



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

Appeal Number: PA/10550/2017

**THE IMMIGRATION ACTS**

**Heard at Columbus House, Newport**

**Decision &  
Promulgated**

**Reasons**

**On 12<sup>th</sup> October 2018**

**On 23<sup>rd</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**E K E  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M McGarvey of McGarvey Immigration & Asylum Practitioners Ltd

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge O'Rourke (the judge) of the First-tier Tribunal (the FtT) promulgated following a hearing on 3<sup>rd</sup> January 2018.

2. The Appellant is a male citizen of Cameroon born in February 1980. He arrived in the UK as a student in June 2012. He thereafter made four applications for residency on the basis of his marriage to an EEA citizen. Those applications were refused. The first refusal was appealed, and that appeal dismissed. On 24<sup>th</sup> April 2017 the Appellant was notified that he was being treated as an overstayer, and he made a claim for asylum on 25<sup>th</sup> April 2017.
3. He claimed that he would be at risk if returned to Cameroon because of his political activity and opinion which was opposed to the government in Cameroon.
4. The claim for international protection was refused on 2<sup>nd</sup> October 2017 and the appeal heard by the FtT on 3<sup>rd</sup> January 2018. The judge heard oral evidence from the Appellant, and found him to be an incredible witness. His account was not accepted. The judge considered an expert report from Assistant Professor Walker-Said PhD dated 21<sup>st</sup> December 2017. The judge did not accept that the report author should properly be regarded as an expert on Cameroon. The judge did not attach weight to opinions given in the report that the Appellant would be at risk if returned to Cameroon. With reference to sur place activities carried out by the Appellant, the judge found these to be (at paragraph 32) “an entirely cynical attempt by him to bolster his claim.” The judge did not find that the sur place activities would put the Appellant at risk. The appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal. Lengthy grounds were submitted on his behalf. In very brief summary it was submitted firstly that the judge had erred in law by making perverse and irrational findings, secondly that he had erred in law by failing to adequately consider expert evidence, and thirdly that he had erred in law by failing to consider relevant case law that being BA (Iran) CG [2011] UKUT 36 (IAC).
6. Permission to appeal was refused by Judge Dineen of the FtT who found no arguable error of law disclosed in the grounds.
7. The application for permission to appeal was renewed. It was submitted that the judge had correctly identified at paragraph 31(iv) that “of most relevance to this appeal (as effectively conceded by Ms Morgan in her closing submissions) is the risk, or otherwise that the Appellant faces in Cameroon due to his sur place activities.” It was submitted that the judge was wrong in law in finding at paragraph 31(iv) that the expert had not provided evidence as to why she believed that the Cameroonian authorities would be aware of the Appellant’s sur place activities in the UK, which would put him at risk in Cameroon.
8. On this point reference was made to paragraph 85 of the expert report in which the expert referred to the Cameroonian authorities initiating the surveillance of all fixed and mobile internet providers in Bamenda in the

country's Anglophone region. Reference was also made in this paragraph to an "internet blockade" in spring 2017 of the Anglophone region.

9. The Appellant's representatives submitted with the application for permission a copy of the article referred to by the expert in her report. This is headed "Cameroonians stage silent protests to demand internet." The article relates to internet users in Cameroon taking to the streets to urge the Cameroonian government to restore internet connectivity in English speaking regions, which the government had cut off.
10. It was submitted that the judge had erred in failing to consider the evidence relied upon by the expert to reach her opinion that the Appellant would be at risk because the government would know of his sur place activities.
11. It was also contended that the judge had erred at paragraph 31(v) in referring to the lack of balance in the expert's view as to the effectiveness of the Cameroonian state's ability to monitor its citizens both at home and abroad. The judge had taken judicial notice that Cameroon is an under developed, if not third world country, with pressing security concerns as to Boko Haram, and it was asserted that Cameroon had the resources to carry out widespread monitoring of its citizens both at home and abroad. The judge found in the absence of satisfactory evidence, that this was not the case. It was submitted that this was wrong, and that many third world countries invest heavily in monitoring their citizens both home and abroad, prioritising this over and above many first world priorities of state responsibility.
12. Permission to appeal was granted by Upper Tribunal Judge Kopieczek in the following terms:

"I grant permission because I am persuaded that the grounds are at least arguable in terms of First-tier Tribunal Judge O'Rourke's (the FtJ's) assessment of the evidence of Dr Charlotte Walker-Said in relation to his conclusion that she could not properly be regarded as an expert, and in relation to his conclusions about the ability of the Cameroonian state to be aware of, or to become aware of, the Appellant's sur place activities in the light of her report. Some of his criticisms of her report may be justified but I do not limit the grounds that may be argued in relation to his conclusions in the report.

Similarly, whilst it may be that aspects of the adverse credibility findings are justified, I do not limit the grounds that may be argued given that the grounds in some respects are to some degree inter related."

13. Following the grant of permission, the Respondent lodged a response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the judge had not erred in law, had appropriately considered the expert report, made findings open to him on the evidence, and provided adequate reasons for those findings.

14. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

### **Upper Tribunal Hearing**

15. Mr McGarvey relied upon the renewed grounds seeking permission to appeal dated 8<sup>th</sup> March 2018. He provided a photocopy of the article relied upon by the expert and referred to in her report.
16. Mr Howells, in making oral submissions, relied upon the Rule 24 response. He submitted that the article did not support the Appellant's contention that the Cameroonian authorities carried out surveillance of Cameroonian citizens in the UK. The article related to an internet blackout in the Anglophone regions of Cameroon. It was submitted that the judge was entitled to make the finding that the expert had asserted that there would be monitoring of Cameroonian citizens in the UK, without providing any evidence to support that assertion.
17. It was submitted that it was open to the judge to make findings that the expert had gone beyond her remit and was effectively making findings of fact. It was submitted that the expert had not complied with Practice Direction 10 in relation to the provision of expert evidence, and specifically had not complied with 10.4 which states that an expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise, and should not assume the role of an advocate.
18. Mr Howells submitted, with reference to the assertion in the grounds seeking permission to appeal, in relation to third world countries, that there appeared to be no evidence before the judge to prove that there were third world countries investing heavily in monitoring their citizens both at home and abroad.
19. In response Mr McGarvey submitted that the article relied on by the expert related to cutting off internet access, and this would not have happened if the government did not have concerns about internet activity carried out by the Anglophone diaspora.
20. Mr McGarvey submitted that the expert should properly be regarded as an expert on Cameroon, and that she had specifically referred to paragraph 10 of the Practice Direction in her report, and complied with it. With reference to third world countries, Mr McGarvey submitted that there were many such countries which monitored their citizens abroad, giving the example of North Korea as one.
21. I was asked to find that the judge had erred in his consideration of the expert report.

22. At the conclusion of oral submissions I reserved my decision.

### **My Conclusion and Reasons**

23. The challenge to the FtT decision before me, related to the assessment by the judge of the expert report, and in particular to his rejection of the expert's opinion that the Appellant's sur place activities would be discovered by the Cameroonian authorities.
24. The initial grounds for appeal, had alleged perversity and irrationality. That ground was not pursued before me, and rightly so. Having carefully considered the FtT decision, I find no indication that the judge made any findings which could be categorised as perverse or irrational.
25. The judge did not err in law at paragraph 28 when he found that the Appellant's credibility was adversely affected because he had delayed in making an asylum claim. The judge was entitled to note that the Appellant had only claimed asylum after four successive applications had been made in relation to marriage to an EEA citizen, and that the appellant had undertaken no political activity in the UK whatsoever in the first four years after his arrival in 2012.
26. No error of law is disclosed at paragraph 29(i)-(v) in which the judge rejected the Appellant's claim to have been politically active in Cameroon, and rejected his claim to have been arrested, detained and tortured.
27. At paragraph 31(i) the judge did not accept that the report author "can truly be regarded as an expert on the current political climate in Cameroon." Having considered the expert's CV, and the contents of paragraphs 1-5 of the report dated 21<sup>st</sup> December 2017, I note that the expert has previously lived and worked in Cameroon, most recently in May 2014, and that the expert has spent ten years studying Cameroon's politics, policies and governments. I accept that the Appellant has, as stated in paragraph 2 of her report, "written papers and articles and given talks and presentations on politics, history and human rights in Cameroon."
28. On balance, my view is that the report author can be regarded as an expert on the current political climate in Cameroon.
29. The judge did not, in my view, err materially in not accepting the report author to be an expert, as the judge did go on in considerable detail to consider the expert report, and I will now consider the conclusions reached.
30. It is trite law that a judge does not have to accept at face value all that is stated by an expert. If a judge rejects what is stated by an expert, or does not attach weight to an expert opinion, then adequate reasons must be given.

31. The judge makes a relevant point at paragraph 31(v) in referring to AAW (Somalia) [2015] UKUT 673 (IAC), in making the point that if an opinion is offered that is unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert witness, that opinion is likely to be afforded little weight by the Tribunal.
32. A further relevant point is made by the judge at paragraph 31(iii) in which he points out that “many of the expert’s opinions are based on the supposition that he is telling the truth about that period of his life.” This relates to the expert’s opinion based upon the Appellant’s account of what he asserts happened in Cameroon. The judge found that the Appellant had not given a credible account of events in Cameroon and did not accept that account. The judge was therefore entitled not to attach weight to an expert opinion based upon an account which the judge had found not to be credible. It is for a judge to find facts not the expert. It is clear, as stated in paragraph 31(iv) that the Appellant’s representative relied as most relevant, in the appeal before the FtT, on the Appellant’s sur place activities, which it was submitted would put him at risk if returned to Cameroon.
33. I find no error of law in paragraph 31(iv) in which the judge notes the expert’s opinion that the Appellant’s sur place activities would have likely come to the attention of the Cameroonian authorities and in my view the judge is fully entitled to make the finding, “However, it is not clear from the report how the expert is able to so confidently state these opinions.” The judge is correct in finding that the footnotes for sources do not relate to surveillance of sur place activities. The article relied upon by the expert, and produced at the hearing before me, does not indicate surveillance of internet activity, but relates to Cameroonian authorities refusing to let the Anglophone regions of Cameroon have access to the internet. That is not the same as surveillance of diaspora activity.
34. The judge makes the point at paragraph 31(iv) that the “expert provides no evidence of monitoring of the sur place activities of dissidents in the Cameroon diaspora.” I have not been provided with any evidence to indicate that the judge’s conclusion is wrong. I do not find that the judge erred materially in his consideration of the expert report.
35. With reference to paragraph 31(v) which is referred to as paragraph 38(v) in the grounds, I find no error of law disclosed. The judge did not err in describing Cameroon as an under developed if not third world country with pressing security concerns as to Boko Haram. The judge did not err in finding that no evidence had been produced to prove that the Cameroonian authorities carry out widespread monitoring of citizens at home and abroad. The evidence to prove such activity was not before the judge.
36. I do not find that the judge materially erred in law in considering the Appellant’s sur place activities. The judge was entitled to conclude, on the evidence, that the sur place activities were a cynical attempt by the

Appellant to remain in the UK, following refusal of four applications for residence as the partner of an EEA citizen. That however is not the primary issue, as when considering sur place activities, a judge must consider whether the Appellant would be at risk, whether or not his activities are cynical. The judge must consider how the appellant would be perceived by the Cameroonian authorities.

37. The judge has not erred on this point. The judge finds at paragraph 32(i) that no satisfactory evidence has been placed before him to conclude the Cameroonian authorities would have seen the Appellant's photograph which he posted on Facebook. The judge has clearly taken into account the principles in BA (Iran) CG. The judge finds that there is insufficient evidence to prove that the Cameroonian authorities would be aware of various Facebook and Twitter posts containing political messages posed by the Appellant. The judge also finds no evidence has been produced to indicate that the Cameroonian authorities would be able to identify the Appellant at various demonstrations. The judge set out the principles in BA (Iran) CG at paragraph 7 of his decision, and in my view it is evident that he has applied those principles and guidelines when considering the evidence.
38. The grounds seeking permission to appeal disclose a disagreement with the conclusions reached by the judge but in my view do not disclose a material error of law. I therefore conclude that the appeal must be dismissed.

### **Notice of Decision**

The decision of the FtT does not disclose a material error of law. I do not set aside the decision and dismiss the appeal.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 13<sup>th</sup> October 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 13<sup>th</sup> October 2018

Deputy Upper Tribunal Judge M A Hall