



IAC-FH-CK-V1

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

Appeal Number: AA/06242/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**MR RICHARD NIFAH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, Counsel instructed via Direct Access

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Appellant against the decision of Judge of the First-tier Tribunal Munonyedi dismissing the Appellant's appeal against the Respondent's decision of 11 August 2014 in which the Respondent dismissed the Appellant's claim for asylum.
2. The Appellant is a national of Ghana who, it is accepted, was in the armed forces from around 1996 until 2002, from which point in time he has been present in the

United Kingdom. He attended an ASU appointment at Lunar House on 30 May 2014. His screening interview was on 9 June 2014 and the full SEF interview on 30 July. I will refer in due course to other applications that the Appellant has made to the Respondent.

3. The Appellant claimed asylum on the grounds that he feared serious harm in Ghana in the form prolonged military detention as an alleged deserter from the army, and being killed. It is appropriate to set out some of the evidence that the Appellant relies upon to support his claim for asylum.
4. The Appellant was an acknowledged athlete. It is accepted by the Respondent that the Appellant was on military service for the Ghanaian forces in the Middle East in 2001 and that he was due to participate in one or more athletics events in the United Kingdom. In the refusal letter there is some confusion as to whether he arrived in the United Kingdom first in August 2001 or in December 2001. In the Appellant's witness statement of 14 September 2015 he says that he first came to the UK on 26 August 2001 for the purpose of taking part in a cross-country race. That event was delayed due to a security alert and he went back to Lebanon. He then returned back to the United Kingdom in December 2001 to participate in the same event. It is my understanding from the Appellant's evidence that that event was again postponed although I have to say that that element of his account is not entirely clear.
5. The Appellant relies on the postponement of the December 2001 athletics event to explain what happened next. He was, he says in his evidence, initially given permission by the Ghanaian army to remain in the United Kingdom for three weeks to participate in the athletics event, but in the light of it being cancelled he applied to the Respondent in or around January 2002 for further leave to remain as a visitor. During the process of that application the Respondent lost his Ghanaian passport. That is accepted, and there is documentation that I have seen which establishes that the Respondent did lose his passport.
6. I refer in particular to Annexes B1 and C1 of the Respondent's bundle being letters from the Respondent dated 8 March 2002 confirming that the Appellant had submitted his passport to the Respondent on 13 February 2002 and unfortunately the Home Office was unable to locate the passport within the Directorate. One such letter was addressed to the Appellant; another of the same date, 8 March 2002, was addressed to the Office of the High Commission for Ghana saying that the above-named person, the Appellant, had submitted their passport to the Home Office to vary their leave to remain:

"We have been advised of the imminent travel needs of the applicant, who has been informed that their passport is not readily obtainable within the Directorate at this time, despite an extensive search having been undertaken. The applicant has now been advised to approach their national embassy/High Commission in order to obtain a replacement document and we, therefore, respectfully request your most urgent consideration in its subsequent issue."

7. The Appellant made efforts through the Ghanaian High Commission to obtain a replacement passport and indeed returned to Ghana in April 2002. The Appellant's account is that as a result of his return to his unit in Ghana being delayed, he was recorded as being a deserter, or 'AWOL'. He was aware of this even before his return to Ghana.
8. He must, I anticipate, have expected at least to be arrested if he knew at that time that he was being treated as a deserter and had been marked as absent without leave. However, we are aware that the Appellant definitely did return to Ghana at that time; his presence in the United Kingdom is known of in March 2002 when the Respondent's letters of 8 March 2002 were written; and it is also recorded that in June 2002 he made a subsequent application in Ghana for entry clearance to return to the UK, such entry clearance being issued on 24 June 2002. So it is known that he was back in Ghana during that period.
9. What the Appellant says in his witness statement at paragraphs 9 to 12 is as follows:
 - “9. In April 2002 I managed to get a travel document from the Ghanaian Embassy and went to Ghana. When I went to report to my unit 5th Battalion of Infantry I was arrested to put in jail as a deserter. I protested my innocence and with the help of my friends in the force I was released on bail pending court martial.
 10. I did not expect anything bad to happen to me and believed that I would be released from all charges. Later I found out that the army had added several other charges against me and Major Sampson [that is a reference to a Major Sampson Adjet, with whom the Appellant had had some dealings in 1997 or 1998] was behind the plot to send me to jail and discharge me from the force.
 11. I spoke to my friends and associates in the army and found out Major Sampson was friendly with many higher ranking officers and politicians and if he wanted he would somehow send me to jail and get me discharged from the army.
 12. The lawyer who was appointed by the army to defend me also failed to see me several times and my attempt to get another lawyer was refused by the court martial. By this time I realised that I would definitely go to jail and decided to leave the country.”
10. In her decision letter of 11 August 2014 the Respondent took issue with the credibility of the Appellant's account for the following reasons. It was said at paragraph 15 that if the Appellant had been granted an extension to his leave from the army until after March by the platoon leader then it was not consistent that the platoon leader would already have booked the Appellant as a deserter in March. At paragraph 17 it was observed that:
 - “17. You claim that when you left Ghana on 31 July 2002 you could not go through the airport because your life was in danger so you went through the Ivory Coast border (SAI questions 24, 25, 59). However, your visa dated 26 June 2002 to 24 December 2002 has been stamped and dated in Accra on 31 July 2002.
 18. You have provided a document that you claim is an enquiry into your absence without leave. It is a copy and not an original, the emblem is not visible and the document is dated April 2003. When you were asked about this document in

your SAI you said that it is a document that is not supposed to come out of the military because it is restricted but your friend got it for you (questions 59 to 61). Due to this document not being an original and having an indistinguishable emblem no weight will be placed on it in the consideration of your claim."

11. Under the title "general credibility" the Respondent made the following observations:
 - "25. In your SCR you claimed that your brother is dead. However in your SAI you claim that you have contact with your brother who lives in Ghana.
 26. In your SCR you were asked how many children you had and you said none. However in an interview that took place at Stevenage police station you claimed that you have a daughter who is a British national who lives in Australia."
12. The Respondent then considered under a heading entitled "Section 8 credibility" at paragraph 28 the fact that the Appellant had failed to claim asylum when he reached the airport in the UK upon returning here.
13. It was also noted elsewhere in the refusal letter that the Appellant had made applications for leave to remain in 2003 and an application for an EEA residence card in 2009 neither of which had been successful but on neither occasion had the Appellant raised any claim to fear harm in Ghana. The application for asylum was refused.
14. In hearing the Appellant's appeal the judge made a number of findings of fact as follows. At paragraph 12 the judge held the Appellant's evidence to be contradictory, inconsistent and lacking in credibility. At paragraph 13 he finds as follows:
 - "13. The Appellant claims that when he returned to Ghana in April 2002 he knew that he had been listed as a deserter and that Major Adjet wanted revenge for his failure to support him in his claims in respect of a military campaign. In my view if the Appellant genuinely feared Major Adjet and believed that he had power and access to important and influential people who would persecute him or wrongly prosecute him then the Appellant would have claimed asylum whilst in the United Kingdom in April 2002.
 14. The Appellant claims that he was well-known in Ghana because of his sporting achievements. In my view it would have been impossible for a well-known personality to arrive at the airport without attracting some form of attention. Had the Appellant been listed as a deserter it is inconceivable that he would not have been detained or apprehended at the airport by the authorities." (Emphasis added to para 13)
15. At paragraph 17 the judge finds:
 - "17. On the whole I found that the Appellant's evidence lacked credibility. In my view had the Appellant been listed as a deserter he would have had documents in his possession that would have been issued to him."

On the issue of documentation the judge also held as follows:

“23. I have considered the supporting documents provided by the Appellant from his friend at the barracks. I have applied the principles established in the case Tanveer Ahmed IAT [2002] UKIAT 00439 and taking the evidence in the round, I am forced to conclude that the documents were knowingly obtained for the purposes of supporting a false asylum claim.”

16. The Judge also held at paragraph 20: “There are other discrepancies set out in the refusal letter.” At paragraph 24 the judge referred to the Section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 issues of delay in making the claim for asylum and also stated as follows at paragraph 25:

“25. The Appellant has not in my view given any evidence of ill-treatment by the authorities or others which crosses the threshold of severity so as to constitute persecution. The test of persecution must be kept at a high and demanding level. There should be strong and credible elements but this is lacking in the Appellant’s account.”

Overall the judge did not believe the Appellant’s account and rejected the claim for protection.

17. In the judge’s consideration of the Appellant’s claim to remain in the UK on human rights grounds, Article 8 ECHR, the judge directed himself in law as to the relevant authorities and had regard to paragraph 276ADE of the Immigration Rules and Sections 117A and B in Part 5 of the Nationality, Immigration and Asylum Act 2002. He held that the Appellant was not entitled to leave to remain on private life grounds under the relevant Immigration Rule and that his removal was proportionate under Article 8.

18. The Appellant appealed against that decision in grounds of appeal dated 2 December 2015 prepared by Mr Turner, who appears before me. At paragraph 15 the well-known authority of Chiver [1994] UKIAT 10758 is relied upon in support of the proposition, I believe, that certain elements of an Appellant’s account may be found by a judge to not be true but that does not necessarily affect the core reliability of their claim.

19. At paragraph 16 the grounds assert that the Immigration Judge has proceeded under a mistake of fact by misunderstanding the chronology of the Appellant’s account in that it was not correct to say that in April 2002 the Appellant was aware both that he was wanted for being a deserter and that Major Adjet wanted revenge against him. Rather, Mr Turner argues, the Appellant was only aware of the latter issue after he arrived back in Ghana and so the judge, in finding it implausible that the Appellant did not claim asylum in April 2002 in the United Kingdom, proceeded under a material mistake of fact or had not had sufficient regard to the Appellant’s evidence.

20. Further, paragraph 18 of the grounds assert that the judge’s finding at paragraph 14 of the decision that it would be impossible/inconceivable for the Appellant to have arrived at the airport without attracting some sort of attention, was not a finding which could properly be made in the absence of evidence supporting that analysis, eg evidence about what procedures are used at the airport in Ghana. It could not be

said to be impossible or inconceivable that the Appellant would have been able to pass through the airport on that occasion.

21. In that respect I agree with the grounds of appeal; the Appellant's return to Ghana could on another view, potentially have occurred without incident at the airport, and it would have required positive evidence undermining the Appellant's account for it to be found impossible or inconceivable. No such evidence was identified by the judge. It is the rejection of that part of the Appellant's account with such apparent certainty, but in the absence of evidence establishing what is certain or not certain, which causes me some concern.
22. Paragraph 18 of the grounds similarly assert that the judge's finding at paragraph 17 of the decision, that the Appellant would have been given paperwork by the authorities as a deserter, and would not have needed his friends who were still in the army to send him paperwork after he had returned to the United Kingdom, was not a finding which could properly be made in the absence of evidence supporting that analysis.
23. I do not find that criticism made out. Where a person is detained in a military setting, I find that it was within the judge's range of possible findings to have come to the conclusion that it was likely, in Ghana, that the Appellant would have been given some sort of paperwork by the authorities at that time. The Appellant has not demonstrated that it was unlikely that he would have been given any paperwork and has not otherwise demonstrated that the judge's finding in that regard is vitiated by any error of law.
24. Paragraph 20 of the grounds suggest that the judge has failed to properly consider or give any weight to the Appellant's claim that the Home Office had lost his passport in 2001 or 2002, causing the Appellant's return to Ghana to be delayed. I find that the judge was clearly aware that the loss of the Appellant's passport was the cause of the delay in his return, and it cannot be said that that is a matter that has been left out of account. I do not find any material error of law raised by paragraph 20 of the Appellant's grounds of appeal.
25. It can be noted that I have not yet returned to the first of the Appellant's challenges, that is that the judge proceeded under a mistake of fact. I have found this a finely balanced issue to determine, noting that in proceedings such as these before the Upper Tribunal it is for the Appellant to establish that a material error of law is made out. I find that such an error has not been disclosed by the grounds of appeal.
26. The Appellant had said at paragraph 6 of his witness statement that when he contacted the army from the UK in around March 2002 the operational officer, Major Adjet, did not believe the Appellant and said that the army had listed him as a traitor. His evidence was: "I pleaded my case and he told me that when I returned to Ghana he would look into it."

27. I accept that at paragraph 10 of his witness statement, the Appellant gave further detail as to how, after returning to Ghana, he came to believe that Major Sampson Adjet was behind a plot to send him to jail.
28. However, the Appellant describes having had to plead with Adjet before his return to Ghana in April in 2002, and the Appellant had known since 1997 or 1998 that Major Adjet was no friend of his; the Appellant's account being that they had both been involved in a battle in which the Appellant had been injured. Major Adjet, it is said, had tried to take credit for certain heroic acts during the fighting, but this had been denied by the Appellant in his own report of events. It was said that Major Adjet had borne a grudge against the Appellant ever since.
29. I do not find, in the light of all the evidence that was before the judge, that he misdirected himself in law, or has misapprehended the evidence that was before him, when finding at paragraph 13 that Appellant knew when he returned to Ghana in April 2002 both that he had been listed as a deserter, and that Major Adjet wanted revenge against him, and thus that if the Appellant was aware of both of those matters, he would have claimed asylum when he was in the United Kingdom in April 2002.
30. As I have indicated, the Appellant has always known that Adjet held a grudge against the Appellant and I cannot see that Mr Turner's directing my attention to the evidence in the witness statement discloses a clear error of law or error of approach on behalf of the judge.
31. What I also find significant is that at paragraph 20 of the judge's decision the judge refers to the other discrepancies as set out in the refusal letter. I have already set those discrepancies out above. The Appellant, however, did nothing within his witness statement before the First tier to address those discrepancies. There is no ground of appeal before this Tribunal challenging the issues taken in the refusal letter, or arguing that the judge has failed to take into account any evidence of the Appellant given in response to the credibility issues raised in the refusal letter. Significant amongst those issues is the almost twelve year wait between the Appellant returning to the United Kingdom in 2002 and his claim for asylum in 2014 which I note in any event only took place because he was apprehended in a car by the police.
32. In all the circumstances I find that the grounds of appeal have not disclosed a material error of law in the present appeal. Although I have found that there was an error of approach in relation to one matter only (regarding the Appellant's passage through the airport on arrival in Ghana), that error is not material in the light of all the other adverse credibility findings made by the Judge, and those which were adopted from the refusal letter.
33. I do not set aside the First-tier decision; I uphold it.


Notice of Decision

The appeal is dismissed on all grounds.

No anonymity direction is made.

Signed

Date 5.2.16

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 5.2.16

A handwritten signature in blue ink, appearing to read 'P. O'Ryan', written in a cursive style.

Deputy Upper Tribunal Judge O'Ryan