



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

Appeal Number: DA/00774/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 13 October 2015**

**Decision Promulgated
On 27 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

**IBRAHIM KONE
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Wilkins, instructed by TRP Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. There was no application or reason to direct anonymity in the First-tier Tribunal and there is no reason to do so in the Upper Tribunal, particularly taking into consideration the public interest in the deportation of foreign national criminals.
2. The appellant appeals to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge V A Osborne and Mrs R M

Bray (the panel) that was promulgated on 18 March 2015. The panel decided that the appellant was not a refugee or otherwise in need of international protection or that his deportation to Ivory Coast or Cameroon (the appellant is a national of both countries) would violate his protected private and family life rights.

3. The appellant appealed on five grounds.
 - a. Procedural unfairness and insufficient reasoning in respect of witness evidence.
 - b. Giving weight to immaterial matter or to a matter not supported by evidence.
 - c. Failure to apply HJ (Iran).
 - d. Failure to make any or adequate findings on whether return to the Ivory Coast would breach his article 8 rights.
 - e. Insufficient reasoning or failure to take account of medical evidence.
4. At the start of the hearing I remarked that the panel did not seem to have made any finding about whether the appellant had a well founded fear of persecution in Ivory Coast which had not been conceded by the appellant. Mr Mills and Ms Wilkins both agreed and this was added as a sixth ground.
5. Having heard from both representatives and having considered the grounds, the rule 24 reply and the decision and reasons statement, I am satisfied that the panel's decision contains an error on a point of law and must be set aside. There is no need to go through all the grounds of appeal because the error of law is in relation to the approach to the medical evidence.
6. The appellant relied on a medico-legal report prepared by the Medical Foundation (Freedom from Torture). The author of the report, Dr Michael Nelki, concluded that the appellant's scars were "entirely consistent with the description he gave for their causes." The fact the doctor did not say "highly consistent" or "typical of" seems to have caused the panel some difficulty as indicated at paragraph 61. I find the reasoning to reject the doctor's conclusion and to interpret it as meaning nothing more than "consistent with" to be irrational since the ordinary meaning of the adjective "entirely" would put it above "highly" in context. For this reason I conclude that the panel erred because it has not given adequate reasons for going behind the medical opinion.
7. Mr Mills acknowledged that if I came to the conclusion then the entirety of the credibility findings were unsound and the appeal would have to be reheard. Ms Wilkins agrees. It is because a fresh assessment of the appellant's credibility has to be made that I remit this appeal to the First-tier Tribunal.
8. I do so with the following directions.

- a. Nothing is preserved from the earlier decisions and reasons statements made in the First-tier Tribunal.
- b. Dr Nelki's conclusion "entirely consistent" is to be understood as meaning "highly consistent" within the Istanbul Protocol.
- c. The rehearing in the First-tier Tribunal is to be at Birmingham before a panel including myself (Designated Judge McCarthy) and a non-legal member other than Mrs Bray or Mrs Hussain (who was involved in an earlier hearing of this appeal).

Decision

The decision and reasons statement of First-tier Tribunal Judge V Osborne and Mrs Bray contains an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal for a fresh hearing in line with the above directions.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal