Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04595/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 6 January 2015	**On 15 January 2015**
Prepared on 12 January 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

E. N.
(ANONYMITY DIRECTION)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Pickering, Counsel instructed by Legal Justice Solicitors
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of the DRC who entered the United Kingdom unlawfully. His asylum claim in September 2013 was rejected, and a decision to remove him to the DRC was accordingly made on 19 June 2014. His appeal against that removal decision was

then dismissed by decision of Judge Kempton promulgated on 6 October 2014.

2. The Appellant duly applied to the First Tier Tribunal for permission to appeal, which was granted by Judge Ransley on 13 November 2014 on the basis it was arguable that the Judge had accepted core elements of the claim and had thus failed to consider the appeal in the light of the principles set out in HJ (Iran).

3. The Respondent filed a Rule 24 Notice on 24 November 2014. She argued that the grounds were misconceived, because the Judge had directed herself appropriately and on a fair reading of the decision had rejected the core account of being the subject of an arrest warrant, and of being wanted by the security services in the DRC.

4. Neither party has formally applied for permission to rely upon further evidence pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008.

5. Thus the matter comes before me.

The grounds

6. The grounds asserted that the Judge accepted the majority of the Appellant's account. Ms Pickering accepted in the course of argument that it was extremely difficult to discern from the style in which the decision was written when the Judge was simply detailing the evidence before her in any particular passage, as opposed to making a specific finding of fact. In particular she accepted that (despite its heading) she could not categorise the whole of the passage comprising paragraphs 18-51 as being a series of findings of fact. Moreover she accepted that there was very limited use of what might be termed the standard language in which a finding of fact was ordinarily made. Although that language could be identified in paragraphs 37 and 38, it could not be found in paragraph 23. Read in context therefore she accepted that paragraph 23 appeared to be no more that a discussion of the way in which the Appellant's case was put.

7. There is no dispute before me over the fact that the Judge accepted the Appellant had worked for the organisation he named, in the capacity he had identified. Nor over the fact that the Judge specifically rejected his claim to be the subject of an arrest warrant, or to have been the subject of any attempt by the security services to arrest him. As Ms Pickering accepted, these latter points were significant adverse findings, which rejected a key part of his account as dishonest.

8. Ultimately Ms Pickering put the Appellant's case in the following way. She accepted;

(i) that there was no free standing HJ (Iran) point,

(ii) that the grounds of the application for permission to appeal raised no challenge to the Determination on the basis it was incomprehensible or perverse (although she reserved the right to argue elsewhere on another occasion that it was),

(iii) that the grounds did not challenge the adverse findings in relation to the Appellant's claim to be the subject of an arrest warrant.

9. In the circumstances Ms Pickering summarised the Appellant's complaint as a failure on the part of the Judge to make an adequate assessment of the Appellant's evidence in the light of the background evidence, and thus a failure to make an adequate assessment of risk. Had the Judge done so then it was argued that she would have been bound (despite her rejection of the arrest warrant) to have reached the conclusion that the Appellant was at risk of harm upon return to the DRC.

10. For the Respondent Ms Rackstraw argued that although the decision was not particularly well drafted it did allow the reader to identify that the key parts of the Appellant's evidence had been rejected as untrue, and the Judge's reasons for doing so. Those reasons were adequate. This necessarily meant that although it was accepted that the Appellant had worked for the organisation named, in the capacity identified, he had acquired no adverse profile with the authorities in the DRC prior to departure upon which they had sought to act. He had done nothing subsequently to create one, and it followed that he faced no risk of harm upon return.

11. In order to establish that he did face a risk of harm therefore the Appellant would have needed to establish that he had acquired an adverse profile with the authorities in the DRC prior to departure upon which they had not sought to act, despite having the means and opportunity to do so. Moreover despite that historic stance, and without any obvious reason for it to change, he had to establish that the adverse profile was such that there was a real risk that the authorities in the DRC would now seek to act upon it by detaining him.

Conclusion

12. It was central to the Appellant's case that his activities in the course of his employment within the DRC had come to the adverse attention of the authorities, causing them to issue an arrest warrant against him, and, to take active steps to seek to arrest him at his home in Kinshasa. Whatever criticisms can fairly be made of the style in which the decision has been written, it is ultimately not in dispute that the Judge rejected those claims, and that she gave adequate

reasons for doing so. Those adverse findings of primary fact were central to the way in which the Appellant put his case, and they are not the subject of challenge before me.

13. It was central to the Appellant's case that the manner in which he performed his employment in the DRC had lead to his acquiring an adverse political profile. If that were so, his identity, and employer, would always have been well known to the DRC authorities. It followed that they would have had ample opportunity to act against him, had they wished to do so.

14. The Appellant's case is therefore that, notwithstanding the dishonest element to the way in which he put his claim, a proper analysis of the background evidence in relation to the DRC would have led the Judge to the conclusion that the Appellant's activities in the course of his employment had created an adverse political profile as a critic of the government, albeit one upon which the authorities in the DRC had not yet acted to take steps against him before his lawful departure, but that nevertheless they would be likely to do so in the event of return.

15. Once the Appellant's case is reduced to those terms it is plain in my judgement that the criticisms that are advanced of the decision are no more than a disagreement with it, and identify no material error of law. Thus notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 6 October 2014 contains no error of law in the dismissal of the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 12 January 2015

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 12 January 2015