



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/12023/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
On 12th July 2019**

**Decision & Reasons
Promulgated
On 2nd August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**E O
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Miss L Crichton, Katani & Co, Solicitors
For the Respondent: Mr M Diwnycz Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is brought against a decision by Judge of the First-tier Tribunal Clough dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Nigeria. He left Nigeria in 1995 and spent about 7 years in Greece before coming to the UK. He is HIV positive. He claims that in 2002 he joined the Biafra Community in

the UK and has attended demonstrations and protests on behalf of this organisation. The appellant expresses a fear that the Nigerian government will persecute him because of his support for Biafran independence.

3. The Judge of the First-tier Tribunal did not believe that the appellant had been involved with an organisation campaigning for Biafran independence.
4. Permission to appeal was granted on two grounds. The first was that the judge arguably failed to give adequate reasons for her adverse credibility findings. The second ground was that arguably the judge speculated about what the organisation the appellant claimed to support would or would not have done.

Submissions

5. At the hearing Miss Crichton referred to paragraph 18 of the decision of the First-tier Tribunal, where the judge made her adverse credibility findings. The judge referred to a letter from a Mr Okanjo of the Biafra Community but the judge stated that this letter did not specify any protests or demonstrations attended by the appellant, which the judge would have expected had the appellant been an active member of the organisation.
6. Miss Crichton directed my attention to a letter dated 12th November 2018 from Mr Uwakwe of the Biafra Community, which was before the First-tier Tribunal in the third bundle for the appellant. This letter states on the second page that the appellant has participated in demonstrations at the Nigerian High Commission in Trafalgar Square and at Westminster. Miss Crichton submitted that the Judge of the First-tier Tribunal failed to take this evidence into account.
7. In paragraph 18 the Judge of the First-tier Tribunal also drew adverse inferences from a membership card for the Biafra Community relied upon by the appellant. According to the judge the membership card was headed "BIAFFtA Community Membership Card" but on the reverse stated that it was a membership card of the "Biafra Community". The Biafran flag was not correctly printed on the membership card as the three coloured stripes on the flag were not of equal width. The judge stated that she would have expected "an independence movement, particularly one with such a history, to be scrupulous in getting such details correct."
8. Miss Crichton again referred me to the letter of 12th November 2018 from Mr Uwakwe. This letter acknowledges that the name "Biaffta Community" on the front of the card, instead of Biafra Community, was a mistake "which occurred during computer printing" of the card. As far as the depiction of the flag was concerned, the quality and standard of the card depended upon the quality and standard of the computer and printer used to produce it. The latter states that

nevertheless the “identity card” was the “identity card of the Biafra Community”. Miss Crichton submitted that the judge did not address this evidence when giving reasons for finding that the card was not reliable evidence of the appellant’s membership of the Biafra Community.

9. Mr Diwnycz acknowledged that he was at a disadvantage in responding to Miss Crichton’s submission. No rule 24 response was available and he did not have in his file all the appellant’s bundles of evidence. Miss Crichton pointed out that the Judge of the First-tier Tribunal referred at paragraph 8 of her decision to three bundles having been lodged for the appellant. Mr Diwnycz accepted that he was not in a position to object to a remittal sought by Miss Crichton.

Discussion

10. The issue before me is not whether the appellant was or was not giving truthful evidence but whether the Judge of the First-tier Tribunal was entitled to make adverse credibility findings for the reasons which she gave. In making her adverse findings at paragraph 18 the judge entirely neglected to take account of the letter of 12th November 2018 from Mr Uwakwe in the appellant’s third bundle. Because she failed to take account of this evidence the reasons given by the judge for her adverse findings are inadequate. In addition, the judge’s comments on the membership card take no account of the explanations in the letter of 12th November. Had she considered those explanations the judge might have been entitled to reject them but the judge erred by not taking them into account.
11. The judge’s errors go to the core of the adverse credibility findings. As no reliance can be placed upon those findings the extent of fact-finding required to re-make the decision means that remittal is the appropriate course, in terms of paragraph 7.2(b). Accordingly the decision of the First-tier Tribunal is set aside and the appeal is remitted to the First-tier Tribunal with no findings preserved for a fresh hearing before a differently constituted tribunal.

Conclusions

12. The making of the decision of the First-tier Tribunal involved the making of an error of law.
13. The decision is set aside.
14. The appeal is remitted to the First-tier Tribunal with no findings preserved for a fresh hearing before a differently constituted tribunal.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. In order to preserve the positions of the parties until the appeal is decided I make such a direction in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Any breach of this direction may give rise to contempt of court proceedings.

M E Deans
24th July 2019
Deputy Upper Tribunal Judge