



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

Appeal Number: PA/10449/2018

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 1 March 2019**

**Decision & Reasons Promulgated
On 10 April 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MAGELLAND [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Bayoumi, Counsel, instructed by Migrant Legal Project

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Cameroon, has permission to challenge the decision of Judge Suffield-Thompson sent on 21 November 2018 dismissing his appeal against the decision made by the respondent on 16 August 2018 refusing his protection claim.
2. The basis of the appellant's claim was that he would be at risk on return because his action in reporting a fatal road accident to the authorities had led to his being kidnapped and tortured by unknown persons and to the

police targeting him. The appellant claimed that family members of the lorry driver had links with state prosecutors and that there was a warrant out for his arrest.

3. The judge found the appellant's claim not credible and gave extensive reasons for so finding. However, in the course of evaluating the expert report by Dr D Walker-Said, which had considered, inter alia, the issue of the authenticity of the arrest warrant, the judge concluded at paragraph 59 that:

"59. Her report is not conclusive and therefore, I cannot categorically find that this document is verified as genuine. However, I do find it is plausible that the Appellant is wanted in Cameroon and that this is why he so afraid of returning and that Mr. Baker's submission that he fears returning due to being prosecuted for a crime rather than being persecuted has merit."

4. The inclusion of this paragraph in the judge's decision poses a serious problem arising from the fact that, even if all the judge appeared to accept in this paragraph is that the appellant feared prosecution (not persecution), the background evidence before the judge indicated that there was a real question as to whether prison conditions in Cameroon were such that anyone detained was at real risk of suffering ill-treatment contrary to Article 15(b) of the Qualification Directive and Article 3 ECHR. At the very least, having made this finding, the judge should have engaged with the country materials dealing with prison conditions, including the US State Department report which assessed "harsh and life-threatening prison conditions" to be one of the most significant human rights issues in the country.
5. Mr Mills sought to argue that the judge in paragraph 59 was not finding that the appellant's claim to be wanted was credible, only that it was "plausible"; but the judge said nothing in this paragraph or elsewhere to suggest that he did not regard plausibility as a strong indicator of credibility and this paragraph goes on to say that the submission that the appellant feared returning due to being prosecuted "has merit". It is simply not possible to read down this paragraph, even though everywhere else the judge's findings appear to be that the entirety of his claim lacked credibility.
6. For the above reasons I consider that the decision of the judge must be set aside for material error of law, since I cannot exclude that the judge's find was not inadvertent and that, had the judge considered the state of the background country evidence on prison conditions, he may have concluded (on the basis of the finding set out in this paragraph) that the appellant qualified for humanitarian protection. At the same time, I cannot accept Ms Bayoumi's submission that I should preserve the judge's finding regarding prosecution. What the judge said at paragraph 59 is out of kilter with the rest of the determination and in the circumstances I consider it unsafe to preserve any of the findings.

7. To conclude:

The decision of the First-tier Tribunal Judge is set aside for a material error of law.

The case is remitted to the First-tier Tribunal (not before Judge Suffield-Thompson) to be heard de novo.

No anonymity direction is made.

Signed

Date: 12 March 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a loop at the end of the last name.

Dr H H Storey
Judge of the Upper Tribunal