



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03290/2018

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2018

Decision and Reasons Promulgated
On 17 September 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MR J C
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Patyna (Counsel)

For the Respondent: Mr Kotas (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Angola born in 1990. He appeals against a decision of the respondent made on 23 February 2018 to refuse his claim for asylum.
2. The basis of the claim is that if returned he would face ill treatment due to his membership and involvement with the Front for the Liberation of the Enclave of Cabinda ("FLEC"). He had been a member from 2007 attending meetings,

distributing leaflets and telling people of FLEC's aims and objectives. His family had also been members. The family home was attacked by the ruling MPLA in 2003 as a result of which they had to flee. In a second attack on the family home in 2013 his father was taken away and his mother beaten as a result of which she died.

3. The respondent accepted that the appellant is Angolan and lived in Cabinda Province. However, it was not accepted that there had been personal or family involvement in FLEC or that there had been the two attacks claimed on the family home by MPLA. In summary, it was considered that his claim of personal involvement with FLEC lacked detail and was inconsistent internally and externally, in particular, that he was unaware that there were factions of FLEC. As for family involvement his account was incoherent, inconsistent and lacking in detail for someone who claims to have grown up and become a member of FLEC because of his family. Further, his claim that the two attacks on the house were due to the family's involvement with FLEC was inconsistent and speculative.
4. He appealed.

First tier hearing

5. Following a hearing at Taylor House on 10 April 2018 at which the appellant gave evidence, Judge of the First-tier Herlihy dismissed the appeal. Her findings are at paragraphs [28] to [46].
6. In summary, whilst finding that the appellant had provided a "*significant level of detail relating to the history of Cabinda and FLEC*" she found his claim that there had only been one FLEC to be "*clearly wrong*" and anyone who claimed to have been a supporter would clearly have known of the various factions that existed [28-30].
7. She also found against him that he named the governor of Cabinda, a government appointed official, as "*the main guy*" in FLEC [31].
8. Further, that his brother with whom he lives in London and who it was claimed had been involved with FLEC had not attended to give evidence or given a statement [32, 33].
9. In addition, the appellant was unable to say where the family lived after fleeing their home in 2003 [34]. Also, he failed satisfactorily to address inconsistencies noted by the respondent about the attack on the family home in 2003 [36].
10. Moreover, she did not place weight on a letter purporting to be from a Jose Balo, a FLEC official [37, 38].
11. In further criticisms the judge did not find credible that the appellant's birth certificate would show his father's profession as a militant member of FLEC given

the hostility of the authorities to perceived opponents. She also placed no weight on photographs purporting to show destruction to the family house in 2013.

12. The appellant sought permission to appeal which was granted on 13 June 2018.

Error of law hearing

13. At the error of law hearing before me Ms Patyna sought to rely on four short points. First, the judge had erred in taking against the appellant the birth certificate without giving the appellant the chance to comment on it. No issues with the genuineness or content had been raised in the refusal letter. Her additional comment that no explanation had been given as to how Cabinda as a province of Angola would be able to issue birth certificates was also a new matter to which the appellant had no opportunity to respond.
14. Second, as the judge accepted that the “Republic of Cabinda” had issued the appellant’s identity card, her finding that it could not issue birth certificates was internally inconsistent.
15. Third, that in two instances she applied a higher standard of proof in reaching findings.
16. Finally, her finding that a person who claimed to have been a supporter of FLEC would have known that there were various factions was speculation failing to take into account possible differing beliefs among Cabindans about the legitimacy, or not, of the groups claiming affiliation.
17. Ms Patyna asked me to set aside the decision and remit for rehearing.
18. In reply Mr Kotas said on the first point that there had been no concession in the refusal letter that the birth certificate was indicative of nationality. The certificate had to be looked at in the round which was what the judge had done. Further, she had not been required to put every point to the appellant.
19. As for the standard of proof point the judge was entitled to make discrete findings on discrete issues. Such did not distract from the overall burden of proof which the judge had properly noted.
20. The point about a FLEC supporter knowing that various factions existed was a reasonable inference open to her from the evidence.
21. Mr Kotas asked me to uphold the decision.
22. I reserved my decision.

Consideration

23. In considering this matter it is clear that the judge gave careful thought to this case. She has reached a number of adverse findings which have not been challenged and which were open to her on the evidence.
24. However, I find problems with her approach to the birth certificate. As indicated, she rejected the genuineness of the contents of the certificate provided by the appellant which on the face of it identified the appellant's father as a FLEC militant. She found it not credible that the father would have registered his profession as a FLEC militant given the hostility faced by FLEC in Angola (per [39, 43]).
25. The respondent in the refusal letter made no comment about the birth certificate which was evidently before her (at page I1 of respondent's bundle). Nonetheless, the respondent having noted that the appellant (whose identity and nationality were accepted) at interview showed significant knowledge of Cabinda, accepted that the appellant had resided in Cabinda (at [40] of refusal letter).
26. Further, the judge at [43] stated:

"I acknowledge that the birth certificate may have been issued by the Republic of Cabinda as opposed to the state authorities of Angola but the appellant has given no explanation as to how the birth certificate was issued given that Cabinda is a province or state of Angola and is administered by Angola."
27. That sentence seems to me to be contradictory but more significantly the judge's concerns about the birth certificate were not matters which the appellant at the hearing had the opportunity to respond to. I note in that regard that the respondent was not represented at the hearing thus there was no cross-examination.
28. I consider that the failure of the judge to raise her concerns at the hearing to allow for a response on matters about the birth certificate which she clearly considered to be important amounted to procedural unfairness. Such, in my view was material given that the appellant, in the course of his written and oral evidence, provided a detailed account of his father's history of work for FLEC including his position as the assistant to the regional secretary (at [15]). Also, she noted (at 28]) Country Guidance case law which indicated that an individual returning with a history of involvement with FLEC would be at risk of ill treatment.
29. I also find merit in the further criticism raised by Ms Patyna about the judge's treatment of the birth certificate. At [41] she concluded that she had "*no reason*" to doubt that the appellant's identity card had been issued to him. It was issued by the "Republic of Cabinda" as was the claimed birth certificate. Given that the ID document appears to have been accepted by the judge, her later rejection [43] of the birth certificate on the basis that the appellant had provided no evidence that Cabindan authorities could issue documents is internally inconsistent.

30. For the reasons stated I conclude that the decision cannot stand. The errors must taint the other findings.
31. The decision of the First-tier Tribunal is set aside. The nature of this case is such that it is appropriate under Section 12 of the 2002 Act and Practice Statement 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing. No findings stand. The members of the First-tier Tribunal chosen to consider the case are not to include Judge Herlihy.

Anonymity

Until a court or tribunal directs otherwise no report of these proceedings shall identify directly or indirectly the appellant or any member of his family. This direction applies to the appellant and the respondent. Breach of the order may lead to contempt of court proceedings.

Signed

Date 11 September 2018

Upper Tribunal Judge Conway