



IAC-FH-CK-V1

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

Appeal Number: AA/11243/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 23rd September 2015**

**Decision & Reasons Promulgated
On 13th October 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**N'FALY CAMARA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr M Diwncyz, Home Office Presenting Officer

For the Respondent: Mr M Middleton, Legal Representative of Kirklees Law Centre

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Turnock made following a hearing at Bradford on 9th March 2015.

Background

2. The claimant is a citizen of Guinea born on 17th April 1988. He came to the UK in January 2010 with a Tier 4 (General) Student visa valid to 30th August 2013. He claimed asylum on 19th August 2013.

3. His claim is based upon problems which started in Guinea after the deaths of his parents and uncle. The family were all members of the Union of Democratic Forces of Guinea. His father was killed on 28th September 2009, at a demonstration supporting the UFDG. His mother died two days later as a consequence of being arrested by the military and tortured. The claimant went to live with his uncle, who was killed during the attempted coup against Alpha Condé in July 2011. After his uncle's death the claimant was informed that there was an arrest warrant issued against him.
4. The objective evidence confirmed that there was a premeditated massacre of at least 150 people on 28th September 2009 by government forces and also that an attempted coup did take place in July 2011.
5. The Secretary of State accepted that the claimant had produced a genuine Guinean passport but not that there was any truth in his claim that the authorities were interested in him. She refused the claim.

The Judge's Determination

6. So far as the delay in claiming asylum is concerned, the judge did not accept that the claimant was ignorant of the asylum process during his stay in the UK but recognised that there would always be a concern, even for a genuine asylum seeker, that a claim would be refused which might inhibit one being lodged at the first opportunity. The claimant was in the UK lawfully throughout his stay and in those circumstances the delay in claiming was not as damaging to credibility as would be case if he had remained in the UK unlawfully.
7. He found that there was some inconsistency in the evidence relating to the claimed arrest and torture of his mother which cast doubt on his credibility. On the other hand, the judge concluded that the claimant answered the questions put to him at interview about the UFDG with a reasonable degree of accuracy although his answers were not conclusive.
8. The claimant produced a number of documents in support of his claim including the warrant said to have been issued against him, the death certificates in respect of his mother and uncle, and a document from the Conakry court.
9. The judge set out in some detail both what those documents said on their face, and the checks that the Secretary of State had been able to make upon them.
10. He then wrote as follows:

“The case of Tanveer Ahmed [2002] UKIAT 00439 established that it is for an individual claimant to show that a document on which he seeks to rely can be relied upon, and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all of the evidence in the round.

In this case the appellant has submitted original documents in sufficient time to enable the respondent to check their authenticity. At paragraph 16 of the letter of refusal the respondent notes: ‘It is accepted that this is a genuine Guinean passport in the absence

of any reason to the contrary'. If the respondent had taken the same approach to the documentation in question that would have been accepted. In any event, taking account of the findings of the document examiner, who does not suggest that the documents are false or give any reasons why they might be otherwise unreliable, I find that to the requisite standard the documentation is reliable."

11. Having found the documentation to be reliable, and taking account of the country information, he concluded that the claimant had made out his case.

The Grounds of Application

12. The Secretary of State sought permission to appeal on the grounds that the judge had allowed the appeal entirely on the basis of his erroneous acceptance of the documentation and had misdirected himself in relation to Tanveer Ahmed, mistakenly placing a burden of proof upon the Secretary of State and incorrectly citing paragraph 16 of the reasons for refusal letter in order to adopt the view that, unless a document can be shown not to be genuine, it ought to be accepted. Furthermore he had failed to include the inconsistencies at paragraphs 38 and 39 in his assessment and therefore not considered all of the documentation in the round.
13. Specifically the judge had erred by stating that, as the Guinean passport had been accepted as genuine, since there was no reason not to find it to be so, he had then adopted the same reasoning in respect of the other documents. There were no clear reasons to accept as genuine the documents relied upon by the claimant and no reason for the Secretary of State to take the same approach to those documents as she had taken to the passport.
14. Moreover, in considering that the document examiner could not find reasons why the documents might be unreliable, the judge had failed to have regard to the fact that the examiner also could not find reasons to find them to be reliable. None were conclusively authenticated. It was therefore incumbent upon the judge to consider their reliability in the light of the inconsistencies identified at paragraph 39 and his rejection of the explanation for the delay at paragraph 38.
15. Second, it was not the claimant's evidence that he delayed making his claim because he was concerned that it might be refused; the finding at paragraph 38 was not open to the judge.
16. Permission to appeal was granted by Judge Simpson for the reasons stated in the grounds on 13th April 2015.

Submissions

17. Mr Diwnycz said that he was not relying on the Section 8 point in the grounds but did rely upon the principal ground, i.e. that the judge had wrongly reversed the burden of proof.
18. Mr Middleton defended the determination. He observed that it was unfortunate that the judge had not recorded that there had been a previous hearing of the appeal

when the Presenting Officer had successfully applied for an adjournment in order to give an opportunity for a specialist to consider the documents. It was open to the judge to place weight upon the examining officer's conclusions, which were more supportive of the claimant's case than that of the Secretary of State.

Findings and Conclusions

19. There is no material error in this determination. There is not a reversal of the burden of proof. It is an assessment of the documentation in the light of the objective evidence and the oral testimony.
20. The context of this appeal is that the country information was not only supportive of the claim in general terms but also in relation to the specific events which triggered the decision to claim asylum. The Appellant had also answered the questions in relation to the UFDG with a reasonable degree of accuracy.
21. First, this is a very experienced judge who was clearly aware that it was for the claimant to establish that the document upon which he seeks to rely can in fact be relied upon. He set out the correct test at paragraph 52 of the determination. Moreover, he also stated that in order to consider the reliability of the document it was necessary to look at all of the evidence in the round.
22. It is the Secretary of State's case that, having set out the correct test at paragraph 52, the judge then did exactly the opposite at paragraph 53.
23. It was plainly relevant for the judge to state that the documents had been submitted in sufficient time to enable checks to be made. It was also relevant that other documents were genuine. Moreover, the judge was entitled to place weight upon the fact that the document examiner had not put forward any reasons to suppose that the documents might be unreliable.
24. In fact the examiner's conclusions in relation to the death certificates are broadly positive although he said that he was unable to conclude upon their authenticity. He did say that he suspected that they were as issued and were similar in design and layout to known authentic Guinea certificates.
25. Both state that the cause of death were maltreatment/assault/battery which is entirely consistent with the claim.
26. The document examiner was unable to reach any conclusions or make any observations in relation to the authenticity of the arrest warrants and the court document. However, he did make some positive findings, namely that the wet ink endorsements were true ink, and were not digital reproductions, although of very poor quality. The arrest warrants appear to have been signed by the same judge and digitally printed without secure features. There was nothing in the documents which raised concerns.

27. It is right that the judge observed that there was some inconsistency in the evidence relating to the claimed arrest and torture of his mother but, even if he had specifically referred to that inconsistency in his conclusions, the examining officer's conclusions in relation to the mother's death certificate were reasonably clear. He suspected that they were as issued.
28. Mr Diwncyz did not submit that there was any misapplication of Section 8. The judge was entitled to place weight upon the fact that the claimant was in the UK lawfully throughout his stay and the delay in claiming was less damaging than if he had been in the UK unlawfully.
29. In conclusion, the judge was entitled to conclude that the claimant had discharged the burden of proof upon him to show that the documentation was reliable and did not, as argued in the grounds, either reverse the burden of proof or fail to look at the documents in the round.

Notice of Decision

The judge did not err in law. The decision stands. The Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Taylor