Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10441/2016**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgation**
On 8 February 2019	**On 14 March 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

AC

(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Pipe (Counsel)
For the Respondent: Mrs H Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the First-tier Tribunal, from a decision of the First-tier Tribunal ("the tribunal") which it sent to the parties on 25 May 2017 following a hearing which took place on 10 May 2017. The tribunal decided to dismiss the claimant's appeal from a decision of the Secretary of State of 3 February 2016 refusing to grant him international protection. But in a decision of 18 April 2018, I decided to set aside the tribunal's decision (whilst preserving its credibility assessment and its findings set out below) and I directed that the decision should be remade by the Upper Tribunal following a further hearing. That hearing took place before me on 8 February 2019. Accordingly, this decision explains how I have remade the decision and why I have remade it in the terms in which I have.

2. The claimant had been granted anonymity by the tribunal. Mr Pipe urged me to continue that grant. Since the case concerns matters touching upon the claimant's quite severe (as is accepted on behalf of the Secretary of State) mental health difficulties which he is now experiencing, I have now decided it is appropriate to continue to grant him anonymity. Mrs Aboni did not seek to persuade me otherwise.

3. The claimant is a national of the Ivory Coast and he was born on 12 January 1991. The background to his claim for international protection on the basis of his experiences in the Ivory Coast is most fully set out in his substantive asylum interview of 12 January 2016 and a witness statement signed by him on 19 March 2015.

4. The account relied upon may be summarised as follows: The claimant's father was a politician and his mother was a housewife. The claimant has one sibling, a brother. At a time when he was aged fourteen or fifteen years (and so in 2005 or 2006) rebel forces entered the family home, murdered both his parents due to their disapproval of his father's political activities, and detained him and his brother. The two were ill-treated during what was a prolonged period of detention. However, the claimant was able to escape. Having done so, he left the Ivory Coast on a date in 2009. He did so because he feared the rebels would harm or kill him if they recaptured him. Having left his own country he spent time in various other countries including Algeria, Libya, Italy and France, prior to making his way to the United Kingdom ("UK") which he entered, clandestinely, on 5 January 2010. The basis of his claim, therefore, was that he would be persecuted by the rebels who had persecuted him previously, if he were to be returned to his home country. The claimant also indicated when making his claim that his mental health had been impacted by his experiences although that impact has become significantly more pronounced more recently, a matter which I shall deal with below.

5. Although the Secretary of State did not find the claimant's account to be credible the tribunal did. It gave cogent reasons for doing so and for making

favourable findings with respect to the claimed account. As indicated, I preserved the credibility assessment and the consequent favourable findings such that they represented the starting point when I came to consider how to remake the decision. The part of the tribunal's decision which I preserved reads as follows:

> "14. I have taken into account the appellant's witness statement which he adopted. I have taken into account the evidence he gave at the combined interview. I have also taken into account the appellant's oral evidence.
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> 15. The respondent does not accept the appellant's account of his experiences in the Ivory Coast. I shall deal with each of the points identified in the refusal letter in turn.
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> 16. The respondent (sic) states that his father was a politician. However, he did not know anything about his father's job. The appellant's evidence is that his father told his mother that he was a politician and that he wore a suit. The respondent states that this does not amount to evidence that the appellant's father was a politician. I note that the appellant was about 14 or 15 years old when his mother and father were killed. I accept that at that age, it is unlikely that a child would know what exactly their parents did for a job. Given the Appellant was told by his mother that his father was a politician and given the Appellant remembers his father meeting people at their home, I find to the low standard of proof that the Appellant's father may have been a politician. I draw no adverse inferences against the appellant for his inability to state was (sic) exactly his father did because of his age at the time.
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> 17. The appellant states that the was tortured by rebels in the Ivory Coast. Although the respondent accepts that the appellant has been consistent with his account, the respondent states that there is no evidence to suggest that his injuries came from the events that he claims. The respondent refers to the medical and dental practitioner's letters and states in the refusal letter that this does not amount to evidence that the appellant had been tortured.
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> 18. I also remind myself that it is the low standard of proof that applies in protection claims. I also remind myself that corroboration is not required if the requirements of paragraph 339L are satisfied. I have carefully considered the written and oral evidence of the appellant. I find the appellant's evidence to be given in a straightforward manner and without embellishment. The appellant's account has been consistent throughout that his parents were murdered by the rebels and the appellant was taken by the rebels. The time period referred to by the appellant coincides with a time of political instability and violence in Ivorian history.
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> 19. I have had regard to the point made by the respondent in the refusal letter regarding the medical evidence. It is correct that the medical evidence presented by the appellant is not medico legal evidence that he obtained for the purpose of corroborating his claim. I note the appellant is unrepresented. I find that the extent of the corroboration is that the appellant has ten missing teeth. Given I have found his account to be consistent, the dental practitioner's letter is therefore corroboration that the appellant does indeed have ten missing teeth. The appellant's evidence is that he was tortured by the rebels. He states that they asked him how many fingers he had to which he replied ten. They then laid him on a table, tied his wrist, open (sic) his mouth wide and proceeded to purl ten teeth out with pliers. I am satisfied that the appellant's account had

been internally consistent. He had provided evidence from the dental practitioner that he had ten missing teeth. Having accepted that the appellant was taken by the rebels and having found that his account has been consistent and given in a straightforward manner, I found that I can be satisfied that he was tortured by the rebels. I find that I can be satisfied to the low standard of proof that the appellant's missing teeth was as a result of torture by the rebels.

20. The respondent does not accept that the rebels trained the appellant to use guns and how to shoot and then told the appellant they were going to kill him. I remind myself of the need to guard against inherent improbability and speculative arguments as set out in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037. I find that it is entirely plausible that the rebels would use threats to kill as a means of control over the appellant and other persons detained. It is clear from the appellant's account during his interview with the respondent that he said that everyone was told they should be rebels and those who did not want to become rebels would be killed. The appellant's account is also that the rebels would choose prisoners at random to kill in front of others. I find the method employed by the rebels to be the ultimate tool in their exercise of control and installing fear in the minds of the prisoners. Furthermore, I find that the appellant cannot be expected to account for the thoughts of his persecutors. I find nothing inherently plausible with the appellant's account.

21. I turn to consider the appellant's account of his escape from the rebels. The respondent doubts the appellant's account on the basis that the rebels would not leave just one rebel in charge of the prisoners whilst four rebels went to investigate the gunshots they heard. The respondent states that his is doubtful. Having heard the appellant's explanation, I find there is nothing incredible about the appellant's account which was given in a straightforward manner. I remind myself of the need to guard against inherent improbability and speculative arguments as set out in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037. Firstly, I find that the appellant cannot be expected to account for the thoughts of his persecutors. The appellant states that he does not know why four rebels left one rebel to guard the prisoners who were at that moment digging their own graves. I note the appellant's evidence that they had already been tasked with digging their graves for the previous two nights. Furthermore, the prisoners had been beaten and torture by having their feet cut or their wrist [sic] broken. Some had hot iron applied to their backs and the appellant had hot iron applied to his right foot. The appellant states that he was tortured by being hit on the wrist with a wooden club and he showed the respondent a lump on his left wrist around one inch in diameter. He had a scar from being stabbed in his lower abdomen which he showed the respondent and also showed the Tribunal. Given the appellant is unrepresented, I do not have the benefit of a medico-legal report to confirm the consistency of the scarring as per the Istanbul Protocol and therefore I have placed no reliance on the lump on his wrist and the scarring on his stomach as consistent with his claim to have been tortured in the manner he describes.

22. At the date of the interview with the respondent, the appellant had blood in his urine. This was confirmed by the medical evidence sent to the respondent previously. The appellant states that he has contracted an infection because he was forced to drink urine by the rebels. As stated above, because the appellant is unrepresented, I do not have the benefit of a report from his urologist to confirm whether this is a plausible cause of haematuria or blood in the urine. I therefore find the appellant has not

> substantiated his claim that the haematuria was ca used by the rebels forcing him to drink urine. I have already found to the low standard of proof that the appellant did have ten teeth pulled out by the rebels. I conclude that it is entirely possible that the rebels were of the view that they were in complete control of the prisoners because of the torture meted out such that they felt able to leave one guard in control of the prisoners whilst four went to investigate the gunshots heard. It is likely that because of the torture and the injuries sustained by the prisoners that the rebels did not contemplate that any prisoners would attempt to escape. Thus, it is plausible that the rebels felt able to leave one guard in control of the prisoners whilst the other went to investigate the sound of the gunshots".

6. So, the claimant was believed. The reason the tribunal did not allow the appeal, though, was because it thought that given the passage of time there would no longer be any adverse interest in him on the part of the rebels. The reason I set aside its decision was because I thought that, whilst such a conclusion was open to the tribunal in principle, it had failed to adequately explain it. That issue has, indeed, been the battleground before me with respect to how the decision should be remade.

7. It is appropriate for me, though, to now mention the claimant's mental health difficulties. He raised those, briefly, when pursuing his application for international protection. But it is obvious that matters were not then as serious as they have subsequently become. The claimant was, in fact, able to attend the tribunal hearing of 10 May 2017 (absent a representative) and to give what appears to have been quite detailed oral evidence. He was subsequently able to make his own written application for permission to appeal to the Upper Tribunal and was then able to secure legal representation which he has had since. But, as a direct consequence of his mental health difficulties, he was not able to attend before me at a hearing which led to my setting aside decision of 18 April 2018 or subsequently. There are various items of medical evidence concerning his mental health difficulties in the paperwork in front of me. I shall focus upon the most informative but all of them come together to demonstrate the unfortunate overall picture.

8. On 14 June 2018 one Dr S Acharya, a consultant psychiatrist, wrote a letter confirming that the claimant had become an in-patient at a mental health unit in Bradgate on 23 March 2018 and that he remained there at the date the letter was drafted. It was confirmed that, in fact, he was detained under Section 3 of the Mental Health Act 1983. The letter talked of him displaying symptoms of "severe depression with psychotic symptoms". Reference was made to auditory hallucinations and in particular "voices telling him that he is dead" and voices asking him to end his life. There is a letter of 9 October 2018 from Dr Acharya indicating a lack of significant improvement in the claimant's condition and again mentioning psychotic symptoms. It is said that he has constant thoughts "of suicide and homelessness" and that he "firmly believes that the rebels are going to kill him in Ivory Coast and he sees no hope for himself". In a letter of 7 February 2019 one Dr B Kumari, a different consultant psychiatrist, explained that the claimant continued to be detained under section 3 of the above Act but that more latterly his mental state had settled

though it appears he was continuing to hear voices including those of the rebels who had ill-treated him asking him to kill himself or others and that he had also been hearing the voices of his deceased parents. It was said that there would be a risk of marked deterioration in his condition should he face the prospect of removal to the Ivory Coast.

9. I anticipated, at the remaking hearing, that I would hear argument concerning entitlement to international protection on the basis of risk at the hands of the rebels and also argument with respect to mental health and linked suicide risk under article 3 and article 8 of the European Convention on Human Rights ("ECHR"). However, before me Mrs Aboni, both fairly and appropriately in my view, indicated that she would accept given the claimant's current mental health difficulties and given the lack of what she said would be adequate medical facilities in the Ivory Coast, that it would be appropriate to allow the claimant's appeal on both Article 3 ECHR and Article 8 ECHR grounds with respect to mental health. She did, though, say that the Secretary of State's position with respect to the claim to be otherwise entitled to international protection was that, as the tribunal had found, there would no longer be any risk now.

10. As to the latter point, Mrs Aboni accepted that the background country material demonstrated that there were former rebels who were now members of the government in the Ivory Coast. However, the appalling events which the claimant described had occurred at a time of instability in the Ivory Coast. Matters were more stable now. The claimant himself had no political profile and there was no reason why anyone should have an adverse interest in him today. The relevant events had all occurred many years ago. Mr Pipe relied upon the content of a skeleton argument which had been provided on behalf of the claimant by different Counsel at a different hearing. He noted that on the accepted account the claimant's parents had been murdered in front of him and that he had then been detained for a number of months and been subjected to torture. His fear of a number of individual rebel leaders remained. He had listed a number of those leaders. He could, potentially be a witness as to the appalling behaviour of those rebels who were now part of the government. Further, he would stand out upon return as a man who had been a previous victim of torture and as a man who has severe mental health difficulties. The fact of past persecution is a serious indication that there will be a risk of further persecution. So, Mr Pipe, urged me to allow the appeal on human rights grounds with respect to mental health (his gratefully accepting Mrs Aboni's concession) but also on protection grounds on the basis of the account given.

11. I should add that the remaking hearing proceeded on the basis of submissions only because, of course, the claimant given his mental health difficulties was again unable to attend. Both representatives were content to proceed in his absence and, indeed, so was I given that there was no clear indication as to when he might be fit to attend a hearing and there was no request that the hearing be adjourned.

12. The concession made by Mrs Aboni has made my task straightforward with respect to the mental health aspect of the case. She now accepts on the basis of the evidence available, including the letters from two consultant psychiatrists who have been involved in the treatment of the claimant, that he should succeed in this appeal before me under both Article 3 and Article 8 of the ECHR. I have no difficulty in accepting that freely given concession. Given the evidence of serious mental health difficulties, the necessity for him to have been detained for what is now quite a lengthy period of time under Section 3 of the Mental Health Act, given the evidence that he has been hearing voices urging him, amongst other things, to end his life, given the apparent linking of aspects of his mental health difficulties to the prospect of his being returned to the Ivory Coast, I conclude that in the circumstances of this particular case the Article 3 threshold, albeit a very high one, with respect to suicide risk caused by return or the prospect of return, is made out. So, I allow the appeal on human rights grounds under Article 3. It occurs to me that there is nothing to be gained by my then going on to allow it on, the same factual basis and for the same reasons under Article 8 but since Mrs Aboni invites me to do so and Mr Pipe unsurprisingly does not urge me to do otherwise, I shall do so.

13. I then move on to what had become the only area of dispute between the parties. As already indicated, I preserved the tribunal's favourable credibility assessment and its fact finding as set out above. I approach this aspect of the case, therefore, on the basis that the claimant has given a truthful account of the murder of his parents which was linked to his father's political activity (though the claimant has never been able to give very much information about the substance or nature of that political activity), his subsequent detention and torture whilst in detention and then his subsequent escape.

14. Mr Pipe, in his submissions, takes me as a starting point to paragraph 339K of the Immigration Rules which reads as follows:

> "The fact that a person has already been subject to persecution or serious harm, or to direct threats of persecution or such harm, will be regarded as a serious indication of a person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that persecution or serious harm will not be repeated".

15. That is an important provision in the context of this appeal. I have applied the approach set out therein in my consideration of what might await the claimant with respect to persecution or serious harm if he is returned to the Ivory Coast. In particular, I have borne in mind that past persecution is a serious indication as to what might happen upon return and that good reasons are required, where there is a history of past persecution or serious harm, for a conclusion that such will not be repeated upon return.

16. Mrs Aboni, essentially, relies upon the passage of time. There has, indeed, been a substantial passage of time since the events which underpin the claim to be entitled to international protection occurred. The horrific murder of the claimant's parents happened in either 2005 or 2006. The detention and torture

occurred after that but since the claimant fled his home country in 20009, even that occurred something in the order of nine or ten years ago. So, in this case, the passage of time is a potentially significant factor. Of course, the passage of time, especially a lengthy one such as this, can, generally speaking, result in potential perpetrators of persecution forgetting about matters or becoming less concerned about matters which had previously caused them to persecute an individual.

17. Further, in the circumstances of this case, the claimant was a child and a young man when the events of persecution occurred. On that basis it occurs to me that it is very likely indeed that the perpetrators of persecution will have lost the capacity to recognise him as his appearance will have changed somewhat in addition to there being scope for memories to have faded. Further still, as Mrs Aboni points out, the claimant himself does not have a political profile. That means that there is really no reason to expect the former persecutors in the Ivory Coast to remember him at all.

18. There is then the question of how, if the claimant were to be returned to the Ivory Coast, any of his past persecutors would even get to know about it. It has not been positively asserted, before me, that they would. I appreciate Mr Pipe suggested that he would stand out upon return as a person with mental health difficulties and as a previous victim of torture. But I am not taken to any background material that indicates that there is the sort of scrutiny of returnees, even those bearing the signs of physical injury and mental health difficulties, which would lead to their return being flagged and notified to former members of the rebel forces now in the government.

19. To deal with certain other concerns raised by Mr Pipe, it is right to say that a number of previous prominent rebels do now have a place in the current government in the Ivory Coast so, looked at in one way it might be thought that they are now in a better position to be able to harm the claimant than they previously were. But, on the other hand, it might be thought that even if they did get to know about the claimant's return and about who he is (and I conclude they would not) they would not feel, in their current position of power, threatened by him and would not, therefore, feel any motivation to deal with him in any way. Mr Pipe makes a specific point to the effect that he has knowledge of what the rebels did to his parents and that disclosure of that by him might cause them difficulties such that they would wish to ensure such did not happen. But, as I say, I do not believe that they would even be aware of his return.

20. I have had regard to Rule 339K and indeed to the general principle that past persecution is an indicator as to likely future persecution. But, in this case, as set out above, I have concluded that there are good reasons to consider that such persecution or serious harm will not be repeated.

21. So, the appeal does succeed under Articles 3 and 8 of the ECHR but not on any other basis.

Decision

The decision of the First-tier Tribunal has been set aside.

The Upper Tribunal remakes the decision itself. In remaking the decision, the Upper Tribunal dismisses the appeal on asylum and humanitarian protection grounds but allows it on human rights grounds under Article 3 and Article 8 of the European Convention on Human Rights.

Signed: **Date: 12 March 2019**

Upper Tribunal Judge Hemingway

Anonymity

The claimant was previously granted anonymity by the First-tier Tribunal. I continue that grant so that the claimant continues to have anonymity. I do so under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. So, no report of these proceedings shall either directly or indirectly identify the claimant or any member of his family. The grant of anonymity applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

Signed: **Date: 12 March 2019**

Upper Tribunal Judge Hemingway

To the Respondent

Fee award
Since no fee is payable there can be no fee award.

Signed: **Date: 12 March 2019**

Upper Tribunal Judge Hemingway