



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

Appeal Number: PA/01504/2017

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 17 September 2018

**Decision & Reasons
Promulgated
On 3 October 2018**

Before

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

Between

**MOHAMED [T]
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, Counsel, instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a national of Benin. In a decision sent on 26 June 2017 Judge Mather of the First-tier Tribunal (FtT) dismissed his appeal against the decision made by the respondent on 26 January 2017 to refuse his protection claim.
2. I am grateful to both representatives for their succinct submissions.

3. The appellant's principal ground assails the judge's treatment of the expert evidence in the form of a report by Professor Lawrence. The judge deals with this report at paragraphs 15(s) and paragraph 28 as follows:

"15(s) A report had been submitted from Professor Benjamin Lawrence of the Rochester Institute of Technology in New York. I appreciate that the author states that he considers the Appellant's narrative of his experience in Benin to be an entirely plausible narrative of persecution on religious grounds, centred on his refusal to become a Voodoo practitioner and political persecution centred on his refusal to join a Voodoo community. Throughout the report, however, the author states that the narrative of the Appellant with respect to his persecution is plausible, however, it is highly unusual in terms of Voodoo practices in Benin and, more broadly, in West Africa. Paragraph 21 states that the nature of his attempted incorporation into the Voodoo community is considerably at odds with many scholarly and media accounts of Voodoo communities which are generally considered to be peaceful and voluntary. The author stated that based on the information given to him and his expert knowledge, he had developed a hypothesis of the Appellant's claim. The full report appears at pages 10 to 20 of the Appellant's bundle.

28. Whilst I have read the conclusions and reasons given by Professor Lawrence, he found the Appellant to be a credible witness although he states the events described by the Appellant to be highly unusual and he describes his hypothesis. I have not found the Appellant to be a credible witness for the reasons set out above and I am not persuaded by the conclusions set out in the report. With regard to the letters submitted by the Appellant, I bear in mind the case of *Tanvir Ahmed*."

4. The principal ground has two main limbs. First it is contended that what the judge states at paragraph 28 evinces a "**Mibanga**" error consisting of first deciding on credibility and then evaluating the expert evidence. I do not consider this contention made out as it seems to me clear from the wording of the second sentence of paragraph 28 that the reasons for not finding the appellant credible "set out above" must refer to the judge's assessment of the expert report.
5. However, I find merit in the second limb of the appellant's principal ground - which can be paraphrased as stating that the judge failed to give adequate reasons for taking a different view of the appellant's credibility - or rather (to use the expert's term) plausibility. In effect, what the judge sought to do was to discount the expert's assessment that the appellant's account was plausible on the basis that the expert himself had said the appellant's account was "highly unusual in terms of voodoo practices in

Benin". However, that really amounted to a rejection without reasons of why Professor Lawrence found the appellant's account plausible notwithstanding it was highly unusual; and it did not address the fact that Professor Lawrence had specifically stated that the tension between described and derivative practices "should in no way be viewed as doubt on my part" (paragraph 21). Furthermore, the judge's assessment in the two paragraphs cited earlier does not engage with the evidential considerations identified by Professor Lawrence's assessment which included that: the respondent in her RFR had relied on incomplete and out-of-date information; that the appellant's account did "resonate with occasional narratives of aberrant voodoo communities" (see also paragraphs 26-28); that the respondent in her COI appeared to be unfamiliar with the operation of forced marriages in Benin, notwithstanding that the appellant's narrative was consistent with known practices in Benin (paragraphs 39-44).

6. In such circumstances if the judge was minded to discount the expert report because it accepted that the appellant's account was highly unusual, it was incumbent on him to explain why he rejected Professor Lawrence's view that its highly unusual nature did not make it less plausible.
7. For the above reasons I conclude that the judge materially erred in law and that her decision should be set aside. In the nature of the error no findings of fact can be preserved and it is hence appropriate to remit it to the FtT.

8. To conclude:


the decision of the FtT Judge is set aside for material error of law;

the case is remitted to the FtT (not before Judge Mather).

No anonymity direction is made.

Signed:

Date: 27 September 2018



Dr H H Storey
Judge of the Upper Tribunal