Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/10444/2014**

THE IMMIGRATION ACTS

Heard at Bradford **Decision & Reasons Promulgated**
On 7 September 2017 **On 24 October 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

PJPB
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes (Counsel)
For the Respondent: Mrs R Petterson (Senior Home Office Presenting Officer)

DECISION AND REASONS

Introduction

1. This is the claimant's appeal to the Upper Tribunal, brought with permission, from a decision of the First-tier Tribunal (Judge Shimmin hereinafter "the Judge") dismissing his appeal against the Secretary of State's decision of 19 November 2014 refusing to revoke a deportation order and refusing to grant him asylum or any other form of international protection.

2. The First-tier Tribunal granted the claimant anonymity. Nothing was said about that before me but I am content to continue the status quo. Accordingly, I continue the anonymity direction.

Background

3. The claimant's factual and adjudication history is somewhat convoluted. I hope to state it quite shortly.

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4. He was born on 3 April 1982 in Sierra Leone. He is a national of that country. When aged about 10 years he was abducted and forced to become a child soldier. He shot his uncle as part of an initiation process. As a soldier he killed people and committed atrocities. He started to use drugs. In or around 2000 he was taken to a place called St Michael's Lodge as part of a programme for the rehabilitation and reintegration of former child combatants. Whilst there he was sexually abused. In March 2002 he was sponsored by UNICEF to come to the UK for a short period in order to learn English. Having come to the UK he visited Spain for a period of one month but was, once again, a victim of abuse whilst there. He then came back to the UK and lived, for a period, with an aunt but had to leave her home because she could no longer afford to keep him. He then spent a period in destitution and started to use illegal drugs. He did, though, form a relationship with a person I shall call HS. She is British. The relationship has now ended.

5. On 24 July 2007 the claimant was convicted of five counts of supplying a controlled drug (crack cocaine and heroin) and he received a sentence of 42 months imprisonment. In March 2008 he was notified of his liability to deportation and a decision to make a deportation order was taken. On 2 February 2009 he claimed asylum and this was treated as an application for revocation of the deportation order. But revocation was refused and so he appealed against that decision. His appeal was dismissed by Judge Swaniker in a determination promulgated on 18 May 2010.

6. Notwithstanding the above the claimant was not actually deported. On 6 August 2011 he was convicted of further drugs offences (possession of Class A drugs with intent to supply) and some offences of dishonesty. He received a sentence of six years imprisonment. He contacted the Secretary of State asserting, once again, entitlement to asylum and was subsequently notified of the Secretary of State's intention to exclude him from protection under the 1951 Refugee Convention pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002. Further correspondence followed which culminated in the decision of 19 November 2014 referred to above. By this time the claimant, having been released from custody, had met a person who I shall call HG, also a British citizen, and had commenced a relationship with her. That relationship still subsists albeit that they do not live together. They have a son who was born on 22 November 2015.

7. The claimant's appeal against the 19 November 2014 decision came before Judge Robson. In a decision promulgated on 6 August 2015 he allowed the appeal on humanitarian protection grounds. However, his decision was subsequently set aside by Upper Tribunal Judge Taylor. The appeal was remitted with certain preserved findings to the effect that the claimant had been a child soldier as claimed, had been abused as claimed and, in consequence of all of that, had suffered from post-traumatic stress disorder.

The appeal to the First-tier Tribunal

8. The claimant's appeal was considered by way of an oral hearing. He was represented by Counsel. The Secretary of State was represented by a Home Office Presenting Officer. The claimant gave oral evidence as did one Dr. Barbara Harrell-Bond who had provided an expert report. It is to be noted that, seemingly for the first time, the Secretary of State argued at the hearing that the claimant should be excluded from a grant of humanitarian protection.

9. The Judge, in a very detailed determination, dismissed the appeal. He concluded that the claimant was excluded from refugee protection; was excluded from a grant of humanitarian protection; would not be at risk of persecution or serious harm upon return to Sierra Leone as a former child soldier because such persons were not at risk on that basis; was not at risk of persecution or serious ill-treatment as a bisexual person because he is not bisexual; was not at risk

of committing suicide if returned to Sierra Leone; and that requiring him to leave the United Kingdom would not amount to a breach of Article 8 of the European Convention on Human Rights (ECHR).

10. I would note at this stage that the report of and evidence of Dr. Harrell-Bond was concerned with ill-treatment the claimant might receive upon return. The tribunal also had written expert witness material from one Dr. Hartree which was concerned with the claimant's mental health.

The permission stage

11. The claimant asked for permission to appeal to the Upper Tribunal. In summary, it was contended that the Judge had erred in failing to properly assess the matter of exclusion from refugee protection; in failing to properly assess the matter of exclusion from humanitarian protection; in failing to properly direct himself with respect to suicide risk in the context of Article 3 of the ECHR; in conducting an unfair assessment of the evidence of Dr. Harrell-Bond and in reaching unsafe findings with respect to the claimant's contention that he is bisexual.

12. Permission to appeal was initially refused by a Judge of the First-tier Tribunal. However, it was granted by a Deputy Upper Tribunal Judge and the salient part of that grant reads as follows:

> " 3. The grounds of appeal disclose arguable errors of law in the decision of First-tier Tribunal Judge Shimmin, in particular:
>
> (i) it is arguable that the Judge's decision to uphold the section 72 certificate at [38] and [39] was materially flawed through a failure to consider the re-categorisation report as to the lower risk the appellant presents to the public and the fact that the appellant has not committed any further offence since his release from detention on 17.10.14;
>
> (ii) it is arguable that the Judge's decision to exclude the appellant from humanitarian protection at [41] – [43] was materially flawed through a failure to take into consideration the preserved findings of fact, set out at [46] viz that the appellant was a child soldier, suffered sexual abuse and consequently suffered PTSD which, along with the issue raised in Ground 1, may be relevant to a proper consideration of paragraph 339D(iii), it not being disputed that the appellant fell within paragraph 339D(i). It is also arguable that, whilst the appellant Counsel did not object, it was procedurally unfair for the respondent to raise the issue of exclusion from humanitarian protection apparently for the first time at the hearing on 19 October 2006, despite the fact that the appeal had already been heard by the First-tier Tribunal and the Upper Tribunal, who remitted the appeal for a further hearing with preserved findings [29];
>
> (iii) it is arguable that the Judge's findings at [86] – [87] as to the Article 3 risk of suicide are materially flawed for the reason set out in [6] – [13] of the grounds of appeal;
>
> (iv) grounds 4, 5 have less arguable merit but all the grounds may be argued."

The hearing before me

13. Permission to appeal having been granted there was a hearing before the Upper Tribunal so that the question of whether the Judge had or had not erred in law could be considered. Representation at that hearing was as stated above and I am grateful to both representatives.

14. Essentially Mr Holmes maintained, and to some extent built upon, the grounds of appeal. He made no concessions as to any of them. Mrs Pettersen argued, in effect, that the Judge had properly considered all relevant matters, had not erred in law and had reached sustainable findings.

15. Where necessary or otherwise appropriate I shall refer, in more detail, to what was said by the representatives when explaining the view I have reached with respect to each ground of appeal.

My consideration of the grounds

16. With respect to what I shall call Ground 1, this is what the Judge had to say about why he was deciding to uphold the certificate under section 72 of the Nationality Immigration and Asylum Act 2002 and, hence, to conclude that the claimant was excluded from the protection afforded by the Refugee Convention:

> "The s.72 certificate
>
> 32. The respondent has made a certificate under section 72 of The Nationality Immigration and Asylum Act 2002 the relevant parts of which state:
>
> *s.72 Serious criminal*
>
> *(1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).*
>
> *(2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is –*
>
> *(a) convicted in the United Kingdom of an offence, and*
>
> *(b) sentenced to a period of imprisonment of at least two years.*
>
> *...*
>
> *(6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.*
>
> *...*
>
> *(10) The Tribunal or Commission hearing the appeal –*
>
> *(a) must begin substantive deliberation on the appeal by considering the certificate, and*
>
> *(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).*
>
> *(11) For the purposes o f this section –*
>
> *(a) 'the Refugee Convention' means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and ...*
>
> 33. The appellant has expressed his dissatisfaction with his conviction in 2007 and particularly his conviction in 2011. It appears that about three years ago he consulted solicitors with a view to challenging the 2011 conviction but there is before me no evidence of progress in that regard. He has done nothing constructive towards setting either conviction aside. Mr Brown, for the appellant, accepts that he cannot go behind the convictions. For the purpose of these proceedings I find that the appellant has been convicted of the offences and sentenced as set out above. I find also that the appellant's failure to accept his conviction but do nothing about it despite the considerable passage of time, indicates that he does not accept the reality of the situation and the seriousness of his criminal behaviour.
>
> 34. Following the 2011 conviction the respondent asked the appellant to rebut the presumption that he was a danger to the community. In a response dated 5 March, 2014 it was stated by his representatives that:

- on the seriousness of the offences, he regretted his actions and that the offending was prompted by his mental health issues;

- he believed that he did not pose a risk to the community and this was supported by a risk assessment dated 3 March, 2014 which assessed the appellant as at a low risk of reoffending. On the question of serious harm to others this was flagged as 'no data found';

- the appellant was appealing his sentence on the basis of malicious prosecution (no evidence has been provided to suggest that an appeal has been lodged).

35. The judge sentencing the appellant on 14 September, 2007 stressed the seriousness of the offences. Very soon after the appellant's release from the first sentence the appellant returned to the same offending and this was reflected in the judge's sentencing remarks at the time of the second conviction on 26 August, 2011 when it was stated:

> *'The aggravating features in your case it seems to me as follows: first of all, you have previous convictions for exactly the same sort of offending as brings you before the court today. It was some four years ago but, of course, given that, you received a sentence I think of 42 months, it was not that long ago that you were released from that sentence and it seems to me you have gone very quickly straight back to precisely the same offending that got you into trouble last time.*
>
> *But what you have done, Mr B, is you have brought all of that tragedy and all that misery that was meted out to you in Sierra Leone over to this country and the drugs that you peddle cause misery, agony and destruction of people's lives.'*

36. I find that individually these offences are very serious. My finding is confirmed and amplified when the offences are looked at cumulatively and include repetitions of the same offences which took place within such a short time of each other. For these reasons I find that s.72(1) is met.

37. I go on to consider whether the appellant poses a danger to the community of the United Kingdom under s.72(2).

38. The appellant's NOMS assessment on 18 March, 2014 is (at section 2b) that he is a low risk of serious harm. In the face of the two convictions in quick succession of very serious offences I have my doubts that this assessment is correct. As discussed above the appellant has not accepted responsibility for the later offence. He regards himself as a victim of malicious prosecution but has made no attempt to substantiate this and challenge the conviction. The appellant blames his mental health but I have not been directed to any expert evidence which would lead the appellant to being absolved, even in part, from responsibility. The appellant has not shown that he has actively addressed his offending behaviour. When considering all the circumstances I find he has not rebutted the certificate.

39. Taking the above findings into account I find that the appellant poses a particular danger to drug users and the community of the United Kingdom in terms of the danger to the wider interests of society considering that the supply of drugs inevitably leads to higher levels of acquisitive criminal activity in order to pay for them, and to an increased call upon the publicly-funded Health Service in order to deal with its deleterious effects. Accordingly, I uphold the respondent's certificate under s.72. It follows that the appellant's asylum claim is refused on the basis that Article 33(2) of the Geneva Convention applies to the appellant and that Convention does not prevent his removal from the United Kingdom."

17. The criticism of the Judge, here, is twofold. First of all it is said that he disregarded an important piece of evidence described as the "re-categorisation report". Secondly it is said that he seemed not to take account of the fact that the claimant had, since his release from detention on 17 October 2014, not re-offended.

18. The salient part of the re-categorisation report relied upon by the claimant for the purposes of his appeal to the Upper Tribunal is set out in the written grounds of application. It is said that that evidence was particularly important because it provided an explanation as to why the claimant had been assessed as being of low risk to the public. That must be a reference to the words in the document "you have engaged well with your sentence plan".

19. I would accept that the Judge did not, in his determination, make a specific reference to the re-categorisation report. However, he was not required to refer to each and every document which was before him and he did make it plain, at paragraph 31 of his determination, that he had "carefully considered all the evidence and the submissions on behalf of both parties". He himself said that a failure to mention a document was not to be taken as an indication that it had not been considered. He was aware of the fact that it had been said in a NOMS assessment that the claimant constituted a low risk of serious harm to the public (see paragraph 38 of the determination). But he explained (see paragraphs 38 and 39) why despite that assessment he took a different view. He did not specifically remind himself that there had been no re-offending since release but nothing in what the Judge had to say could be taken as an indication that he believed otherwise or had lost sight of that. The Judge was entitled to attach weight, as he did, to the fact of there being two convictions in relation to very serious offences in quick succession. Taking an overall view his conclusion as to the section 72 certificate was open to him on the material before him and, despite the criticisms made, has been adequately explained.

20. I conclude, in light of the above, that Ground 1 is not made out.

21. I now turn to Ground 2. As to exclusion from a grant of humanitarian protection the Judge said this:

> "339D of the Immigration Rules
>
> 40. Under paragraph 339D of the Immigration Rules *a person is excluded from a grant of humanitarian protection under paragraph 339C(iv) where the Secretary of State is satisfied that:*
>
> > *(i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;*
> >
> > *(ii) there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;*
> >
> > *(iii) there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or*
> >
> > *(iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.*
>
> 41. The appellant accepts that he killed and committed atrocities in Sierra Leone as a boy soldier. On the basis of these admissions I find that he comes within 339D(i) and (ii).
>
> 42. With regard to 339D(iii) I find that there are serious reasons for considering that the appellant constitutes a danger to the community for the United Kingdom for the same reasons I have given above in respect of the section 72 certificate.
>
> 43. Accordingly, I find that the appellant is excluded from a grant of humanitarian protection."

22. The principle criticism here, in looking at the written grounds coupled with what was said to me at the hearing, was to the effect that in deciding as he did the Judge had effectively "gone behind the preserved findings of fact" which had been made by Judge Robson to the effect that the claimant had been a child soldier, had suffered abuse and was, as a consequence, suffering from post-traumatic stress disorder. But it is appropriate to read the Judge's decision as a whole.

The Judge was aware of those preserved findings because he expressly referred to them at paragraph 46 of his determination. It is true that he made that reference in the context of his consideration as to the possible applicability of Articles 2 and 3 of the ECHR. Nevertheless, that is sufficient to demonstrate that he was clearly aware of those matters. Further, in my judgment, he was entitled to rely upon his reasoning and his findings with respect to section 72 certificate.

23. As to the suggestion of procedural unfairness given that the argument had only been raised at a late stage, that was not a matter contained within the written grounds and nor did Counsel who represented the claimant before the Judge, and whom I know to be very experienced Counsel in the field, raise the matter or express any concerns at the hearing. Mr Holmes did not actively pursue the matter before me. In the circumstances I would conclude that Ground 2 is not made out.

24. As to Ground 3, which is concerned with suicide risk, the Judge said this:

> "Medical claim
>
> 79. The appellant claims he suffers from Post Traumatic Stress Disorder and that removal to Sierra Leone would breach his Article 3 and 8 rights in that he will be at increased risk of suicide. He argues that the psychiatric treatment and medication he needs and has in the UK will not be available there.
>
> 80. I have carefully considered the medico-legal report of Dr Naomi Hartree dated 12 August, 2014, her addendum medico-legal report of 30 March, 2015 and finally her letter dated 2 April, 2015.
>
> 81. Dr Hartree has addressed the appellant's physical and mental state but, following the finding that the appellant was a child soldier, it is only the appellant's mental state that is of interest in my decision.
>
> 82. In her main medico-legal report of 12 August 2014 Dr Hartree states:
>
>> 22.3 Regarding suicide risk (including the risk of a serious suicide attempt), in my view Mr B is currently at moderate risk of suicide (on a scale of low-moderate-high). He has some significant or concerning 'risk factors' together with some protective factors. His risk factors are:
>>
>> *a)* *he has a past history of attempts or near attempts at suicide by serious methods (a ligature and jumping from a cliff);*
>>
>> *b)* *he has existing mental illness (PTSD) and symptoms of depression; both are recognised as increasing the risk of suicide;*
>>
>> *c)* *he has a distressing level of symptoms and thoughts that it would be better to die;*
>>
>> *d)* *he expressed prominent ideas of guilt and remorse and showed signs of shame in his demeanour. This may be a serious risk factor - one study of military personnel found that guilt and shame are associated with increased severity of suicidal ideation in military mental health outpatients, and that guilt has a particularly strong relationship with suicidal ideation (Bryan 2013);*
>>
>> *e)* *he has ongoing stress factors in his life, such as being detained, and anxiety about his situation;*
>>
>> *f)* *he reports feeling hopeless most of the time and really being able to feel optimistic. Hopelessness is a significant risk factor for suicide (Beck 1975);*
>>
>> *g)* *he has social risk factors known to increase suicide risk – being single, male and unemployed.*

> *22.4* *(*The current protective factors for the appellant were then listed.)
>
> *22.5* *If Mr B were removed from the UK, or faced with such removal plans or attempts, in my view his risk of self-harm and suicide would be highly likely to increase. In that situation he would be likely to become increasingly hopeless. As detailed above, he has described feeling unable that he would not be able to cope (sic) with returning to Sierra Leone because of the reminders of the past that it would bring him, saying in that scenario it would be easier for him not to be alive, and showing visible distress as he said this. The prospect of a return to Sierra Leone, or an actual attempted return, would therefore be likely to exacerbate Mr B's PTSD and depression symptoms together with his thoughts and urges towards ending his life. Since he is already reports (sic) a severe level of symptoms and has significant suicide risk factors, any further deterioration would be highly concerning. In my opinion his suicide risk if removed from the UK would be high.*

> 83. The appellant stated, and it was accepted by the respondent, that the appellant's condition had not changed since Dr Hartree's last report (2 April 2015). He was still taking mirtazapine (an antidepressant) and chlorpromazine (an antipsychotic at low dose) daily.
>
> 84. Dr Hartree's report of 2 April 2015 confirms that psychiatric treatment is available in Sierra Leone but is not of the quantity or the quality that is available in the UK. Dr Hartree she says that chlorpromazine is available in Sierra Leone but he may have difficulty sourcing mertazapine. Dr Hartree says that he could change to another anti-depressant but that mertazapine is a second line antidepressant, after first-line antidepressants such as fluoxetine have been tried and found insufficiently effective.
>
> 85. I find that the appellant has not established that he needs inpatient care such as offered at a psychiatric hospital. Dr Hartree describes this as inappropriate for the appellant and likely to exacerbate his mental ill-health.
>
> 86. Although in short supply, outpatient treatment would be available for the appellant (as set out by Dr Hartree in her 2 April, 2015 report). It is agreed that the appellant's psychiatric condition has been stable for about two years and I am not satisfied on the evidence before me that the appellant's return to Sierra Leone would put him at Article 2 or 3 in terms of his suicide and mental health generally. I find that he would have the assistance and support of his family and he would be able to access his current medication or reasonable alternatives.
>
> 87. Accessing therapists would be difficult but they are available. I remind myself that it is not the duty of the United Kingdom to be the world's hospital. There are, I find, sufficient facilities available to the appellant in Sierra Leone to protect from suicide and the worsening of his mental illness.
>
> 88. For the sake of completeness I note the case of N v the United Kingdom – 26565/05/ [2008] ECHR 453 sets a very high threshold as to the seriousness of illness required to breach Article 3. I find that the appellant's condition does not approach that level."

25. In my judgment that represented a clear and thorough evaluation of the evidence as to suicide risk and the arguments about it which the Judge was required to decide.

26. To my mind what is said in the written grounds is really very vague. Sections are quoted from the judgments in *J v Secretary of State for the Home Department (2005) EWCA Civ 629* and *Y & Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362* and it is then said that the Judge had failed to "properly direct himself in law in line" with those judgments. But there is no meaningful explanation as to how that was so. Before me it was contended that the Judge had wrongly treated the case as being a "deathbed case" and, as I understand it, had applied too high a threshold. It was also argued that he had not explained why he was rejecting the view expressed by Dr. Hartree.

27. The Judge was clearly aware of the views of Dr. Hartree some of which he set out in the part of the determination which I have reproduced above. He noted that psychiatric treatment was available in Sierra Leone even if not of the quality available in the UK (paragraph 84). He noted the availability, albeit in short supply, of outpatient treatment (paragraph 86). Against that background it was open to him to conclude, along with his finding that there would be family assistance, that there was no Article 2 or Article 3 risk in the context of suicide. It cannot be said that he ignored, did not acknowledge or did not consider what was said by Dr. Hartree. The Judge took a holistic view as to the question of suicide risk and his reasoning incorporated the views of Dr. Hartree. As to the "deathbed case" point, that seems to rest upon what the Judge had to say at paragraph 88 of his determination. However, he had already reached his view as to suicide risk by then.

28. I conclude that this ground is not made out.

29. As to Ground 4, it is right to say that the Judge was not impressed with the written or oral evidence of Dr. Harrell-Bond. She had expressed opinions as to risk the claimant would face upon return to Sierra Leone as a former child soldier and as a bisexual person. Essentially it is contended, in the written grounds, that the Judge had been wrong to question the independence and impartiality of the expert (a point is made that she had given evidence before the tribunal in 20 other cases and the appeals had been allowed in all but one such case) and had erred through failing (as it was said fairness required) to put his concerns to her at the hearing. It was the latter point which Mr Holmes sought to focus upon before me.

30. This is what the Judge had to say:

"Risk as a former child soldier

61. I remind myself that the facts retained from the decision of Immigration Judge Robson are as follows:

a) the appellant was a child soldier as claimed;

b) he did suffer abuse as claimed;

c) as a result of being a child soldier and the consequences of the same, he has suffered from Post-Traumatic Stress Disorder.

62. I have before me the expert report of Dr Barbara Harrell-Bond dated 12 October, 2016. She is a legal anthropologist with '15 years of research experience in Sierra Leone and throughout West Africa, specialising in family law, administrative law and dispute resolution through 'customary' courts'. In 1982 she shifted the focus of her career to concentrate on refugees and that required her becoming familiar with refugee issues and supervising research in forced migration globally; there were refugee crises over those years mainly in Africa, Asia and Central America. She is now Emerita Professor at the University of Oxford.

63. On retirement at the age of 65 she undertook EU funded research in Kenya and Uganda working with teams of lawyers in both countries (1997-2000) on the extent to which refugees could enjoy their rights in exile. She states that one outcome of this research was the realisation that legal assistance with asylum claims was the most serious need of refugees and, with others, she founded the Refugee Law Project, Makerere University's Law Faculty in Uganda to provide legal aid for refugees. She also established a refugee legal assistance NGO in Cairo which formed the basis for establishing refugee legal aid in other refugee hosting states.

64. Dr Harrell-Bond has experience in interviewing and representing boy soldiers in their claims for resettlement through UNHCR in Egypt. She has served as an expert witness for lawyers, courts and refugee status decision-makers in the USA, Algeria, Britain and several other countries.

65. I am concerned as to the independence and impartiality of the evidence given by Dr Harrell-Bond. She told me that she has lived in Sierra Leone with her children for several years, that she was an FGM expert

witness, a West African researcher until 1982 and has many contacts in Sierra Leone who check the veracity of witness statements of people on whom she is preparing reports. She was last in Sierra Leone in 2004 and 2005. I note that she runs a website for refugees and lawyers which leans towards assisting refugees and their representatives rather than researching and reporting on their circumstances. This is a thread running through much of her experience. Furthermore, that experience is fragmented among the countries of West Africa and beyond. She appears to have limited specialism in Sierra Leone.

66. Dr Harrell-Bond told me in evidence in chief that in the 20 cases in which she had appeared in a forum such as the Tribunal all had been allowed except one which was a case in which she had stood bail for the appellant. I regard the giving of expert evidence and standing as a surety for the same appellant to display an error of judgment which gives the appearance of lack of independence as an expert. This further undermines my confidence in the expert evidence given.

67. As a result of my above analysis I find that I give little weight to the opinions of Dr Harrell-Bond.

68. She was instructed on behalf of the appellant on four issues:

1. the potential risk to the appellant in Sierra Leone as a former child soldier;

2. the potential risk to the appellant as someone who is bisexual;

3. what medical treatment is available to the appellant to treat and manage his condition long-term me:

4. the accessibility of any available treatment for someone in the appellant's position.

69. These instructions are put to the expert on the premises that the appellant has no family in Sierra Leone and that he is bisexual. I have made findings above that the appellant has not established that he has family there and that he is bisexual. These findings undermine much of the basis of Dr Harrell-Bond's report.

70. In her report she relied on a report from 2008 which indicated that returnees from Western countries were regarded as being wealthy, foolish for returning to Sierra Leone and, when they are deported, as criminals. This would mean that they were 'not well perceived'. Dr Harrell-Bond goes on to deduce that, 'failed asylum seekers are handed over to the immigration and security officials on arrival, then detained, often sent to prison tortured, tried for treason or even killed'. This is sourced from www.refugeelegalaidinformation.org/... which appears to be an organisation working for and sympathetic to refugees. No additional support for the opinion is produced beyond this one reference. Next to this reference the reader is requested to look at Annex VI which refers to the DRC, which I find to be of limited assistance to this Sierra Leonean case.

71. In her evidence in chief Dr Harrell-Bond accepted that she could not say definitely what happened to returnees in Sierra Leone but what she described happened elsewhere.

72. Under the heading of 'Risks of his being subjected to revenge killing' Dr Harrell-Bond states (my emphasis), *'We have no guarantee that a member of his family or that of the families of others whom he killed will not seek him out and exact revenge. Moreover, the threat to a known former boy soldier may not just be limited to actions by those directly connected with the atrocities that he committed, but could come from other members of the community who have suffered from the actions of boy soldiers generally.'* These statements are not supported by reference to any source. Furthermore, the first part of the statement is put on the basis of 'guarantee', which is the wrong standard and the second part is speculative ('may not'), giving no degree of likelihood. Neither of these opinions is helpful to me.

73. The following are questions put in cross-examination with Dr Harrell-Bond's replies:

Q. Do you have any evidence of child soldiers remaining in Sierra Leone?

A. My son told me of a report on the radio.

Q. Do you know of child soldiers returning to their families?

> *A. Heard of one on the radio. There is a special agency to reintegrate boy soldiers in Liberia.*
>
> *Q. So you say that most child soldiers returning to Sierra Leone would be at risk?*
>
> *A. I don't know.*

> 74. I find from her replies in this cross-examination that Dr Harrell-Bond does not know if child soldiers in, or returning to, Sierra Leone are at risk.
>
> 75. With regard to the appellant having been a child soldier I note that he ceased this role in 1999, some 17 years ago. As such I find the threat of revenge will have reduced with time. I note that immediately after he ceased his role as a child soldier the appellant lived near Freetown. It was known to the populace that the home in which he lived housed child soldiers but, nevertheless, he lived there without substantial harm from the population. If he was able to do so then I find that he is more likely to be able to do so now.
>
> 76. I find on the basis of all the evidence before me that the appellant has failed to establish that there is a reasonable likelihood of him suffering torture, inhuman or degrading treatment on return to Sierra Leone as a former child soldier suffering from PTSD. He would be able to reintegrate without fear of ill-treatment, especially with the help of his family.
>
> 77. Because of my finding that the appellant has not established that he is bisexual it is not necessary that I consider the expert evidence of Dr Harrell-Bond in this regard.
>
> 78. Furthermore, as I have found that the appellant would not be at risk on return to Sierra Leone as a former child soldier suffering from PTSD it is not necessary for me to consider whether the appellant needs to internally relocate."

31. It seems to me that the question of whether or not Dr. Harrell-Bond had appeared before other judges and whether or not the appellants whom she had testified for had been successful or not were not relevant considerations. The Judge was called upon to assess matters, including the reliability or otherwise of the expert evidence of Dr. Harrell-Bond, on the basis of the material presented to him. He was not obliged to accept the accuracy of the expert evidence simply because it was presented to him as being expert evidence. But what he had to say about independence and impartiality demonstrates that he gave careful thought to those aspects. He was entitled to take account of the fact that, for example, she did run a website for refugees which, in his words "leans towards assisting refugees and their representatives rather than researching and reporting on their circumstances". He was entitled to take into account, in terms of reliability of the evidence, his view that she "appears to have limited specialism in Sierra Leone". He was entitled to attach weight to the history of her having stood as a surety for a claimant in circumstances where she had also provided expert evidence for the same claimant and to conclude that that demonstrated "an error of judgment which gives the appearance of lack of independence". Further, I cannot see that the Judge was obliged to put his concerns to the expert for her comments at the hearing. It is certainly true that he could have done if he had wished. It was an option. But expert evidence had been offered to him and it was his task to assess the reliability or otherwise of that evidence and to then explain his view about it. That is exactly what he did.

32. I conclude that this ground is not made out.

33. As to Ground 5, it is suggested that the findings concerning bisexuality were unsafe through lack of adequate reasoning. As to that, the Judge said this:

> "Bisexuality
>
> 55. I make a finding of fact that appellant has not established, even to the lower standard, that he is bisexual. My reasons for that finding are as follows.

56. The appellant has been in the United Kingdom and had claims before the Home Office for many years. On 27 February, 2008 the appellant was issued with a one stop notice under which he was legally obliged to provide the Secretary of State with all the reasons he wished to claim asylum at that point. It was not until 2014 that he claimed he was bisexual and that this would cause him persecution on return to Sierra Leone. The appellant says that he failed to mention this earlier because of embarrassment and the cultural stigma attaching to homosexuality in Sierra Leone. Mr Brown asked me to consider the country context and that homosexuality was taboo in West Africa. He reminded me that the appellant had explained his causal relationships with men and given the name of one of those men.

57. I find the appellant has not given reasonable and sufficient reasons for the delay. The appellant was in the United Kingdom seeking international protection and his claim was fully investigated in the hearing in 2010. It must have been plain to him that that, was potentially, a final stage in his claim for protection and he must raise all possible issues. It was plain that he must put his trust in the systems in place in the UK if he was to gain protection. This imperative was repeated in his later claims. I find that the appellant's delay damages the credibility of his claim that he is bisexual.

58. Dr Hartree has produced a very detailed and in depth psychiatric report dated 11 September, 2014. It would have been reasonable for the appellant to have discussed his bisexuality with the doctor. There is no mention of it whatsoever in the report and I find his failure to disclose it to Dr Hartree further damages the appellant's claim in this regard.

59. The appellant has known for many months that his claimed bisexuality would be an issue before this Tribunal but he has failed to provide any corroboration. In cross-examination before me he stated that he had had many relationships. There were many friends who knew of those relationships. The appellant could have called those friends or his male former sexual partners to give evidence. Although supporting evidence is not generally necessary in these proceedings I am able to draw adverse inferences if evidence, which is readily available is not produced. This is such a case. I find that it would be relatively easy for the appellant to bring supporting evidence before me.

60. For the above reasons I make a finding of fact that the appellant is not bisexual as he claims."

34. The specific criticisms made in the written grounds concerning that passage of the determination are that the claimant had provided what was said to be "a plausible reason for his late disclosure of his claimed sexual orientation" which the Judge had not given proper reasons for rejecting; and that the Judge had been wrong to have expected him to have disclosed his claimed bi-sexuality to Dr Hartree. Essentially similar oral submissions were made to me by Mr Holmes.

35. The Judge was clearly aware of the claimant's contention that he had not disclosed his bi-sexuality earlier because of embarrassment and a cultural stigma. The Judge expressly referred to that at paragraph 56 of his determination. He then explained why, in his view, notwithstanding that, if the claimant was bisexual he would in fact have disclosed the matter earlier. He made the very cogent point that his claim had been fully investigated at a hearing in 2010 which might have potentially (although it turned out not to be) been "a final stage in his claim for protection" and yet he had not disclosed it then. The Judge was entitled to conclude that, notwithstanding any embarrassment and cultural stigma, such would have been disclosed at that hearing had the claimant genuinely been bisexual. As to the point regarding Dr. Hartree, on one view it might be argued, I suppose, that since she was concerned with his mental health there would have been no particular need for him to have discussed his bi-sexuality with her. But to assert that is really just to simply look at matters in a different way. I cannot say it was not open to the Judge to conclude that a potentially very important consideration such as that would not have been mentioned to a person who was preparing an expert report for the purposes of his appeal. In any event there is the further cogent point, made at paragraph 59, that despite having claimed to have had a number of relevant relationships the claimant had failed to provide any corroborative evidence at all regarding his claimed bi-sexuality.

36. I would conclude, in light of the above that, the Judge was entitled to attach some weight to the failure on the part of the claimant to mention his claimed bisexuality to Dr. Hartree. But in any event I would also conclude that, even if the Judge had not attached any weight to that failure, he would inevitably have reached the same conclusion given the force of the points made at paragraphs 57 and 59. I conclude, therefore, that this ground is not made out.

37. In short then, I accept Mrs Pettersen's submission to the effect that the Judge properly considered all matters, reached findings and conclusions open to him and adequately explained those findings and conclusions. Indeed, to my mind, the determination is a most clear and thorough document which demonstrates that the Judge approached his task with diligence and care.

38. I detect no error of law in the Judge's decision which, in consequence, shall stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error law. Accordingly, that decision shall stand.

Signed: Date: 23 October 2017

Upper Tribunal Judge Hemingway

Anonymity

The First-tier Tribunal granted the claimant anonymity. I continue to do so pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a tribunal or court directs otherwise the claimant 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 respondent. Failure to comply could lead to contempt of court proceedings.

Signed: Date: 23 October 2017

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

Since no fee is paid or payable there can be no fee award.

Signed: Date: 23 October 2017

Upper Tribunal Judge Hemingway