

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03255/2017

THE IMMIGRATION ACTS

Heard at Columbus House, Newport
On 30 April 2018

Decision & Reasons Promulgated
On 11 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

AD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms S Alban, Fountain Solicitors

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

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge A D Baker in which she dismissed the appeal of the Appellant, a citizen of Guinea, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 13 March 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Baker on 26 June 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Brunnen on 9 October 2017 in the following terms

The grounds on which permission to appeal is sought submit that the judge failed to give adequate reasons for attaching no weight to a newspaper article and for finding that a website on which the Appellant claimed to have posted an article was "closed" (as opposed to publicly accessible). It is arguable that it is not apparent from paragraph 37 of the Judge's decision what led her to find that the website was closed. It is

arguable that if she had made a different finding on this point, she might have taken a different view of the newspaper.

Background

3. The history of this appeal is detailed above. The Appellant is a citizen of Guinea born on 21 December 1980. He claims to have left Guinea in October 2009 to study in Malaysia and he came to the UK as a student arriving in September 2015. He became involved in Guinean politics from about 2007 and was a member of the Union of Guinea's Democratic Forces (UFDG) and he continued to work for this organisation whilst he was in Malaysia and the United Kingdom. The core of his claim related to an article he claimed to have written under a pen name that was posted on the Guinea news website on 5 September 2016. This article was used two days later in a talk show when the Guinean Interior minister was interviewed, and the embarrassment caused resulted in the Guinean authorities going to the Appellant's home and abusing his family. The Appellant's father was later summonsed to the police station and asked when the Appellant would be returning to the country. A newspaper article was said to confirm what had happened on the radio programme.
4. The Judge dismissed the appeal finding, after hearing oral evidence, that the Appellant's account lacked credibility and in particular that the internet article that he claimed to have published was posted on a "closed website" and that the newspaper produced was not a reliable document due to its late production and the Appellant's overall credibility.

Submissions

5. For the Appellant Ms Alban said that the Judge had failed to give adequate reasons for placing no weight on the newspaper article. The Judge says that this should have been produced earlier but this was not put to the Appellant or raised by the Respondent. A copy of the newspaper article was in the Appellant's bundle and the original was produced at the hearing. At paragraph 34 the Judge refers to the article's reliability "*in the context of there being no other evidence*" but this was wrong, there was other corroborative evidence including a summons for the Appellant's father, his ID and the online article. At paragraph 37 the Judge failed to give adequate reasons for finding that the online article appeared, if at all, on a closed website. This is factually wrong; the website was accessed by the Respondent. The Judge errs further at paragraph 38 where she places no weight on the blogs posted by the Appellant. He produced evidence in his supplementary bundle at pages 3-16. A viewer only had to click on the articles to see the comments.
6. For the Respondent Mr Mills said that the Respondent tried to access the specific online article, but it was unobtainable. There was no suggestion made by the

Respondent and no submission made to suggest that it was a closed website. The Respondent accepts that guineenews.org is an active website but does not accept that the article was ever published. The Appellant's evidence was that articles are taken down after 6 months but there is nothing to corroborate this. Mr Mills accepted that the Respondent was likely to have made enquiries just before the date of the refusal letter so outside the 6-month period from the claimed publication of the article. So far as the newspaper article was concerned the Appellant claims that it was printed in Guinea in September 2016 and was sent to him by a friend. The Judge was right to find that it was produced very late in the day some 9 months after claimed publication. The Judge gives adequate reasons for rejecting the reliability of the documents. Mr Mills said that it was accepted that the Judge was wrong to find that the website was "closed" but this was not material to the decision to dismiss the appeal.

7. Ms Alban responded to say that the finding that the website was closed was material. The website was open, and the Appellant produced a copy of the article with the website footer clearly shown. The delay in producing the original newspaper article was not raised by the Respondent at the hearing. It must be taken into account that the Appellant was in the United Kingdom throughout the period in question and had to rely on others to send the newspaper article to him.

Decision

8. The grounds of appeal and the grant of permission relate solely to the Judge's treatment of the evidence produced by the Appellant and in particular the newspaper article from L'Observateur entitled "Insecurité à Conakry" and an internet article published on guineanews.org. Copies of both of these documents were contained in the Appellant's bundle and the original newspaper, including the relevant article, was produced at the hearing. The Judge found that she could place no weight on the newspaper article (paragraph 41). She found that there was no evidence on the face of the copy internet article to indicate that it was ever published and that the website upon which it was claimed to have been posted was closed.
9. There can be little doubt that the authenticity of these two documents was fundamental to the Appellant's claim. The internet article was claimed to have been used to embarrass the Interior Minister during a radio interview and the newspaper article was said to be corroboration both of the interview and its consequences. So, if the Judge did misdirect herself or give inadequate reasons for doubting the authenticity of the documents this would be material to the decision made.
10. Dealing with the documents in chronological order it was the Appellant's claim that the internet article was published on the guineenews.org website on 5 September 2016 and that content on this website remains available for a period

of six months. It is an open website. The Judge found that it is a closed website and that there was *“no evidence to identify that this was a public website or that (it) could be accessed by the public or indeed that it was accessed by any individual other than him at all”*. The Judge goes on to find that there was no evidence on the face of the document to indicate that it was ever published on the internet.

11. There can be no doubt that this finding demonstrates factual inaccuracy. The Respondent did not suggest that this was a closed website and indeed accepts before me that it is not. It is a public website that can be accessed by members of the public. The only issue therefore is whether the article in question was published as claimed.
12. It is pertinent here to clarify the nature of the ‘article’. The Appellant’s claim is not that this was an article published by guineenews.org. His claim is that it was an article written by him and posted as a comment on the guineenews.org website (paragraph 7 of his statement). In this respect there is, contrary to the Judge’s finding, evidence on the face of the document that it was published being a standard internet ‘footer’ – http://www.forumguineenews.org.uk/six-ans-dalphi-cond-quel-bilan-pour-la-guinee_topic2098.html. The document also shows, as the Appellants claims in his statement at paragraph 11, the date that it was printed being September 15, 2016. The Appellant has not produced anything to corroborate his claim that posts only remain on the site for six months although the Respondent accepts that it may have been outside the period of six months when the specific posting was searched by the Respondent on the open website. These factual issues are not addressed by the Judge and given the open nature of the website and the production of a copy of the post with an identifying footer the issue before the Judge was whether, in the light of the other evidence, there was a reasonable likelihood that this was a genuinely published article. The mistake as to fact means that this was not addressed.
13. The newspaper article must be seen in the light of this misunderstanding of the evidence. At paragraph 34 the Judge notes the production of the article in the context of there being no other evidence and in paragraph 35 the Judge notes that limited weight can be attached to the original newspaper. Although there is no specific finding that the two documents produced, the internet posting, and the Newspaper article are false, that is the clear implication of the findings. As Ms Alban pointed out the Appellant submitted not only these documents but documents relating to his father summons which was not accepted by the Respondent but also his membership of the organisation which was accepted.
14. My conclusion from the above is that the Judge misunderstood the evidence pertaining to the internet posting wrongly finding that the site to which it was claimed that the article was posted was ‘closed’. The Judge was further wrong to find that the posting had no evidence on the face of it to show that it was published on the internet. The Judge’s findings in these respects were, in my

judgement, influential in her finding that she could place no weight on what, on the face of it, is an original newspaper containing an article corroborative of the core of the Appellant's claim. The misunderstanding of the evidence caused the Judge to misdirect herself in a manner that was material to her decision to dismiss the appeal. The Appellant's appeal is therefore allowed.

Summary

15. The decision of the First-tier Tribunal involved the making of error of law material to the decision made. I allow the Appellant's appeal. The decision of the First-tier Tribunal is set aside. The nature of the error of law is fundamental to the credibility findings made and so in accordance with the President's direction I remit the matter to the First-tier Tribunal for hearing de novo.

Signed:

Date: 8 May 2018

**J F W Phillips
Deputy Judge of the Upper Tribunal**