



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09786/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On February 4, 2019

Decision & Reasons Promulgated
On February 25, 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR BENOIT WEYI LUMBANZILADIO
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk of Counsel instructed by Powell Spencer & Partners

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant entered the United Kingdom on January 26, 2018 and claimed asylum the same day. The respondent refused his application for protection under paragraphs 336 and 339M/339F HC 395 on July 25, 2018.
2. The appellant appealed this decision on August 9, 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002 arguing he would be detained and tortured by the authorities if returned to the Democratic Republic of Congo.

3. The appellant's appeal was heard by Judge of the First-tier Tribunal Foudy on November 15, 2018 and in a decision promulgated on November 22, 2018 the Judge dismissed his appeal on protection and human rights grounds.
4. Permission to appeal was sought on December 6, 2018 and Judge of the First-tier Tribunal Hodgkinson found it was arguable there had been an error in law because (a) the Judge failed to demonstrate that she had had regard to a communication purporting to be from a lawyer; (b) it was unclear what inconsistency the Judge relied upon in relation to his account of his escape and (c) the Judge also mistakenly concluded that François actually paid for the appellant's travel to the United Kingdom.
5. No anonymity direction is made.

SUBMISSIONS

6. Mr Schwenk adopted the grounds of appeal and submitted that there had been an error in law. The circumstances at the original hearing were unusual in that the appellant had not obtained translations of documents that he sought to rely on. The Judge had allowed the appellant to read two documents in French and the interpreter then translated what he said. Mr Schwenk submitted the Judge failed to take into account an email that was purported to have come from a lawyer, Robert Makiese, in the DRC. He further submitted that the inconsistency referred to in paragraph 16 of the Judge's decision was not an inconsistency as the appellant was simply providing additional information. Finally, the Judge had wrongly found that François had paid for the appellant's travel to the United Kingdom. The grounds of appeal also highlighted gender and spelling errors which taken together amounted to an error in law.
7. Mr Tan submitted there was no error in law. The situation was unsatisfactory at the original hearing because the appellant had failed to have documentation translated prior to the hearing but to avoid any injustice or delay the Judge had allowed the appellant to read out what was in the documents and the interpreter had translated what he said. Whilst the Judge did not make reference to the email, he submitted that that email took the case no further and there was no material error. The Judge assessed other documents in paragraph 18 of her decision and made findings open to her. With regard to inconsistencies, Mr Tan submitted that the account given in his interview was different from the account the appellant had subsequently relied on. The Judge had made a number of unchallenged findings in paragraph 16 of her decision. Whilst he accepted that François had never stated he paid for the appellant to come to the United Kingdom he submitted this error, along with spelling and gender mistakes, did not amount to an error in law.
8. Mr Schwenk made the point that the appellant had been unable to obtain translations because he could not find a legal aid solicitor willing to take his case. There had been a direct challenge to paragraph 18 of the Judge's decision on the basis the reasoning was inadequate, and he reiterated the Judge had made no reference to the letters that

were contained in the appellant's bundle or the fact Robert Makiese confirmed there were outstanding warrants.

9. I reserved my decision.

FINDINGS

10. The appellant filed his own grounds of appeal in which he took issue with the Judge's findings about his case. Whilst Mr Tan accepts there were errors he submitted that none of the errors were material to the overall decision.
11. Unusually at the hearing the Judge allowed the interpreter to translate documents that appeared before her untranslated. The Tribunal in Thevaras [2002] UKIAT 06146 suggested that the documents should not be translated by the interpreter unless they were short enough to be translated on the spot and important enough to require translation in the interests of justice and unless an acceptable explanation for late production and lack of service had been provided.
12. On checking the Court record, I note that the Judge made it clear to the appellant that it was not the role of the interpreter to translate a document, and seemingly without objection from either party, allowed the interpreter to translate the appellant's spoken words.
13. The document at page B11, translated in the manner described above, referred to the appellant's name and stated that if he was discovered or seen he had to be brought to the police. The interpreter confirmed the words in the document made no reference to it being an arrest warrant but translated as an invitation to attend at the police station to answer questions.
14. The email that had been sent by Robert Makiese on November 12, 2018 had also been translated in a similar manner. The Judge's record of proceedings recorded that the email was not directed at anyone in particular and invited an unnamed person to attend to answer questions. In other words, the email confirmed very little and did not confirm the authenticity of the document at B11 or suggest there was an arrest warrant out for the appellant.
15. The Judge went on to consider the letter provided by the appellant's sister but again this had not been translated by an authorised translator albeit there was a "google translate" translation. At paragraph 18 of her decision, the Judge pointed out that the document had not been independently translated and that therefore reduced the weight she can attach to it and made a finding that the document referred to by the appellant's sister was not an arrest warrant despite the fact the appellant was supposedly a fugitive from Makala prison. The Judge did not find credible that the authorities would simply issue a letter asking to him to be taken to a police station if he was a fugitive. Such a finding was open to her.
16. The Judge considered the evidence regarding his escape from prison and at paragraph 16 the Judge made a number of findings which included findings of

incredulity that the chief at the prison would do what was claimed or that François would risk his family, career and life to help a stranger escape from prison. Although there was no evidence that François had paid for either the appellant's false passport or his travel tickets nevertheless the evidence presented by the appellant was that François had sorted everything. When assessed against the background of the appellant's account I am satisfied the finding that François paid for everything was not a material error.

17. With regard to the submission that the Judge failed to have regard to the email, I find that the Judge was aware of the email. I accept Mr Tan's submission that the email added little to the evidence because it did not contain important information and was simply a document that referred to other documents. I am satisfied that the failure to make a finding on the document was not an error in law because the evidence contained within the document would not have impacted on the other evidence.
18. When considering the appellant's escape, the Judge identified differences in the evidence, and she assessed his whole account about his escape and found the claim lacked credibility and she gave numerous reasons for that conclusion. Despite Mr Schwenk's best efforts to suggest otherwise the grounds of appeal did not challenge other adverse findings.
19. Taking all the matters into account I do not find there has been an error in law.

NOTICE OF DECISION

I uphold the decision and I dismiss the appeal.

Signed

Date 05/02/2019

A handwritten signature in blue ink that reads "SPALIS". The signature is written in a cursive style with a horizontal line underneath the name.

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Signed

Date 05/02/2019

Deputy Upper Tribunal Judge Alis