



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

Appeal Number: AA/03492/2015

THE IMMIGRATION ACTS

Heard at Manchester

**Decision and Reasons
Promulgated**

On 12 November 2015

On 24 November 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Mohamed Toure

[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Not represented

For the respondent: Ms C Johnstone Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mohamed Toure, date of birth 6.4.71, is a citizen of Guinea.
2. This is his appeal against the decision of First-tier Tribunal Judge Holt promulgated 13.5.15, dismissing his appeal against the decision of the Secretary of State, dated 13.2.15, to refuse his asylum, humanitarian protection and human rights claims and to refuse leave to enter the UK. The Judge heard the appeal on 6.5.15.
3. First-tier Tribunal Judge Robertson refused to admit the appeal, it being out of time. However, when the application was renewed to the Upper Tribunal, Deputy Upper Tribunal Judge Archer granted permission to

appeal on 24.8.15.

4. Thus the matter came before me on 12.11.15 as an appeal in the Upper Tribunal.
5. At the outset of the hearing the unrepresented appellant sought an adjournment to have legal representation. However, he has had legal representation. In their letter of 10.11.15 his former representatives, International Immigration Advisory Services, indicated that the appellant had informed them "That he does not need our representation in this appeal and would like to appear himself in the court for hearing." The notice of hearing in the Upper Tribunal was sent to the appellant by first class post on 16.10.15. Thus he has had ample opportunity to obtain legal representation. He could provide me no satisfactory explanation as to why he had not done so. I refused the application.
6. The solicitor's letter referred to above advised the Tribunal that a French interpreter would be required. No interpreter had been booked. The appellant claimed that his wife would be able to assist him in the appeal but it quickly became apparent to myself and to Ms Johnstone that her understanding of English was little better than that of the appellant. I thus put the case back to the afternoon to see if an interpreter could be found. One was able to attend and I was satisfied that the appellant and the interpreter understood each other and thus the appeal proceeded.

Error of Law

7. For the reasons set out below I find that there was no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Holt to be set aside.
8. In summary the grounds of appeal assert that the judge should have made findings in relation to the evidence of the appellant's wife, who confirmed that the appellant could not return to Guinea. It is also claimed that the judge failed to deal with private life under paragraph 276ADE(vi).
9. In granting permission to appeal, Judge Archer found it arguable that the judge did not consider private life under paragraph 276ADE or under article 8 ECHR adequately or at all. "Once the judge found that the marriage was a sham then the article 8 claim was wholly reliant on private life. The appellant has apparently been in the UK since 2003 and private life merited some consideration."
10. Whilst the judge did not specifically address private life, the evidence before the judge could not have justified allowing the appeal on the grounds of private life either under paragraph 276ADE or in the alternative article 8 ECHR. As the Rule 24 response of the Secretary of State, dated 11.9.15, explains, there was nothing in the decision to suggest that the appellant adduced any sufficient evidence to discharge the burden of showing an interference with his private life. "It is averred that whilst the determination is silent in respect of 276ADE and private life, this silence is immaterial in the light of the appellant's failure to put forward a case on that basis."

11. The appellant has an appalling immigration history. He entered the UK illegally in November 2002 using a forged passport. When refused leave to enter he claimed asylum. His claim was refused in January 2004 on grounds of non-compliance. However, he did not leave but remained illegally and went on to establish a relationship with his wife. More than 10 years after being refused asylum and leave to enter he made further submissions, which were accepted as a fresh claim, but refused by the decision of 13.2.14.
12. There is no explanation as to how addressing the evidence of the appellant's wife would or could have made any difference to the outcome of the appeal. It is true that she claimed in her witness statement that due to conditions in Guinea he could not go there, but there is no explanation of any particular reasons why he could not return to Guinea.
13. It appears that article 8 was advanced at the appeal hearing in relation to family life only. The grounds of appeal to the First-tier Tribunal did not specifically raise private life, referring only to the length of time he had been in the UK. I have looked at the judge's handwritten notes of the hearing and in particular at the record of the appellant's representative, Mr Afzal, to Judge Holt, but it is recorded only that Mr Afzal relied on the fact that the appellant had been in the UK since 2003. Nothing else was submitted about private life.
14. The appellant has been in the UK for some 12 years. His immigration status has been unlawful and entirely precarious. He has never been allowed entry to the UK. He has never had legal status in the UK. He does not meet any of the Rules for leave to remain. In particular, there is nothing in the evidence before the First-tier Tribunal to show that there are very significant obstacles to his integration in Guinea, as required under paragraph 276ADE.
15. There are no compelling reasons to consider private life outside the Rules on the basis of article 8 ECHR and thus no reason for the First-tier Tribunal Judge to do so. Even if consideration were to be given to article 8 ECHR private life, section 117B of the 2002 provides that immigration control is in the public interest, and that it is in the public interest that persons seeking to remain should be financially independent and able to speak English. The appellant does not speak English, nor is he financially independent. 117B also provides that little weight can be given to the private life of a person whose immigration status is precarious and that little weight can be given to a relationship with a partner developed whilst he was present illegally. There are therefore very significant public interest factors weighing against the appellant.
16. I tried to elicit from the appellant what factors might have been raised at the First-tier Tribunal as to the strength of his private life in the UK, or which might be relied on if the decision in the appeal were to be remade. Other than the fact of the length of his unlawful presence in the UK and that he had friends in the UK, there were no factors in support. There are letters from friends in general support of the appellant, but he told me he has no community involvement. He claims not to work, and has engaged in no charity or voluntary activities. I struggled to try and find some basis on which he could mount a claim to have a private life in the UK outside the bare facts of his relationship with his wife. He told me he did nothing at all other than stay at home. He did say that his friends had helped him

enormously. Despite my attempts to explain to him that this was not a rehearing of the appeal and that the judge had found his marriage to be a sham, it was clear that almost all of the focus of his submissions was in relation to his marriage, asserting repeatedly that his marriage was genuine.

17. In all the circumstances, it is very clear that the matters complained of in the grounds of appeal could have made no difference whatsoever to the outcome of the appeal, even if specifically addressed by the First-tier Tribunal. There is thus no basis to set aside the decision on the grounds raised.

Conclusions:

18. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.

A handwritten signature in black ink, appearing to read "James L. Pickup". The signature is written in a cursive style with a large initial "J" and a distinct "L" at the end.

Signed

Deputy Upper Tribunal Judge Pickup