IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10531/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination & Reasons Promulgated**
On 22 April 2015	**On 4 August 2015**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

ACD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Querton, Counsel instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal comes back before me following my decision after a hearing on 14 January 2015 that the First-tier Tribunal had erred in law in its decision on the appellant's appeal.

2. That appeal was on asylum and human rights grounds against the respondent's decision dated 27 November 2014 to remove him as an illegal entrant.

3. The appellant is a citizen of Cameroon, born on 3 February 1986. He arrived in the UK on 14 October 2014 in possession of a visitor's visa, valid until 6 February 2015. He made a claim for asylum on 15 November 2014.

4. My written decision explaining the basis on which I concluded that the First-tier Tribunal had erred in law is set out as an annex to this determination to which reference should be made for the further background to the appeal and the basis of the appellant's claim.

5. As I explain in the error of law decision, certain findings of fact made by the First-tier Tribunal were to be preserved. They can be seen at [37] of the error of law decision. I summarise those preserved findings as follows:

   (i) All of [31] of the First-tier Tribunal's determination which reads as follows:

   > "I find that the Appellant has given a consistent account of his arrest on 14th June 2014, his detention and escape three days later. He gave the same account, of the events arising from 14th June 2014, in his interview, witness statement and during cross-examination. I accept that the Appellant was arrested, detained for three days, threatened, deprived of food and water, and escaped. He travelled through the bush with TJ and got a lift in a lorry to Douala where he stayed with a friend of TJ's until he came to the UK."

   The preserved finding in this respect includes that the appellant was accused during interrogation of being a member of, or associated with, Boko Haram, and that he was beaten and kicked during his detention.

   (ii) During his detention the police took the appellant's phone and ID card. The appellant escaped with TJ and stayed at TJ's friend's house from June to October 2014.

   (iii) The police did not come looking for the appellant at any premises after his escape and that no enquiries were made of his wife or mother as to his whereabouts whilst the appellant was in Cameroon.

   (iv) The appellant was not smuggled out of Cameroon. He obtained his visa on 6 August 2014 having attended the British embassy in person and had his photograph and fingerprints taken. He travelled to the UK on his own passport without difficulty.

   (v) The appellant had not given a credible account of being unable to contact his wife.

6. Further documentary evidence on behalf of the appellant subsequent to the error of law decision consists of an updated witness statement from the appellant, an expert report from Charlotte Walker-Said dated 17 April 2015 and some further country background materials. There was no further oral evidence.

Submissions

7. On behalf of the appellant I was referred to those findings of fact preserved from the decision of the First-tier Tribunal. In addition to the fact that the appellant escaped detention, I was reminded that his account was that his phone and ID card were taken. Thus, those findings amount to a history of persecution.

8. I was referred to the appellant's skeleton argument which itself highlights those features of the expert report relied on on behalf of the appellant. I was referred to the decision in FK (SDF member/activist – risk) Cameroon CG [2007] UKAIT 00047 which it was submitted related only to a specific political party but it was found in that case that that particular appellant would be at risk of re-arrest.

9. So far as this appellant is concerned, apart from the fact that his ID card and phone were retained, age makes it more likely that he is someone who would stand out as linked to Boko Haram. His arrest was made following a discovery of arms in a truck and he would be returned at a time when the country's resources are focused on Boko Haram. He is likely to be stopped and re-arrested.

10. I was referred to background evidence in relation to the likelihood of persecution and ill-treatment in detention.

11. In addition to paragraph 339K of the Immigration Rules, it was submitted that country background information and the expert evidence confirms that there would still be a risk to the appellant. Internal relocation would not be an option available to him.

12. On behalf of the respondent Mr Wilding submitted that it cannot be shown that the appellant would now be at risk, notwithstanding the preserved findings. The difficulty that the appellant faces is in terms of how he left the country, which flies in the face of what the expert says about why he would be at risk on return. The expert report itself refers to the extent of surveillance at airports in 2013. The appellant left via the airport with a visa, using his own name and ordinary channels. The same is evident at page 17 of the report. There was significant security around the airport when Ms Walker-Said was there in May 2014. Although the appellant's ID card was taken, he managed to get through the airport with a passport. It is clear that by the time he left he was of no interest to the authorities.

13. What is said in the report about attention being directed towards him because of a lack of previous formal employment and little schooling is inconsistent with what is in the appellant's witness statement about his studies and the work he did in Cameroon. He was a trader, buying and selling goods.

14. Although the report says that the appellant would be identified as an escapee, it does not deal with the basis on which any technology would be able to identify him. In the US State Department Report ("USSDR") dated October 2013 it states under the sub-heading "Administration" that record keeping on prisoners was inadequate, although the Ministry of Justice had begun to computerise files. In his witness statement the appellant says that he was held at a house rather than a prison or some other formal place of detention. Accordingly, his detention appears to have been informal. The fact that there was no follow-up after he left detention indicates that there was no interest in him. Similarly, there would be no on-going interest if he were to return. He is not likely to be recognised and would not be at risk.

15. In reply, Ms Querton submitted that the expert opinion was based on the findings of fact. The expert was aware that the appellant had left on his own passport. Her use of the word "lucky" in terms of how he was able to leave may not be the most appropriate terminology but it does not detract from her opinion.

16. So far as the appellant's informal employment is concerned, this relates to someone who is employed and drawing a regular wage. In his witness statement the appellant says that he moved to the north to find employment and thus he was not part of the formal employment sector.

17. So far as record-keeping and security is concerned, the expert evidence is that matters have moved on since the appellant left, despite the inadequate earlier record keeping. Efforts to combat terrorism and resources available to law enforcement have increased.

18. The expert report takes into account the fact that the appellant would be returning as a failed asylum seeker, although the country guidance case does not refer to such a risk and the expert was not asked to comment on it in its own right.

My Conclusions

19. It is clear from the expert report of Ms Walker-Said and from the background information put before me that the security forces in Cameroon have been and continue to be responsible for serious human rights abuses. Aside from what is in the expert report, one sees in the Amnesty International Report dated 25 February 2015 in the initial summary, that it states that arbitrary arrests, detentions and extrajudicial executions of people suspected of being members of Boko Haram were reportedly carried out by security agents. Under the sub-heading "Background", with reference to various human rights abuses, it states that "Most of these violations were committed in the context of the fight against Boko Haram."

20. The US State Department Report for Cameroon of 27 February 2014, in its summary on the first page state as follows:

> "The most important human rights problems in the country were security force torture and abuse, particularly of detainees and prisoners, denial of fair and speedy public trial, and restrictions on freedom of assembly and association.
>
> Other major human rights abuses included security force killings, life-threatening prison conditions, arbitrary arrest and detention, prolonged and sometimes incommunicado pre trial detention, and infringement on privacy rights."

21. At Section 1(c) it states that security forces reportedly detained and tortured persons at specific sites, including temporary holding cells within police or gendarme facilities and cells located at the Directorate General for External Intelligence.

22. Various other aspects of the background material and the expert's report provide evidence of those abuses. No submissions to the contrary were made on behalf of the respondent.

23. Similarly, the background evidence is replete with references to the extent to which the security forces have been concerned with the threat presented by Boko Haram and the intensification of efforts by the security forces to crack down on those involved with or suspected of being involved with Boko Haram. Again, no submissions to the contrary were made on behalf of the respondent. Indeed, to some extent the respondent's position depends on security forces' activities in this respect, in that it is submitted that if the appellant had been of any continuing interest to the authorities in Cameroon, there would have been some sign of it before he left and he would not have been able to leave using his own identity through ordinary channels at the airport.

24. It is in reality on those propositions which the respondent's case rests. That is to say, after the appellant's escape from detention there is no evidence that the security forces searched for him, and the lack of risk is evident from the means of his departure. The respondent's argument boils down to this: although the appellant was accused of involvement with Boko Haram in the past, and beaten, threatened, detained and intimidated as a result, there was and would be no further adverse interest in him.

25. The respondent relies on the information in the USSDR to the effect that record keeping on prisoners was inadequate, as well as the appellant's account that he was kept in what would appear to have been an informal place of detention. Thus, it is argued that there is unlikely to have been a record of his detention.

26. I recognise the force of the submissions made on behalf of the respondent. However, I am nevertheless satisfied that the appellant has established that on return to Cameroon there is a real risk that he would be persecuted.

27. In the first place, it is important to bear in mind paragraph 339K of the Immigration Rules, to which I have referred in the error of law decision. I do not consider that it could be said that there are good reasons to consider that the persecution that he suffered in the past would not be repeated.

28. Although the findings of fact made by the First-tier Tribunal are to the effect that the appellant had not given a credible account of the police looking for him after his escape or of having made any effort to find him through his wife or mother, as I said in the error of law decision at [30] there is background evidence in relation to the police that needs to be taken into account. The US State Department Report for 2013 states that:

> "Police were ineffective, poorly trained and corrupt. Impunity was a problem. Citizens often resorted to vigilante action rather than calling police."

29. That the appellant has not established that the police made efforts to find him after his escape, is relevant but not determinative of the issue of risk on return.

30. Ms Walker-Said states on page 4 of her report that:

> "The threat that he would be stopped by the police or security forces was most likely very present when he left Cameroon and he was simply lucky enough to leave the country without being detected. The threat of being discovered and having the security forces learn of his arrest record continues, even if he was not caught at the airport upon exiting the country."

31. I do consider that it would have been of more assistance had the report given some explanation, analysis or opinion as to how the appellant would have been able to leave the country without being detected, the appellant's explanation having been rejected by the First-tier Tribunal. It is plainly a matter that needs to be taken into account.

32. However, it is important to separate speculation or conjecture from fact. As already indicated, the respondent's position is that the appellant was apparently not the subject of further enquiry after he escaped and he left the country without detection; ergo, he was not of interest. In my judgement the conclusion contended for by the respondent does not necessarily follow from the facts. There is an alternative explanation in terms of the inefficiency of the security forces. Other possibilities can be speculated upon, for example that he was simply 'lucky' to use Ms Walker-Said's term. The inescapable facts, as found by the First-tier Tribunal, are that he was found travelling in a vehicle that contained arms. He was arrested, detained, ill-treated and questioned about association with Boko Haram. He was not released but escaped. In the context of a country seeking then, as now, to deal with a very real security threat from Boko Haram, it seems to me to be inconceivable that the security forces would not be intensely interested in a person such as the appellant on his return, on the basis of those facts.

33. I asked the parties whether there was evidence of whether returnees are questioned at the airport, but neither party was aware of any such evidence. The extracts from background material provided on behalf of the appellant include the USSDR but not that part of it that deals with freedom of movement. I have considered it for myself. It states that:

> "Security forces at roadblocks and checkpoints in cities and on most highways often extorted bribes and harassed travelers. Police frequently stopped travelers to check identification documents, vehicle registrations, and tax receipts as security and immigration control measures. There were credible reports that police arrested and beat individuals who failed to carry their identification cards as required by law."

34. This is consistent with the information in the expert report which states on page 17 that documentation is key to getting through checkpoints and that that documentation would reveal the appellant's identity. The report states that it is highly likely that security forces would either recognise him or have access to information about his previous arrest.

35. The chances of him being recognised, it seems to me, are remote unless he happens to be encountered by those that previously detained him or unless those at a checkpoint or roadblock recognise him from photographic evidence held, for

example, on a database. There is no evidence about that, although it is accepted that the appellant's ID card was retained by the security forces when he was arrested.

36. On page 6 of the expert's report it states that:

> "The airports in Cameroon have ramped up security even in recent months since [the appellant's] departure. In 2013, airports in Yaoundé and Douala were equipped with new video surveillance technology and new equipment was placed throughout the airports and security measures have only increased since then with the influx of American and French technology for surveillance and cross-referencing entrants and migrants with police records."

It seems, therefore, that since the appellant's departure airports have increased their security, which is also consistent with what is said in the background reports to be increased security.

37. It is also pertinent to refer to another passage from the expert report at page 17 which states that when the author was in Cameroon in May 2014, all roads leading to and from the airport had roadblocks, and passports and personal identification was checked at every roadblock. It was explained to her that critical central points like airports and regional government offices had roadblocks leading to them to prevent an invasions by Boko Haram, smuggling by them or illegal entry by their militants or intermediaries. In these circumstances, it is reasonable to conclude that on his return the appellant would encounter the security forces, probably sooner rather than later, for example at one of the many checkpoints or roadblocks. I have referred to the USSDR about reports of people being arrested and beaten for failing to carry identification cards, as required by law. This resonates with the expert evidence.

38. The appellant's ID card has been retained. Neither party made submissions to me or referred me to any evidence about whether the appellant would be able to obtain another one prior to return. It is reasonable to conclude that he would be without it on his return. It would only take simple questioning to establish why he does not have an ID card, and the appellant could not be expected to lie (see RT (Zimbabwe) and others v Secretary of State for the Home Department [2012] UKSC 38).

39. It is in any event reasonable to conclude that there would be some record of his having been detained, notwithstanding that it does not appear to have been at a formal or official place of detention. The fact of his ID card having been retained is some evidence of a formal detention and intention to document him.

40. Ms Walker-Said states at page 14 of her report that the police are "typically very adept at finding suspects once they return home." She refers to police networks and informal secondary networks being used. On page 9 she states that she has learned that the police have information showing networks that are both formal and informal, the informal networks being through traders, migrants, merchants, chiefs and rural and urban go-betweens who provide the police information.

41. The appellant's history of dealings with the security forces in terms of his arrest and detention, the intensity of the security crackdown in relation to Boko Haram, and the

clear evidence of human rights abuses committed by the security forces, combine to establish that the appellant would be at real risk of persecution on his return.

42. In coming to that view I have not sought to resolve the dispute between the parties about what is said in the expert report in terms of the appellant being a person who has a lack of education or background of employment, which would increase suspicion of him. Mr Wilding on behalf of the respondent rejected that description of the appellant. It is sufficient to note what is said in the report about a heightened interest that young people in particular attract from the security forces in Cameroon, and to note that the appellant is still, at 29 years of age, a young man.

43. In conclusion therefore, I am satisfied that the appellant has established to the required standard that on return there is a real risk of persecution for a Convention reason, namely an imputed political opinion.

44. For the same reasons, I am satisfied that there is a real risk of a breach of his Article 3 rights.

45. In the light of those conclusions, I do not consider it necessary to undertake the technical and formal process of determining the Article 8 ground of appeal.

Decision

46. The decision of the First-tier Tribunal involved the making of an error on a point of law. That decision having been set aside, I re-make the decision allowing the appeal under the Refugee Convention and under Article 3 of the ECHR.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 his 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.

Upper Tribunal Judge Kopieczek 10/07/15

ANNEX

1. The appellant is a citizen of Cameroon, born on 3 February 1986. He arrived in the UK on 14 October 2014 in possession of a visitor's visa, valid to 6 February 2015. His claim for asylum, made on 15 November 2014, was refused.

2. On 27 November 2014 a decision was made to remove him as an illegal entrant. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge Frances on 12 December 2014, whereby she dismissed the appeal on all grounds. Permission to appeal in respect of her decision having been granted, the appeal came before me.

The basis of claim

3. The basis of the appellant's claim is summarised in the decision of the First-tier Tribunal and it is not suggested that that summary is inaccurate. I summarise here the salient features of the appellant's claim, based on the summary in the determination of Judge Frances, with some amendments or additions.

4. The appellant claims that he owned a shop which sold women's beauty products. He met a man named M at a wholesale market in Maroua and started transporting goods for him in a vehicle.

5. On 14 June 2014, when transporting goods with three other men, they were stopped by the police who found firearms in bags of rice. The appellant and the others were arrested and taken to a house where they were accused of trafficking arms for a Nigerian terrorist organisation, Boko Haram. The appellant was detained for three days. During his detention he was kicked and beaten, and not provided with food or water or any access to toilet facilities. When being interrogated the appellant was accused of having links with Boko Haram and questioned as to whether the weapons were for them. They were threatened that if they did not say who they worked for they would be killed. His phone and ID card were taken from him.

6. On the third day of his detention the house in which they were kept was attacked by men with guns. The people attacking the house rescued the driver, U, and the appellant and another man, TJ, used the opportunity to escape.

7. After spending a night in the bush, the following day they obtained a lift to Douala from a lorry driver. The appellant stayed at the house of TJ's friend. Between the time of his escape and coming to the UK in October 2014 the appellant was in hiding.

8. A person by the name of J made arrangements for the appellant to obtain a visa from the British Embassy, using the appellant's passport that he had obtained in May 2014 for the purpose of going to Nigeria to buy goods.

9. The appellant was able to pass through the airport en route to the UK because J introduced him to another man who brought him clothes like the ones worn by airport workers. He did not therefore pass through passport control.

10. He spoke to his wife on 6 December 2014 and she told him that two men had arrived at their house asking as to his whereabouts. His wife said that they were police officers although they were in plain clothes. He has since been unable to contact his wife. His wife also told him that a man had phoned her pretending to be a friend of his.

Findings made by Judge Frances

11. The following is a summary of the findings made by Judge Frances. At [31] she concluded that the appellant had given a consistent account of his arrest on 14 June 2014, his detention and escape three days later. She accepted that he had been arrested and detained for three days, threatened, deprived of food and water and escaped.

12. At [32] she concluded that his claim to be of interest to the police after his escape was not credible for the reasons set out in the determination. She found that the appellant was of no interest to the police after he escaped from detention. Furthermore, his account of how he obtained a visa and his journey to the UK was not credible. At [36] she concluded that the appellant had not established that he was smuggled out of Cameroon, and found that he had travelled to the UK on his own passport. It was concluded that the appellant was of no interest to the authorities prior to coming to the UK.

13. Judge Frances was not satisfied that the appellant had given a credible account of any visit being made by the police to the appellant's wife or in relation to his inability to contact her now. The appellant's claim that he would be of interest to the police on suspicion of trafficking arms for Boko Haram or his claim that he is perceived to be a member of Boko Haram were also found not to be credible.

The grounds of appeal and submissions

14. Having considered the skeleton argument and the grounds of appeal submitted on behalf of the appellant, I invited Mr Logo first to respond to the points made. Mr Logo submitted that although Judge Frances had accepted that there had been ill-treatment of the appellant she did not accept that the appellant had been regarded as someone who was a member of Boko Haram. Furthermore, the appellant in the screening interview had stated that he is a Catholic and there is no background evidence that Catholics are associated with Boko Haram. At [31] of the determination Judge Frances did not expressly state that she accepted the claim that he had been accused of being involved with Boko Haram.

15. In subsequent paragraphs the judge had explained in detail why the persecution that the appellant had been subjected to in the past was not likely to be repeated. He had been detained in June but remained in Cameroon until October 2014 without having

come to the attention of the authorities. He travelled to the British High Commission and obtained a visa without coming to harm. There had been no attempt to contact the appellant by the authorities.

16. In the light of the background of police corruption it is possible that what had happened may have been the actions of rogue elements of the police. The appellant had been able to travel on his own passport with no assistance and had gone through passport control. That would not have happened if the authorities had any adverse interest in him. This is particularly so bearing in mind the appellant's claim that the police retained his ID card.

17. So far as ground 3 is concerned, relating to the judge's alleged failure to have regard to the country guidance decision of FK (SDF member/activist-risk) Cameroon CG [2007] UKAIT 00047, that case was very specific to a particular group and does not establish as a general rule that those escaping from detention would be at risk.

18. Mr Neale submitted that the appellant's religion was irrelevant, given that the police falsely accused him of being linked with Boko Haram. Furthermore, there is no evidence that the police knew of his religion.

19. At [31] the judge had accepted his account of ill-treatment. There is no indication that she rejected his account of the details of his interrogation, and if she had rejected it, she would have had to have said so.

20. Paragraph 339K of the Immigration Rules is highly significant. There was no justification for the judge's finding that the police had no interest in the appellant, there having been no consideration of the question of whether the police were simply not able to find him. This is significant when considering his case that he went to a friend of a friend's house in a different part of the country. Furthermore, in the asylum interview the appellant said that he had been living with a friend in north Cameroon but his family, including his wife and children, lived in Douala, which is in another part of Cameroon. There was no consideration of the risk to the appellant as an escapee from police custody. I was referred to the decision in Demirkaya [1999] INLR 441 in relation to the significance of past persecution.

21. The finding that he was of no interest to the police after he escaped is not a finding that is based on the evidence.

My conclusions

22. I announced at the hearing that I was satisfied that Judge Frances did err in law in her assessment of the question of risk on return. The following are my reasons.

23. At [31] Judge Frances said as follows:

> "I find that the Appellant has given a consistent account of his arrest on 14th June 2014, his detention and escape three days later. He gave the same account, of the events arising from 14th June 2014, in his interview, witness statement and during cross-examination. I accept that the Appellant was arrested, detained for three days,

> threatened, deprived of food and water, and escaped. He travelled through the bush with TJ and got a lift in a lorry to Douala where he stayed with a friend of TJ's until he came to the UK."

24. I reject Mr Logo's submission that Judge Frances did not find that the appellant had been accused of association with Boko Haram. The appellant's case as set out in his witness statement was that he was accused during interrogation of having links with Boko Haram and questioned about whether the weapons were for that group. It is clear from [31] that the judge accepted the appellant's account of his detention. As submitted by Mr Neale, there is no indication from the determination that the judge rejected any part of his account of his detention and interrogation. For the avoidance of doubt, it is to be noted that he also said that he was beaten and kicked during his detention. Again, although Judge Frances does not expressly refer to that aspect of his account, it is implicit that she accepted it. Similarly, it is also significant that his account is that he was threatened by the police that he would be killed if he did not say who he was working for.

25. Thus, it is necessary to assess the risk on return on the premise that the appellant was accused of being involved with Boko Haram and that firearms were found in the vehicle in which he was travelling.

26. Paragraph 339K of HC 395 (as amended) provides as follows:

> "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."

27. What is said in paragraph 339K is consistent with the *ratio* of Demirkaya which found that past persecution was probative of a future risk of persecution unless, to summarise, there are good reasons to believe that there is no real risk of future persecution.

28. Notwithstanding Judge Frances' actual findings in terms of whether the police had to the appellant's knowledge expressed an interest in him after his escape, for example by having visited his wife, a matter which Judge Frances has rejected, the fact remains that it is accepted on Judge Frances' findings that the appellant had been detained, ill-treated, accused of involvement with a terrorist organisation and escaped from detention. In my judgement, those accepted facts required an assessment on their own terms in respect of the risk of persecution on return.

29. In the circumstances, I do consider that on this occasion this experienced judge fell into error in concluding that because the appellant had not established that there had been any visits to the family or any enquiries about him, and that in that respect he had embellished his account, it meant that there would be no risk to him on return. The facts that were accepted in terms of past persecution and escape from detention,

as well as accusations of belonging to a terrorist organisation, required an independent and self-contained assessment of risk on return.

30. My conclusions take into account the background evidence which was before the First-tier Tribunal and to which I was referred in terms of, for example, police inefficiency. Thus, in the US State Department Report for 2013 it is stated that:

> "Police were ineffective, poorly trained and corrupt. Impunity was a problem. Citizens often resorted to vigilante action rather than calling police."

31. I also note whist is said in the USSDR about there being continuing reports that security forces tortured, beat, harassed and otherwise abused citizens, prisoners and detainees. Whilst that evidence is likely to have been a factor in Judge Frances' conclusions in terms of the appellant's account of his ill-treatment, it was also evidence to be taken into account in terms of the assessment of risk on return.

32. Again, although in general terms Judge Frances referred to background evidence showing that the police had intensified efforts to track down suspected Boko Haram members, in coming to her conclusion that the appellant would not be at risk on return that is also a factor to be taken into account independently from the question of the lack of evidence of any interest in the appellant whilst he remained in Cameroon.

33. In relation to ground 1, being the complaint about Judge Frances' failure to adjourn, that was a ground on which permission to appeal was refused. It does not therefore, require further consideration by me.

34. In relation to the contention that Judge Frances failed to apply relevant country guidance, in submissions on behalf of the appellant before me it was submitted that in reality that is a matter that overlaps with the issue of the assessment of risk on return. In the circumstances, again I do not consider that further consideration of that separate ground is required.

35. Being satisfied that Judge Frances erred in law, I set aside her decision. I consider that the appropriate course is for the re-making of the decision to take place in the Upper Tribunal. In the light of the detailed findings of fact made by Judge Frances, it is not appropriate for the matter to be remitted to the First-tier Tribunal, and in particular taking into account the limited nature of the enquiry now to be undertaken: risk on return.

36. Having canvassed the views of the parties, I also decided that the appeal should no longer be subject to the fast track procedure having regard to rule 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I am not satisfied that the appeal can justly be determined if it remains a fast track case. This conclusion takes into account the submissions made on behalf of the appellant to the effect that it is hoped that expert evidence will be adduced in relation to the question of risk on return. Whilst I make no direction in respect of such evidence, I do consider that the assessment of risk on

return would be better informed by further evidence, whether background or expert evidence.

37. I indicated to the parties the extent to which I consider that the facts as found by Judge Frances should be preserved. They are as follows:

- The whole of [31], including that the appellant was accused during interrogation of being a member of, or associated with, Boko Haram, and that he was beaten and kicked during his detention.

- During his detention the police took the appellant's phone and ID card. The appellant escaped with TJ and stayed at TJ's friend's house from June to October 2014.

- That the police did not come looking for the appellant at any premises after his escape and that no enquiries were made of his wife or mother as to his whereabouts whilst the appellant was in Cameroon

- The appellant was not smuggled out of Cameroon. He obtained his visa on 6 August 2014 having attended the British embassy in person and had his photograph and fingerprints taken. He travelled to the UK on his own passport without difficulty.

- The appellant had not given a credible account of being unable to contact his wife.

38. The parties are to note the directions for the forthcoming hearing as set out below:

DIRECTIONS

1. The decision is to be re-made in the Upper Tribunal and is to be listed for hearing no earlier than six weeks from 14 January 2015.

2. No later than 14 days before the next date of hearing the parties are to file and serve any further evidence relied on.