area. It is however the case that the Appellant has, over a number of years, shown himself to be a resourceful person having managed to escape from his captors, escape from his forced labour in Libya and travelled to Europe and reside for a number of years in Italy, Switzerland and France before coming to the UK. Whilst it is also the case that the Appellant came to the UK and did not know anybody, the degree of support available to the Appellant in the UK, as is evidenced in his witness statement, may perhaps be more effective than that available in the event of return to Dakar. These are all factors which I have taken into account.

45. Whilst the Appellant has referred in his witness statement to difficult conditions in Dakar in particular, and the potential poor standard of living there which he would find, it is the case that that is a standard of living which a significant proportion of the inhabitants of Senegal in general and Dakar in particular have to endure and in the absence of individual characteristics which would make the Appellant particularly vulnerable, it is arguable that it would not be unduly harsh for him to relocate there and live in conditions which a significant proportion of other inhabitants of Senegal experience.

46. The Appellant has claimed that one of the difficulties in him returning to Senegal is his mental health condition. The Appellant provided at the hearing a letter from his GP dated 15th May 2023 confirming that the Appellant had seen his GP recently on two occasions with concerns relating to his mental health and had been provided medication for his mental health. No evidence has been put before me to suggest that treatment for mental health conditions is not available in Senegal and the medical

evidence before me is limited to the letter from the Appellant's GP which indicates that the Appellant has only recently started on medication. This of itself does not suggest a longstanding mental health issue and there is no evidence before me of any secondary input from mental health services although the letter from the Appellant's GP suggests that the GP is attempting to arrange for the Appellant to obtain counselling. Whilst there is no specific evidence other than the GP's letter available to me, I have taken into account as part of my overall assessment the Appellant's mental health condition.

47. I note from the evidence before me that the Appellant speaks Wolof which the background evidence would suggest is spoken by 80% of the Senegalese population therefore the Appellant would not have any significant language difficulties in the event of return. Having considered all of the evidence before me, whilst taking into account the personal characteristics of the Appellant to which I have referred, I do not find that it would be unduly harsh for the Appellant to internally relocate to an area of Senegal other than the Casamance region."

The Rule 24 notice

3. The Rule 24 notice stated;

"3. The grounds assert that the First Tier Tribunal erred by failing to consider the positive grounds conclusion of the Competent Authority when assessing the appellant's ability to re-locate within Senegal. There is no evidence that the FTT did not in fact consider this point. However given that it not the appellant's case that he was trafficked from Senegal this was not a material consideration.

4. The other grounds essentially rely on the appellant's mental health and claim that the FTT ignored the evidence from WERS. As recognised in the grounds WERS are not medical experts. There was no medical report in this case and the FTT had proper regard to the best medical evidence available, that from the appellant's GP. As recognised in **HA (expert evidence; mental health) Sri Lanka** GP evidence is invaluable and paints a broad picture of an appellant's mental health. It was clearly correct for the FTT to focus on this evidence. There is no material error."

The hearing before me

4. Mr Greer's helpful skeleton argument augmented the written grounds as follows;

36. By the time the Appeal came before Judge O'Hanlon, the Respondent had accepted that it was more likely than not that the Appellant had been a victim of human trafficking and modern day slavery on several occasions, in several different countries, across multiple national borders in 2 separate continents, for nearly a decade. It is *Robinson obvious* that this is a serious indication that the Appellant would be vulnerable to similar exploitation upon relocation in Senegal.

37. The background evidence before the Tribunal established that Human Trafficking and modern day slavery was endemic in the place to which the Respondent proposed the Appellant should relocate. In particular, modern day slavery occurred in the farm labour sector in which the Appellant had experience as a child labourer and as a modern day slave.

38. The background evidence before the Tribunal established that the Senegalese state continued to prosecute its war against Casamance separatists. The background evidence also established that those without civil documentation faced difficulties accessing state services.

39. The case specific evidence before the Tribunal established that the Appellant is in receipt of support from several services in the United Kingdom, without which he would be unable to navigate society. It was common ground between the parties that

the Appellant had a genuine, subjective fear of being targeted by those who forced him to work as a child soldier throughout Senegal, whether or not this was objectively well founded.

40. Against those agreed facts and undisputed background evidence, the First tier Tribunal's findings at [44] - [47] are unsustainable. This is for the following reasons.

41. **Firstly**, the determination does not address anywhere on its face whether the Appellant might find himself at risk of further exploitation upon relocation within Senegal. This was a *Robinson obvious* point and the First Tier Tribunal failed to deal with it.

42. **Secondly**, the determination is faulty for lack of reasoning. From a fair reading of [44] - [47], the Tribunal identifies a number of matters which tend to suggest that this Appellant will be *unable* to live a relatively normal life upon relocation. It is difficult, even on the broadest and most sympathetic reading, to understand how the conclusion at [47] follows the passages that precede it. The decision does not entitle the Appellant to understand why he has lost on this point.

43. **Thirdly**, the observation at [44] that the Appellant that the Appellant *has shown himself to be resourceful person having managed to escape from his captors*, is irrational. On each occasion that he escaped, but for the last, the Appellant found himself being re-trafficked and subjected to Modern Day Slavery. To suggest that the Appellant's repeat victimhood is indicative of resourcefulness rather than vulnerability is, with respect to the Judge below, frankly perverse.

44. **Fourthly**, the observation as to the Appellant's resourcefulness at [44] is made without reference to the evidence from the Appellant's Modern Slavery advocate. This unchallenged evidence demonstrates that the Appellant is in need of a significant degree of support in order to function in the United Kingdom. That he needs such support in the United Kingdom is a serious indication that he will continue to require such support in future, in Senegal. This was the only evidence before the Tribunal as to the Appellant's resourcefulness. The Tribunal was obliged to address it. It's failure to do so is a material legal error.

45. **Fifthly**, the determination does not deal with the fact that the Appellant has a genuine, earnestly held fear of return to Senegal or the fact that the Appellant is without civil documentation. Nor does the determination take into account the fact that the state has been actively pursuing those associated with Casamance separatists. The Appellant has been branded in such a way that he would be immediately identified as having fought against the Senegalese state. These factors were of relevance to the assessment of the reasonableness of relocation. The Tribunal was obliged to deal with them. It did not. This is a material legal error."

5. Mr Greer's oral submissions did not expand on the written submissions in any material way.
6. Mr Diwyncz submitted that there was not a plethora of evidence in the appeal. The Judge made of the evidence what he did.

Discussion

7. By far the strongest ground is ground 2 which is also considered in point 5 at [45] of Mr Greer's skeleton argument. The fact that the "Appellant has been branded in such a way that he would be immediately identified as having fought against the Senegalese state" was considered by the Judge where he noted at [40] that the Appellant accepted "in his oral evidence that his shirt would cover up the mark." I am satisfied that in this respect the Judge materially erred as he has not gone on to consider what would be reasonably likely to happen should the Appellant either be asked at the airport where he was from, why he was being returned to Senegal, and what he had done whilst there. Nor does the Judge consider what would be reasonably likely

to happen if the Appellant took his shirt off for example if he was at work, or to take a shower, and what he may be asked about the branding. He should not be required to lie. The Judge did not consider what repercussions there may be should the authorities find out about the branding. Whilst I was not pointed to any evidence that was before the Judge to suggest “that the state has been actively pursuing those associated with Casamance separatists”, the Judge summarised the background evidence presented to him in [40] stating;

“The 2021 USSD country report on human rights practices: Senegal records that in the southern Casamance region there is low-level insurgency and incidents between the security forces and armed separatists. The article refers to sporadic incidents of violence, and a report from the Sahelien news site of 2023 stated since 1981 in the Casamance region there has been low-intensity conflict between separatist rebel groups and the Senegalese government.”

8. The Judge considered the geographical limitation of the fighting but does not consider the other ways in which the branding may become known, how that may lead to the Appellant’s past becoming known, and how the authorities may respond if they find out he had been a fighter for the separatist movement in the Casamance region. That was a material error of law.
9. Regarding ground 1 (a)(i), (b) and (d) and point 1 at [41] of Mr Greer’s skeleton argument, the Judge did not materially err in law in relation to the conclusive grounds decision as that was not before him when he made his decision. The only document he had regarding that was the positive reasonable grounds decision which the Judge referred to at [25]. The Judge was plainly therefore aware of it. The Judge was considering the Appellant’s position in Senegal, not Niger, Libya or Italy where he was the victim of modern slavery. The exploitation he had suffered in Senegal was as a child soldier. As he was 30 at the time of hearing it was plainly not arguable that he could be subjected to exploitation on the same basis. It was not therefore a Robinson obvious point. Nor was it Robinson obvious that he could be exploited in Senegal on the same basis as he had in Niger, Libya or Italy.
10. Regarding ground 1 (a)(ii), and (c) and point 2 and 4 at [42 and 44] of Mr Greer’s skeleton argument, the Judge did not err in relation to the assessment of the evidence from WERS. The Judge considered the evidence at [46] together with the medical evidence, gave such weight as he felt was appropriate to it, and made findings available on that evidence. There was therefore no material error of law in that regard.
11. Regarding point 3 at [43] of Mr Greer’s skeleton argument, this amounts to nothing more than a disagreement with a finding the Judge was entitled to make on the evidence.
12. The decision of the First-tier Tribunal is set aside as the error in ground 2 goes to the heart of the asylum appeal. As the human rights claim relates to his ability to safely return or relocate, I accordingly set

aside the entire decision as the human rights claim is infected by the failure to deal adequately or at all with the consequences of the branding, even though the individual points in ground 1 themselves do not amount to material errors of law.

Notice of Decision

13. The Judge made a material error of law. I set aside the entire decision.
14. I remit the appeal to the First-tier Tribunal not before Judge O'Hanlon for a de novo hearing.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 February 2024

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.

