



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

Appeal Number: PA/11616/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment Tribunal  
On 25 September 2017**      **Decision & Promulgated  
On 27 October 2017**      **Reasons**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**[E I]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Toal, Counsel, instructed by Duncan Lewis & Co Solicitors

For the Respondent: Mr P Singh, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The subject of the challenge brought by the appellant with permission is the decision of First-tier Tribunal (FtT) Judge Broe sent on 4 May 2017 dismissing the appellant's appeal against a decision made by the respondent on 15 September 2016 refusing his application for international protection.

2. The appellant, a national of Kenya, had applied for asylum on the basis that he was a former civil servant who would be at risk on return because he had acted as a government informer and would be at risk of similar harms as had befallen others working with him. The judge did not find that the appellant had given a credible account.
3. I am grateful to both representatives for their careful submissions. Mr Toal conceded at the outset that the appellant could not succeed in his ground of appeal relating to the risk on return arising from the appellant's health difficulties.
4. It is unnecessary for me to set out the submissions of the parties in any detail because I am satisfied that the judge did materially err in law. The essence of his error was his failure to give adequate reasons for rejecting the assessment made in the expert report prepared by Dr Benjamin Knighton. That report had found that the appellant had given a plausible account in key respects and that he would be at risk on return.
5. The judge's treatment of the expert report appears in paragraphs 27 and 28 of his decision:
  - "27. I note that in interview he said that after the new government came into office in 1982 (an error because the correct date was 2002) the government did not want informers. He said *"John Maina was an informer and he got lost and he was found floating in a dam in a bag, he was killed"*. He said that he asked himself if he could be the next one and thought that he should go away. In his report Dr Knighton summarises the account given by the Appellant as follows: *"The Appellant has in mind Nicholas, who he says got lost in (he ventured 1902 (I accept that may be a typing error) and 1983 first) 2003, who was found floating in dam near Kajiado in a sack. Johnson and John Maina also disappeared but he did not wait to follow up these cases or any others that may happen, but ran away to seek anonymity"*. These accounts cannot be reconciled. The Appellant has given contradictory accounts of the event which he says was the catalyst for his departure from Kenya. I find this to cause significant damage to his credibility.
  28. I accept that the Appellant may have provided an account consistent with some of the background evidence and it is clear that was a factor in Dr Knighton's findings. I note however that the names given by the Appellant are those of people with a public profile. I find it likely that they would have been known to anyone in Kenya with an interest in politics. I have no doubt that information about them could have been found by the simplest of internet research. I am not persuaded that the knowledge exhibited by the Appellant establishes that he was an informer as he claims."
6. There are two main difficulties with the judge's assessment of this report. First, the judge does not provide any clear explanation for why he disagrees with the expert's assessment. It is just about possible to glean from the first sentence of paragraph 27 that the judge considered that the report only showed that the appellant had provided an account consistent with "some of the background evidence"; but the judge does not identify

specifically anything in the appellant's account that was inconsistent. It is just about possible as well to glean that the judge considered the report contained mistakes: earlier, at paragraph 21 he noted that Dr Knighton had said the appellant had provided the names of those he had investigated when working as an informer in an interview said to have taken place on 17 July 2017, which "must be an error". And indeed, as became clear during submissions, there are a number of other examples of mistakes which appear to be the result of failure on the part of Dr Knighton to check the draft of the report before sending it. However, if the judge relied on there being errors of this sort in the report, then it is odd he felt sure enough to count against the appellant a contradiction between his own account at interview and that he was said by Dr Knighton to have given concerning who precisely were the two co-informants who had come to harm. The appellant said they were Johnson and John Maina, whereas in one passage of the report (the one relied on by the judge) the expert described the appellant saying that one of the victims was Nicholas. Attempted reliance on this claimed contradiction was all the more questionable because elsewhere in the same report, it is clear that the expert had recorded the appellant's evidence as being that the two victims were Johnson and John Maina.

7. In submissions before the judge the respondent's representatives asked him to view adversely the fact that, "[t]here was no transcript of the appellant's interview with his expert". It is impossible to say, however, that this was one factor the judge weighed against the report, since no mention of it is made at paragraphs 27-28 or anywhere else.
8. In any event, in my experience it is very rare for such transcripts to be available and their absence has not prevented the respondent from accepting many an expert report.
9. Reading the judge's reasons, it is clear that in rejecting credibility he did not rely solely on the asserted "contradiction" between the appellant's account at interview and that recorded (at one point) by the expert. Nevertheless it is impossible to say that the judge's assessment would have been the same even if he had treated the report as evidence weighing in the appellant's favour.
10. For the above reasons I conclude that the judge materially erred in law and that his decision is to be set aside.
11. The case is remitted to the First-tier Tribunal because the effect of the judge's error is that none of his findings of fact can stand. The fact that I have found a material error in the judge's decision should not be taken to indicate anything regarding the merits of the appellant's claim. They will be exclusively a matter for the judge dealing with the case on remittal.

## **Direction**

12. **In light of Mr Toal's identification during his submission of a number of mistakes in the expert's report, I hereby direct that the expert be asked to produce a revised version addressing those mistakes as identified by Mr Toal and briefly explaining why (if they are mistakes) they were made (an email sent by Dr Knighton to the appellant's solicitors on 23 September does not address all of them). The new report as amended should be sent to the First-tier Tribunal with copies to the respondent within 28 days for the sending out of this decision.**
13. No anonymity direction is made.

Signed

Date: 26 October 2017

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looped 'S' at the end.

Dr H H Storey  
Judge of the Upper Tribunal