



IAC-FH-AR-V1

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

Appeal Numbers: AA/00583/2013
AA/04177/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 3 November 2014
Extempore**

**Decision and Reasons Promulgated
On 4 November 2014**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**AD
SD**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the First Appellant:	Miss E Daykin, Counsel, instructed by Halliwells
For the Second Appellant:	Miss G Brown, Counsel, instructed by Bindmans LLP
For the Respondent:	Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants appeal with permission against the determination of First-tier Tribunal Judge Khawar, in which he dismissed their appeals against the decision of the Secretary of State to refuse their claims for asylum. The first appellant is the father of the second appellant and it is the case that both are citizens of Mali who face persecution if returned there.

2. Judge Khawar heard the appeal on 16 January 2014 but it was only on 10 July 2014 that his determination was promulgated. As, for the reasons set out below, the appeals are to be remitted to the First-tier Tribunal for a fresh hearing on all issue it is unnecessary to set out in detail the facts of this case which are set out in the witness statements, skeleton arguments and the refusal letters.
3. The Secretary of State did not accept the appellants' claims nor did she accept their claim to be of Malian nationality. Judge Khawar found neither appellant to be credible and was not satisfied by their evidence as to their nationality, making no findings on nationality.
4. The grounds of appeal against Judge Khawar's decision are in, effect twofold:
 - (i) that he permitted a procedural error amounting to an error of law in that, having initially said, after hearing evidence from the first appellant, that he would adjourn the matter he later, having heard additional evidence and having taken a break for lunch, then indicated that he would not be adjourning the matter, and in his reasons for refusing the adjournment, without having heard submissions on this issue, took into account the fact that the first appellant had given ostensibly an entirely dishonest account of his case; and,
 - (ii) that his findings with respect to credibility were flawed, in that he failed to make proper findings in respect of the second appellant, and in particular failed adequately to explain why his evidence was not capable of corroborating the first appellant; and, failed to explain adequately why he did not attaché weight to the evidence of the witness.
5. At paragraph 58 of his determination Judge Khawar says

“Although I was initially sympathetic to adjourning this appeal part heard, at the conclusion of evidence I had resolved it was inappropriate to adjourn by virtue mainly of the fact that the appellant had sought to raise a medical issue which he had not previously disclosed. He was questioned as to his medical conditions both during his screening interview and his asylum interview. The only illnesses he experienced were stomach ulcers and asthma. I also note that he is represented by experienced solicitors who will undoubtedly have questioned the appellant as to any medical conditions he may have. Accordingly and particularly in view of the fact that the appellants has ostensibly given an entirely dishonest account in this case, I refused the application to adjourn this case on a part heard basis.”
6. It appears that the first appellant had left the hearing centre in the belief that his appeal was to be adjourned. It was only later, after the lunch break, that the judge changed his mind. Whether he had left is, however, unclear, but it is not necessary for me to make a finding on that issue.

7. Whilst I accept that it is open to a judge to revisit a decision to refuse an adjournment, in this case one of the reasons given for refusing the adjournment is that the judge had formed a view that the first appellant, had ostensibly given an entirely dishonest account of his case. That conclusion was reached before the hearing of submissions in respect both of the first appellant and of the second appellant, and thus was not permissible. On that basis alone I am satisfied that the refusal to adjourn the appeal for did involve the making of an error of law such that the judge permitted a procedural error giving rise to an error of law. The appellants did not, therefore, get a fair hearing of their appeals, it not being possible to differentiate between the two appellants.
8. It cannot be said that the outcome of the hearing would necessarily have been the same had there been an adjournment, and accordingly, I am satisfied that the error was material. For that reason, Judge Khawar's decision must be set aside.
9. In the circumstances I am satisfied that the only appropriate course of action would be to remit the appeal to be heard afresh by a freshly constituted First-tier Tribunal as it will be necessary to make fresh findings of fact in respect of all issue arising in these appeals.
10. Accordingly I remit the hearing to the First-tier Tribunal and for the avoidance of doubt I make it clear that none of the findings of First-tier Tribunal Judge Kharwar are to be preserved. It is not at this point appropriate to make any further directions as these are properly for the First-tier Tribunal but given that the issue of whether the appeals should remain linked, it would appear appropriate for there to be a Case Management Review before the appeals are listed for substantive hearing.
11. I also make an anonymity order in respect of both appellants, given that the second appellant is a minor, and by not anonymising his father, he would be identifiable.

SUMMARY OF CONCLUSIONS

- 1 The decisions of First-tier Tribunal Khawar did involve the making of an error of law and I set them aside.
- 2 I remit the appeals to the First-tier Tribunal to be determined afresh; none of the findings of fact made by Judge Khawar are preserved.
- 3 I direct that 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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 4 November 2014

Upper Tribunal Judge Rintoul