



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

Appeal Number: PA/04427/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On Wednesday 19 December 2018**

**Decision & Reasons  
Promulgated  
On Tuesday 15 January  
2019**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**R T B**

**[Anonymity direction made]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R Moffatt, Counsel instructed by Legal Rights Partnership

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this is an appeal on protection grounds, it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## **DECISION AND REASONS**

### **Background**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Jessica Pacey promulgated on 14 December 2018 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 15 March 2018 refusing his protection claim.
2. The Appellant is a national of Cameroon. He claims to be at risk for three reasons. First, based on his father’s membership of SCNC and the authorities’ interest in the family on that account. Second, because he is himself a member of Friends of Liberty. Third, because he is an anglophone Cameroonian will be perceived by the Cameroonian authorities as a secessionist and political opponent.
3. The Judge did not accept as credible the Appellant’s claim to be at interest of the authorities due to family membership of SCNC. Even if his father were arrested as he claimed for that reason (which the Judge did not accept), the authorities had on his own account arrested his sister because she protested about their father’s arrest which the Appellant had not done. The Judge did not accept that the Appellant would come to the authorities’ attention due to membership of Friends of Liberty. The Judge did not accept that, as someone with no political profile, previous activity or even interest in politics that the Appellant would be at risk from the Cameroonian authorities on return.
4. The Appellant raises four grounds of challenge to the Decision. First, it is said that the Judge did not carry out a complete assessment of the risk claimed. That is based on an asserted failure properly to consider the bases of risk as set out in an expert report of Dr Walker Said (“the Expert Report”). The second ground is allied to this and asserts a failure to take account of the Expert Report when assessing credibility. Third, the Appellant says that the Judge failed to take into account certain evidence including the Expert Report but also evidence corroborating the Appellant’s sister’s account, background evidence and evidence concerning sur place activity. Fourth, on the basis that the Judge had ignored certain factors said to be relevant or had failed to give adequate reasons for her adverse credibility findings in light of those factors.
5. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 11 October 2018 in the following terms so far as relevant:

“...3. Grounds 2-4 take issue with the judge’s adverse credibility findings, but in effect amount to no more than disagreement with those findings and an attempt to reargue the Appellant’s case.

4. Ground 1 is however arguable. It takes issue with the failure of the Judge, having accepted at paragraph 60 that the Appellant financially supported ‘Friends of Liberty’, an Anglophone independence group in the United Kingdom, to address specific evidence of risk on this basis as presented by the expert evidence. A further risk factor derived from the Appellant’s Anglophone origins and heritage, identified by the expert, is also arguably not addressed.

5. There is therefore an arguable error of law disclosed by the application.”

6. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

## **Submissions**

7. Ms Moffatt put forward the Appellant’s case on essentially three grounds, identifying the overlap between grounds two and three.

8. In relation to the first ground, she pointed out that the Expert Report identifies three bases for the Appellant being potentially at risk on return to Cameroon. First, he says that he is the family member of a former member of SCNC (his father). Second, he says that his own political activity would bring him to the attention of the authorities. Third he says that he is an anglophone Cameroonian who would be perceived as supporting secession irrespective of the other factors. Although the Judge rejected the first basis of the claim, the adverse credibility findings did not impact on the second and third. It was therefore accepted that the Appellant is a member of Friends of Liberty and an anglophone Cameroonian. Notwithstanding that acceptance, the Judge had failed to consider the risk on account of those latter two factors. Ms Moffatt drew my attention to various parts of the Expert Report and in particular [20] of that report ([AB/380]) which makes clear that the third basis of the claim arises irrespective of the Judge’s view of the first basis. The expert expressly states that all anglophone Cameroonians would be under suspicion on arrival and the government would examine their background and activities very closely. Allied to that, the expert provides information about the ability and intent of the Cameroonian authorities to monitor activities ([53] to [55] of the Expert Report) which the Judge failed to take into account. Although that passage is concerned with monitoring and surveillance in Cameroon itself, Ms Moffatt pointed to the summary of the risk at [91] of the Expert Report which made plain that there was still a risk of the Appellant being viewed as a potential dissident irrespective of whether his father was in fact involved with the SCNC as claimed.

9. Ms Moffatt dealt with the second and third grounds together. As she rightly identified, there is some overlap with ground one. However, the thrust of these grounds is that when assessing credibility the Judge failed to take into account the views expressed in the Expert Report in particular about the plausibility of the Appellant's father's involvement with the SCNC ([15] of the report), and the detention of the Appellant's sister as a result of that involvement ([36] and [37] of the report). The expert also confirmed the authenticity of the father's SCNC membership card. That was not considered (although Ms Moffatt accepted that only a copy of the card was at that time available to the Judge; the Appellant has applied under Rule 15(2A) to adduce the original which he has now obtained). The claim to be at risk based on family membership was also consistent with the background evidence which the Judge also failed to mention. The Judge also failed to refer to the evidence about the Appellant's involvement with other organisations whilst in the UK as evidenced at [AB/356-357]. Those grounds were therefore not merely a disagreement with the findings.
10. Although Ms Moffatt did not expand on ground four, accepting that it was a "rag-bag" of issues, Ms Willocks-Briscoe submitted that, in any event, this ground is unmeritorious and impacts on the other grounds. From [51] onwards of the Decision, the Judge set out the inconsistencies in the Appellant's case and gave reasons for rejecting the claim based on the Appellant's father's membership of SCNC because his father would not have been in Cameroon at the relevant time. Once that part of the account was disbelieved, the claim that the Appellant's sister was detained falls away which disposes of the point at ground [3(a)].
11. Ms Willocks-Briscoe did however accept that she was in more difficulty defending the Decision in relation to the second and third bases of claim. She did however point out that all the Judge accepted in relation to the Appellant's sur place activities was that he provided financial support to Friends of Liberty ([60]) and she said that the finding that the authorities would not be aware of such support was therefore open to the Judge. She said it could be inferred from [68] of the Decision that the Judge had not accepted the remainder of the account of activities in the UK (although Ms Willocks-Briscoe did accept that the Judge had not gone on expressly to deal with the other evidence about, for example, attendance at demonstrations).
12. Ms Willocks-Briscoe accepted that the Decision does not deal expressly with the risk to the Appellant as an anglophone Cameroonian. She submitted however that this may not be material depending on my view of the remaining grounds.
13. In response to that latter point, Ms Moffatt submitted that the bases of claim were interdependent, and it was not possible to separate them out when considering the risk on return.

## **Discussion and Conclusions**

14. I deal with the grounds together as it is evident from the submissions that there is a significant overlap between them. It is also evident from my record of those submissions above that the main thrust of the grounds is the Judge's failure to consider the Expert Report. I therefore deal with that first.
15. The Judge deals expressly with the Expert Report only at [67] of the Decision as follows:

“Dr Walker-Said's report, though comprehensive, gave her expert opinion and conclusions on the basis that everything the Appellant had said was credible and factually accurate. It may well be that someone with a family history of opposition to the government would be at risk on return. Given my findings as to the Appellant's credibility, however, I attach very little weight to her report since it is based on what I have determined is a false premise, namely the veracity of the Appellant's account.”
16. I accept that the Judge's treatment of the Expert Report amounts to an error of law for three reasons. First, the Judge fails to note that, irrespective of the Appellant's credibility, the expert identifies potential risks based on his sur place activities and his position as an anglophone Cameroonian. The expert expressly says that those risks may materialise even if the first basis of the Appellant's claim is not accepted. The fact that the Judge may only have accepted the Appellant's financial contributions to a secessionist organisation in the UK does not assist since the Appellant was asserting further sur place activities about which the Judge ought to have made findings and provided reasons if she discounted those as having occurred. She does not deal at all with the third basis of claim (as Ms Willocks-Briscoe accepted).
17. Second, the Judge fails to take account of the expert's evidence about the extent of the authorities' monitoring of those considered to be dissidents and their intent to do so. As I have observed, that evidence does appear to be concerned with the activities of the authorities in Cameroon itself but that is also instructive in relation to the interest which the authorities may take to those returning from abroad particularly where those persons are anglophone Cameroonians as the Appellant is accepted to be.
18. Third, when finding the Appellant not to be credible in relation to the first basis of his claim, the Judge has failed to take account of the expert's opinion about the plausibility of that aspect. The Judge was of course entitled to rely on inconsistencies but has failed to consider the claim on a holistic basis taking account of the evidence which suggests that the claim is plausible (including also the background evidence).
19. In light of the above, I do not need to go on to consider other evidence which the Judge may have overlooked or failed to deal with. It is

sufficient that the Judge failed to engage with the Expert Report. Since I am satisfied that this failure potentially affects all three bases of the Appellant's claim which I accept are in any event interwoven at least to some extent, it follows that I accept that the error is material. Accordingly, I set aside the Decision.

20. Both parties submitted that, if I found a material error of law, I should remit the appeal to the First-tier Tribunal.
21. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. That reads as follows:

“[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that :-

  - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
  - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”
22. My decision is based on the Judge's failure to consider and make findings on evidence on which the Appellant places heavy reliance, namely the Expert Report. Accordingly, in the interests of a fair and just disposal of the Appellant's protection claim, I am satisfied that it is appropriate to remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Jessica Pacey.

### **DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Jessica Pacey promulgated on 14 September 2018 is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Jessica Pacey.**



Signed  
Upper Tribunal Judge Smith

Dated: 7 January 2019