Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/07234/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 July 2015	**On 8 July 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr M M M
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Garrod, Counsel (instructed by Leslie & Co)
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Astle on 4 June 2015 against the decision of First-tier Tribunal Judge Seifert made in a decision and reasons promulgated on 30 April 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals. The substantive hearing before Judge Seifert had taken place at Hatton Cross on 17 November 2014.

2. The Appellant is a national of Tanzania, born on 4 March 1962. He is qualified as a medical practitioner, and had worked as a doctor in Zanzibar. He claimed that he was harassed and had been arrested there because of his active support of the Civic United Front ("CUF"). He entered the United Kingdom on 20 September 2000, with a student visa, to undertake an MSc in public health which he completed at Cardiff University College of Medicine. He then undertook an IT course, with a student visa valid to January 2004. Thereafter he became an overstayer. He claimed asylum on 7 April 2014, asserting that he remained at risk as a CUF member. The Respondent refused the asylum claim on 8 September 2014. The Appellant appealed against his removal from the United Kingdom.

3. When granting permission to appeal, First-tier Tribunal Judge Astle considered that it was arguable that Judge Seifert had erred above all because of the significant delay between the hearing and the promulgation of the decision and reasons, which rendered her adverse credibility findings unsafe. It was also arguable that the judge had failed to identify and apply the appropriate burden and standard of proof.

4. The Respondent filed notice under rule 24 indicating that the appeal was not opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

5. At the start of the hearing Mr Bramble for the Respondent clarified that the rule 24 notice indicating that the onwards appeal was “not opposed” was not a concession in terms. In fact, he wished to argue that the judge’s decision and reasons should not be set aside, notwithstanding the delay. The tribunal considered that it was appropriate to hear argument and there was no objection by Mr Garrod.

6. Mr Garrod for the Appellant relied on the grounds of onwards appeal earlier submitted and the grant of permission to appeal. The key authority was RK (Algeria) [2007] EWCA Civ 868, where the Upper Tribunal’s predecessor the IAT had delayed 29 months between hearing and promulgation. The Court of Appeal had cited with approval from Sambasivam v Secretary of State (2000) Imm AR 85 a statement from Mario (1998) Imm AR 281 at 287: “In an area such as asylum, where evidence requires anxious scrutiny, the Tribunal will usually remit a case to another adjudicator where the period between the hearing and the dictation of the determination is more than 3 months”. Here the delay was 6 months, with no explanation provided. The value of seeing the Appellant give evidence had been lost over time. The decision and reasons should be set aside and the appeal reheard before another First-tier Tribunal judge.

7. Mr Bramble for the Respondent accepted that there had been delay but submitted that the appeal needed to be seen in its context. The country background evidence showed that the situation in Tanzania and Zanzibar in particular had changed fundamentally. The CUF now held 24 seats in parliament. The current unrest was from militant Islamic threats, not the political scene. The judge had examined the country background evidence and her conclusions were plainly correct. RK (above) showed that a remitted hearing was not required in every case of delay. The appeal would have the same outcome if it were reheard. The complaints made in the grounds of appeal about the burden and standard of proof were not sufficient to establish a material error of law.

8. In reply, Mr Garrod emphasised the authority of RK (above), which should be followed. Credibility had not been a feature of the reasons for refusal letter. The judge's description of the burden and standard of proof were flawed. The credibility assessment was not the judge's proper starting point. The situation in Tanzania was not settled. The fact that there could be disagreement over the judge's determination showed that it was a case for remittal and rehearing.

No material error of law

9. The tribunal reserved its determination, which now follows. The delay in the promulgation of the judge's decision and reasons is obviously regrettable, but the tribunal has concluded, in the light of RK (above), that this is not an appeal which could ever have had a different outcome. No useful purpose would be served by remittal to a differently constituted First-tier Tribunal.

10. In the first place, there was no complaint about the conduct of the hearing. The judge's neat and comprehensive manuscript note of the appeal hearing indicates that the judge was fully engaged throughout. The appeal file was in good order and contained all relevant documents, which the judge set out at [6] to [8] of her determination. It is true that the determination offered no explanation for the delay in promulgation but in fairness to the judge perhaps two weeks or so of the period may be attributable to Christmas and New Year. There has also been a marked shortage of First-tier Tribunal judiciary, which has led to extra burdens on the judges and a tendency to take on too many sittings. But of course these are peripheral matters so far as the Appellant is concerned.

11. Mr Garrod submitted that the judge had taken the wrong approach in two material ways, in placing an undue emphasis on credibility and in a confused understanding of the burden and standard of proof. The judge described the burden and standard of proof at [14] of her determination as being for the Appellant to show that "there are substantial grounds for believing or a reasonable degree of likelihood that he meets all of the requirements of the Qualification

Regulations", contrasting that with the balance of probabilities standard applicable to meeting the requirements of the Immigration Rules. While there may be scope for academic argument as to whether there is any difference between "substantial grounds for believing" and "a reasonable degree of likelihood", in the tribunal's view, these amount to accepted alternative definitions of the asylum standard. The judge showed by the contrast she drew with an Immigration Rules appeal that she appreciated that the lower standard applied. There was thus no error of law.

12. As to the undue emphasis on credibility asserted by Mr Garrod, the tribunal considers that there is nothing objectionable in [17] of the decision and reasons. The judge has recited a formulaic self direction, in which caution is the watchword. The credibility assessment was expressed to be a part of the assessment and analysis process, not the whole process. Moreover, the judge carefully examined the Appellant's account and his fear of return on the alternative basis that he should be believed, contrary to her assessment of his credibility. After considering the country background evidence which she succinctly and accurately summarised, the judge found that the Appellant was not at real risk today: see [63] to [66] of the determination.

13. In the tribunal's view, not only were all of the judge's findings adequately and clearly reasoned, they were the only findings which any judge could properly have reached on the same evidence. The country background evidence showed that the situation had fundamentally changed since the Appellant's departure, whether or not his claims of events prior to that date were credible to the lower standard. His enormous delay in claiming asylum, and the absence of corroboration of relevant matters (e.g., medical evidence) which could reasonably and safely have been obtained by a person particularly well placed to do so, further undermined a weak case.

14. The guidelines discussed in RK (above) remain a useful guide. Indeed, the President of the First-tier Tribunal has indicated that judges should aim to promulgate their decision and reasons within 10 workings days, when possible. That is a most desirable aim. Here the judge fell far short of such timeliness, but injustice to the Appellant has not resulted. Just as in RK (above), where the Court of Appeal declined in the event to overturn the impugned determination despite the extraordinary delay in promulgation, in the present appeal the tribunal finds that the delay has not affected the judge's credibility assessment or her general approach to the case. There was no material error of law. The original decision stands.

DECISION

The tribunal finds that there was no material error of laws in the original decision, which stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell