UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) **APPEAL NUMBER: PA/07770/2018**

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
On: 15 November 2018	**On: 11 December 2018**

Before

Deputy Upper Tribunal Judge Mailer

Between

[H N]

ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: **Mr C Mahfuz, counsel (instructed by Victory Solicitors)**
For the Respondent: **Mr T Lindsay, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The appellant is a national of Cameroon, born on 12 March 1997. He appeals with permission against the decision of First-tier Tribunal Judge James, who in a decision promulgated on 23 August 2018 dismissed the appellant's asylum and human rights claims.

The respondent's case

2. The appellant first came to the UK on 25 June 2011 to visit his father. He returned to Cameroon on 28 August 2011. He again visited his father in the UK between 29 June 2012 and 30 August 2012.

3. He entered the UK on 14 July 2013 following a successful application for settlement. He was initially granted two years' leave to enter which was extended to indefinite leave to remain for ten years from 5 November 2013. He returned to Cameroon on 7 May 2014 and remained there for several years until he arrived in the UK on 3 December 2017.

4. He claimed to have a well founded fear of persecution on the basis of the Anglophone crisis in Cameroon. The respondent contended that this was not a Convention reason. It was accepted that he was a Cameroon national. From the documents produced the respondent stated that he had not been targeted by the Cameroon authorities and had not been arrested, detained or tortured by them on 30 November 2016. He therefore did not have a genuine, subjective fear on return to Cameroon.

5. The appellant had his mother and sister present and settled in the UK but as an adult he was not dependent on either of them. He did not meet the requirements under paragraph 276ADE(1) of the Rules. He would not face very significant obstacles to integration on return to Cameroon. Nor were there any exceptional circumstances warranting leave to remain under Article 8 outside the Rules.

The First-tier hearing

6. Counsel who represented the appellant before the First-tier Tribunal informed First-tier Tribunal Judge James that the appellant had made an application to return to the UK for settlement in July 2017. That application was refused on 30 August 2017 and he has lodged an appeal, although he could not provide the Judge with the date it was filed. After he came to the UK on 3 December 2017 the decision to refuse that application had been withdrawn by the respondent.

7. Counsel on behalf of the appellant applied to adjourn the appeal on the basis that the Judge might make findings in the appeal relating to Article 8 that would be relevant and prejudicial to his outstanding application [12].

8. The presenting officer checked the Home Office records electronically and informed the Tribunal that they indicated that there is no application outstanding [13].

9. First-tier Tribunal Judge James noted that there may be a number of issues common to the appeal and any outstanding application, but he had before him an active asylum appeal and there was no clear evidence that there was an outstanding settlement application. He accordingly refused the adjournment sought [14].

10. He noted that he had the benefit of a bundle of documents comprising 134 pages. There was also a respondent's bundle. He heard evidence from the appellant and his mother. He stated that he had taken all the documents into consideration [17].

11. Judge James accepted that the appellant had previously been granted indefinite leave to remain and that this had only expired because he had spent more than [two] years outside the UK [21] [48]. He recorded the submissions of both partied from [18-31]. The appellant claimed that he remains a person of ongoing interest to the Cameroon authorities on the basis that he has breached bail. He claimed he was targeted and arrested as part of a group of about 30 other people which is an act of persecution.

12. The Judge noted that in his screening interview, the appellant made no reference to being detained. He stated that he provided a full narrative during his asylum interview [24]. He claimed in evidence that he would be arrested and subjected to the same treatment as when he was detained in Cameroon. He contended that Cameroon is not like the UK in having a joined up judicial and immigration process and thus it is not unreasonable that he was allowed to leave Cameroon. He asserted however that he may get extra punishment on return because he breached bail [25].

13. The respondent submitted that it is not plausible that the appellant's father would have taken all his documents. His mother had no idea that the appellant had asked for his documents to be sent to him.

14. The appellant produced no evidence to show that the documents had been sent to his mother [19].

15. In relation to the theft of his documents by his father, the appellant submitted that the respondent holds two envelopes showing the delivery of the documents. His mother has provided evidence why his father had his documents stolen by the appellant's uncle in Cameroon. His mother was unaware that his father had a new partner until she looked for his father on the internet. It was claimed that it is plausible that his father wanted to remove the appellant to avoid any interference with his new relationship. When confronted his father admitted that he held the documents and sent them to his mother.

16. The appellant claimed to have evidence from his landlord in Cameroon that the police have been to the hostel to trace him. The authenticity of the letter from Lobe Cooperative Credit Union dated 29 December 2015, which was very poorly copied in the bundle of documents, indicated that the police have been to the hostel several times. The appellant claimed that its authenticity had not been challenged.

17. In his 'findings and conclusions', the Judge stated that he had looked at the evidence in the round and applied the lower standard of proof. He considered the appellant's credibility regarding his claimed arrest, detention and torture in Cameroon. He claimed he became involved in a strike at Buea University concerning the imposition of penalties for late payment of fees. The Judge had regard to an online article confirming the appellant's narrative that riot police were called and used force to break up the protests. There was no reference to arrests in the article or to events being linked to any Anglophone crisis.

18. The appellant claimed that after 20 days' detention he was released on reporting conditions. He was subsequently arraigned before the High Court on 20 June 2017 and was told to expect a hearing on 9 February 2018. He was unable to produce any documentary evidence on this. The appellant submitted that he received no paperwork because his arrest and detention was illegal. Judge James concluded that such arraignment before the High Court would have resulted in documentation from the Court. In addition there would have been media reports of the hearing [33]. Whatever the basis for his initial arrest and detention, the subsequent proceedings appear to follow due process and he would expect that to involve a paper trail [34].

19. At [35] he noted that the appellant had been able to leave Cameroon using his own passport without being detained. Whilst the passport control arrangements in Cameroon might be different to the UK, he would not expect it to be so underdeveloped as to "not note that a person subject to criminal prosecution would go unnoticed." He referred to the letters from Lobe Cooperative Credit Union Ltd at pages 115-116. The first letter, dated 29 December 2017, suggests that the police have been to the hostel room he shared with his brother "several times". The letters are addressed to his brother.

20. He accepted that there were protests at the Buea University as claimed and that the appellant might have been in attendance [36]. In the absence of any documentation relating to his arrest and subsequent arraignment, he did not accept the appellant's narrative that he was arrested, detained and tortured as claimed. He did not accept that the authorities in Cameroon are so unsophisticated that they would not be able to identify a possible fugitive from criminal proceedings. He was not persuaded that the letters addressed to his brother indicate that he is wanted by the police.

21. He stated that the appellant had not been an activist for independence, nor was there evidence that he has been a protester in support of independence. There was no evidence that he would become such an activist or protester on return. He accordingly found that the appellant would not be at risk of persecution or serious harm as a result of the Anglophone Crisis in Cameroon [37].

22. Although the appellant claimed that the protest at Buea University was an Anglophone protest, the contemporaneous report does not describe it as such. Nor was there evidence before him on which he could be satisfied that it was part of any movement for independence for the Anglophone regions of Cameroon. The appellant did not therefore face a real risk of persecution or serious harm on return to Cameroon. He is not entitled to either asylum or humanitarian protection [38].

23. He considered 'the position' in relation to Article 8 of the Human Rights Convention. He noted that the appellant was granted indefinite leave to remain in the UK on 5 November 2013 along with his siblings. He returned to Cameroon on 7 May 2014. He claimed that after his return there he thought he had lost his passport. He reported it to the local police. The report produced provides the

passport number and visa number. He claimed that his father was angry and effectively abandoned him in Cameroon. This caused tension between his father and mother, resulting in their separation in July 2014. His father found a new partner. The appellant was enrolled in a local school to complete his A levels and on 14 September 2016 he was admitted to Buea University.

24. The appellant informed him that on 30 July 2017 his mother made an application on his behalf for settlement in the UK as a returning resident. That application was refused on 30 August 2017. He filed an appeal which was withdrawn on 31 March 2018 [40].

25. He had regard to the appellant's mother's "narrative". The appellant's parents did not separate until 10 July 2014, two months after the appellant's return to Cameroon. By the time she finally confronted the appellant's father in November 2017 he had another partner, with whom he had a child. The appellant claimed that his father planned to abandon him in Cameroon to keep him out of the way while he started a new relationship. It was unclear to the Judge why he would want to remove a 17 year old son and not any other member of the family [42].

26. The appellant had not produced for examination the new passport he claimed was obtained by his father. He claimed that on arrival in the UK in 2017 he was advised to claim asylum and that this would proceed once he surrendered his passport and biometric residence card. Whether he did so or not, it is clear that he has been able to obtain a copy of the biometric residence permit. The failure to produce a copy of his new passport prevents any consideration of when and how it was obtained in the absence of the appellant and any analysis of any biometric data such as the photograph used [43].

27. He considered the narrative relating to the documents, but in the light of the matters referred to at [39-43] the narrative was not credible or persuasive. Some elements may be true. He did not find the substantive elements credible [44].

28. With regard to his family and private life claim under Article 8, Judge accepted that he has a family life with his mother and sister. He also accepted that he acquired some measure of a private life in the UK since returning here but in the absence of any substantive evidence, he did not find it of such significance as to engage Article 8. In any event, it was formed when his status was precarious and carries little weight. He did not accept that he had a private life continuing from his time in the UK between July 2013 and May 2014. His absence in Cameroon between May 2014 and December 2017 would have terminated any such private life [46].

29. With regard to s117B of the 2002 Act, Judge James found that the appellant did not meet the requirements of the Rules. There had been no submission to the contrary. The public interest remained undiminished in the appeal. The appellant speaks English, but had not shown that he is financially independent [47].

30. With regard to the proportionality exercise, he stated that he has given careful consideration to the fact that the appellant has previously been accepted for

settlement in the UK and was granted indefinite leave to remain. He lost that status as a result of being outside the UK for a continuous period of more than two years. That two year rule is in place as part of the regime for effective immigration controls [48].

31. His narrative of being abandoned in Cameroon is not credible. He could have made arrangements to renew any lost documents and avoided the loss of his status. Judge James accordingly did not give the previous grant of indefinite leave to remain any significant weight in favour of the appellant. The appellant could return to Cameroon and continue with his studies with the support of his mother. He is 20 years old and would be able to work there following his studies. He would not face insurmountable obstacles.

The appeal to the Upper Tribunal

32. In granting permission to appeal, First-tier Tribunal Judge Carruthers considered it arguable that the Judge may not have sufficiently explained why he gave little or no weight to the letters which purport to support the appellant's case of being at risk of persecution in Cameroon. With regard to Article 8, he found it to be unlikely that the appellant has a sustainable case to make by reference to that article.

33. Mr Mahfuz, who did not appear before the First-tier Tribunal, stated at the outset that he does not rely on Ground I – that the Judge failed to have regard to the skeleton argument produced - but on Grounds 2 and 3 as set out in his skeleton argument.

34. A central issue in the appellant's case was whether he was of interest to the authorities in Cameroon on his return. He referred to the letters produced from the appellant's previous landlord at pages 115-116.

35. The letter from the Lobe Cooperative Credit Union Ltd at page 115 is dated 1 January 2018. It is addressed to Mr [NNA] Jr. It states that following the first "mail" sent to him on 29 December 2017, they have not had any reply and still the policemen have come twice and are already losing patience and getting brutal with people who are not concerned with the matter at hand. They stated that they will have to break down his door any day that the policemen show up again. He was also informed that they were officially terminating his stay at the hostel. Keeping anything in association with [HN] is at the detriment of the hostel. He was advised to get his brother as soon as he can for his safety and well being.

36. The letter at 116 is dated 29 December 2017. It is stated that it had come to their notice that "your brother, [HN]" who was one of the unfortunate victims of the student strike arrests has missed his monthly report for December 20, 2017. On 22 December, five armed policemen came to the hostel searching for [HN] who has not been seen around the hostel since the beginning of the month.

37. He submitted that the Judge failed to give proper reasons for finding that he was not persuaded that the letters addressed to his brother indicated that the appellant

is wanted by the police - MK (Duty to give reasons) Pakistan [2013] UKUT 00641. In MK the Tribunal held that a bare statement that a document was afforded no weight is unlikely to satisfy the requirements to give reasons.

38. Further, the Judge did not consider the documents in the context of the evidence in the round. That is particularly so given that he accepted that there had been protests at the Buea University and that the appellant may have been in attendance.

39. With regard to Ground 3, he submitted that the Judge failed to properly afford any, or any proper weight, to the fact that the appellant had been granted ILR previously on 5 November 2013 as noted at [48]. He failed to provide reasons why such a grant would not be a weighty consideration within the Article 8 assessment outside the Rules.

40. Mr Mahfuz submitted that the appellant's case was that as the respondent's refusal of his returning residence application had been withdrawn, the application of 31 July 2017 was still live. The finding at [14] that there was no clear evidence that there was an outstanding settlement application accordingly did not accord with the evidence, namely the letter of the First-tier Tribunal at page 67 of the bundle dated 21 March 2018, where it was noted that the respondent has withdrawn the original decision and the Tribunal was satisfied that the appeal had been withdrawn.

41. He further submitted that the previous grant to the appellant of ILR ought to have been afforded proper weight within the proportionality exercise as it was capable of demonstrating a significant degree of family life with his family members living in the UK, namely his mother and sister, both of whom had ILR.

42. He referred to paragraph 34BB of the Rules which provides that the applicant may only have one outstanding application at a time. If an application for leave to remain is submitted in circumstances where a previous application for leave to remain has not been decided, it will be treated as a variation of the previous application. He referred to paragraphs 18 and 19 of the Immigration Rules.

43. In reply, Mr Lindsay submitted with regard to the failure to consider the letters submitted in support that at [17] of the decision, First-tier Tribunal Judge James stated that in addition to the evidence of the appellant and his mother, he had a bundle comprising 134 pages and has taken all the documents into consideration. There is no rule requiring the Judge to refer explicitly to every bit of evidence. This however has been done. The Judge stated that he has looked at the evidence in the round [32].

44. The letters were considered at [35-36]. The Judge expressly referred to pages 115 and 116 where the letters are produced. It is not a fair reading of those paragraphs to conclude that the Judge has given no reasons for giving no weight to the documents. The crux of the appellant's case is that he had been mistreated. The explicit finding at [36] is that he did not accept the appellant's narrative that he was

arrested, detained and tortured as claimed. He sets out reasons reinforcing that conclusion at [36].

45. The Judge was entitled to find that documentation relating to his arrest and arraignment could be expected. Accordingly, adequate reasons have been given.

46. With regard to Ground 2, it is accepted that the appellant had previous leave to remain in the UK. He subsequently left the UK and moved to Cameroon for over three years. He returned to Cameroon on 7 May 2014 and only returned to the UK on 3 December 2017. There was thus a period of absence of three years and seven months.

47. As noted by the Judge, the appellant's ILR lapsed after two years. His absence in his case was nearly double the period. Accordingly, ILR is no longer extant and is not a relevant proportionality assessment consideration [48].

48. The substance of the Article 8 claim must be considered. The appellant was not able to have two outstanding applications at the same time. He must advance any matter relied on at the appeal. The Judge considered the evidence with regard to Article 8 as a global assessment. The appellant had been out of the country for over two years. The application as a returning resident would fail. At best, the appellant could have a free standing Article 8 claim. He did have such a claim and he should have adduced all the relevant evidence.

49. In reply, Mr Mahfuz contended that if proper regard was had to the extent of ties, his application as a returning resident might have been allowed. Both his mother and sister are in the UK.

Assessment

50. I have set out the competing submissions of both parties in some detail. With regard to Ground 2, Mr Mahfuz submitted that the Judge failed to give proper reasons for finding that he was not persuaded that the letters addressed to the appellant's brother indicated that he was wanted by the police.

51. However, the Judge has given a detailed decision with regard to the asylum appeal. He has expressly referred to the letters contained at pages 115 and 116, namely the letters at [35-36]. He had also stated at [17] that he had the benefit of the bundle of documents with 134 pages and he stated that he has taken all the documents into consideration.

52. As submitted by Mr Lindsay, the appellant's case was that he had been mistreated. However, the Judge found that he did not accept the appellant's narrative that he had been arrested, detained and tortured as claimed. He has given sustainable reasons for those conclusions at [36].

53. I accordingly find that Ground 2 has no merit.

54. With regard to Ground 3, namely that the First-tier Tribunal Judge failed to provide adequate reasons why a grant of ILR would not be a weighty consideration within

the assessment of Article 8 outside the Rules, I accept Mr Mahfuza's submission that the Judge does not appear to have been referred to and thus did not have any regard to the Rules, and in particular to paragraphs 18 and 19 of the Immigration Rules. I find that he has not properly considered the extent of the appellant's ties as a returning resident.

55. In accordance with those paragraphs, a person seeking leave to enter the UK as a returning resident may be admitted for settlement where the immigration officer is satisfied, inter alia, that he had indefinite leave to remain in the UK when he last left and that he has not been away from the UK for more than two years.

56. Moreover, paragraph 19 provides that a person who does not benefit from the preceding paragraph by reason only of having been away from the UK too long, may nevertheless be admitted as a returning resident if, for example, he has lived here for most of his life.

57. Moreover, Home Office guidance sets out how applications for entry clearance as a returning resident should be considered where a person has been absent from the UK for more than two years. Their indefinite leave will not automatically lapse. In line with paragraph 19 of the Rules, a person may nevertheless be admitted as a returning resident if they can demonstrate strong ties to the UK.

58. Factors for consideration under paragraph 19 include their strength of ties to the UK including:

(a) the nature of those ties;

(b) the extent to which those ties have been maintained during the applicant's absence;

(c) the length of their original residence in the UK;

(d) the length of time the applicant has been outside the UK;

(e) circumstances in which they left the UK and the reasons for remaining absent;

(f) their reasons for wishing to return;

(g) whether, if they were to be readmitted, they would continue to live in the UK;

(h) any other compelling or compassionate circumstances.

59. The nature of the person's ties to the UK and the degree of those ties which have been maintained during his absence will need to be considered when assessing whether he should be re-admitted as a returning resident. Where he has close family ties in the UK which have been maintained during their absence, this will likely indicate strong ties to the UK. The more immediate the family members are, for example, parents, spouse, partner, children or grandchildren, the stronger those ties are likely to be.

60. I accordingly find that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law in respect ofnthe appellant'sm . It is evident

that the First-tier Tribunal has not considered or given proper consideration to the provisions set out in paragraph 19 of the Rules.

61. I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be re-made will be extensive. In the circumstances I find that this is a proper case to remit to the First-tier Tribunal for a fresh decision to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and it is set aside.

The appeal is remitted to the First-tier Tribunal for a fresh decision to be made by another Judge on the appellant's Article 8 claim.

No anonymity direction made.

Signed Date 5 December 2018

Deputy Upper Tribunal Judge Mailer