Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04182/2019 (P)

THE IMMIGRATION ACTS

No hearing	**Decision & Reasons Promulgated**
On 26 October 2020	**On 29 October 2020**

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

LILIAN [F]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant, a national of Cameroon, appeals with permission against the decision of the First-tier Tribunal (Judge S T Fox) dismissing her appeal against the decision of the respondent on 25 April 2019 refusing her protection claim.

2. Permission to appeal to this Tribunal was granted by Judge Foudy of the First-tier Tribunal in a decision dated 1 May 2020. Having reviewed the file I considered that this appeal was likely to be appropriate for determination of the question whether there was an error of law and, if so, whether the determination of the First-tier Tribunal should be set aside, without a hearing. In response to the directions I made, I now have before me written representations by Mr Tim Jebb BL on behalf of the appellant and by Mr C Avery, Senior Home Office Presenting Officer, on behalf of the respondent. Nothing in them gives me any reason to suppose that the interests of justice or any other relevant factor demand that a hearing be held in this case.

3. I have considered the material before me and the representations of both parties, and I have reached the conclusion that the decision of the First-tier Tribunal must be set aside for error of law and that the appeal must be re-heard in full before a different judge. For that reason I express no view on the merits of the appellant's substantive case, and the terms in which this decision is written are deliberately non-committal in respect of it. In what follows I explain why Judge Fox's decision cannot stand.

4. The appellant's basic immigration history is that she left Cameroon in 2008, after completing a Bachelor's Degree. She continued her studies in South Africa until 2012. In 2012 she came to the United Kingdom from South Africa, with a visa as a student. Her studies in the United Kingdom continued for a number of years. In 2014 she visited her family in Cameroon and stayed there for about six weeks, before returning to the United Kingdom and her studies. In 2016 she applied for leave to remain on the basis of a relationship. That application was refused, and it appears that the relationship has now broken down. In 2018 she claimed asylum on the basis of a well-founded fear of persecution in Cameroon. At the hearing of the appellant's appeal against the respondent's refusal of that decision, she gave oral evidence and was cross-examined. There was documentary evidence about the situation in Cameroon. The hearing was on 3 December 2019. Judge Fox's decision was sent out on 18 February 2020.

5. It seems to me that the grounds of appeal against that decision have clear merit in two separate areas.

6. The first relates to the form of the decision itself. There are numerous typographical areas, including one paragraph which is formatted differently from all the others, and a number of occasions on which the judge refers to the appellant as male. If those had been the only problems, I doubt whether this appeal would be before the Tribunal. They are not, however, the only problems. Paragraph [16] reads as follows:

> "I have had regard to the objective information provided by both parties and also I have noted the Tribunal's decisions in Karanakaran [2000] EWCA Civ.11; Tanveer Ahmned IAC [2002] 00439*; JT Cameron-v-The Secretary of State for The Home Department [2008] EWCA Civ.878 (28 July 2008; Januzi [2006] UKHL 5; AH [2007] UKHL 49; and for the avoidance of doubt I have had regard Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 where applicable with regard to assessing credibility relevant to paragraphs 339L and 339N of the Immigration Rules as well as to Sections 117A, 117B, 117C and 117D of the Nationality Immigration and Asylum Act 2002 (as amended)."

7. That, presumably, is a standard paragraph used by the judge in many decisions. Although the list of decisions is referred to as "the Tribunal's decisions", only one of them is a decision of the Tribunal, the others being decisions of the Court of Appeal and the House of Lords. The only decision of the Tribunal which is mentioned, Tanveer Ahmed, is one which has no

relevance to the present case. It is far from clear why the other cases, and no more recent cases, are selected for reference. The reference to Januzi shares a problem with the reference to sections 117A - 117D of the 2002 Act, in that they too appear to have no application to the present case. Indeed, at paragraph [48] the judge specifically indicates that those sections are not relevant; and at paragraph [55] he finds that Januzi is not relevant. In these circumstances, one is left with the clear impression that the judge's self-direction on the law was ill-focused, or seriously defective, or probably both.

8. At paragraph [45] there is what again appears to be a standard observation, in the following form:

> "The Appellant is not a good witness as to fact and truth. His evidence may not be relied upon. The Appellant may be safely returned to her home country, without fear of misfortune, adverse attention or otherwise."

9. At paragraph [47], similarly apparently a standard paragraph, is this:

> "On the evidence before me today am satisfied [sic] that the Appellant is an economic migrant and has not come to United Kingdom [sic] to seek international protection. I am satisfied that these are not the actions of the person truly and genuinely seeking international protection."

10. What "these" actions are is unspecified. Further, there is not the slightest trace of an economic motive in any of the evidence to which the judge refers.

11. At paragraph [65] the judge's conclusion on humanitarian protection is recorded as follows:

> "On the evidence before me today and for the same reasons as recorded above I am satisfied that the Appellant has not shown that there are substantial grounds for believing that he faces a real risk of suffering serious harm on return to Iraq and that he does not qualify for Humanitarian Protection refused under paragraph 339F of the Immigration Rules."

12. Despite the judge's conclusion expressed in this way, the appellant is, as I have said, a national of Cameroon, and female.

13. There is another difficulty to which I need to refer under this head. The judge's decision appears to confuse the SCNC, the anglophone separatist movement in Cameroon, with the NCNC, an extinct Nigerian/Cameroonian political party. The judge records the country evidence with a focus on the SCNC, presumably on the basis that that was related to the claim the appellant put before him. But he records the appellant's own case as based on her father being currently a member of the NCNC (which ceased to exist in the late 1960s), and at paragraph [31] appears to count the appellant's ignorance of the NCNC against her.

14. Mr Avery's written submissions valiantly attempt to argue that the judge's errors are merely superficial. I do not accept that. The areas which I have identified show at an absolute minimum that the judge failed to check his determination before signing it and having it sent out. In my judgment they also show signs of serious confusion, apparent on the face of the decision itself. These are matters that demanded resolution before the judge could properly be confident that he had given the necessary attention to the appellant's case. As a result, as it appears to me, these errors demonstrate a failure of the judicial process. It was the judge's task to bring care and professional expertise to the appellant's appeal, and he failed to do that.

15. The appellant's other ground of complaint relates to the judge's assessment of credibility. As this will have to be considered again, I am not going to go into the evidence in detail. It is of course clear that the appellant needed to explain why, if her fear of Cameroon was genuine and dated from 2008, she was able to visit that country in 2014, and did not make her claim until 2018. Having indicated that he proposed to take s 8 of the 2004 Act into account, the judge concluded both at [46] and [49] that the factors set out in that section count against her. At [46] he wrote as follows:

> "I find that the Appellant's failure to claim asylum when she could have first claimed while travelling through countries that may have been signatories to the 1951 Convention, without a satisfactory explanation, undermines the credibility of the Appellant's claim to have come to the United Kingdom to escape persecution."

16. The appellant's travel to the United Kingdom appears to have been directly from South Africa. No doubt she could have claimed in South Africa, but that is not a judge's point: she was not "travelling through" other countries on the way between South Africa and the United Kingdom. At [49] the judge says this:

> "The Appellant arrived in the United Kingdom in October 2012. She did not claim asylum upon entry. She claims this was because she had a student Visa. It is clear, from the facts recorded above that she believed that a departure for [sic] Cameroon was essential in 2008 because of fears generated [sic]. Claim [sic] to have had a valid visa is inconsistent and mitigates [sic] strongly against her overall credibility. She claims that the crisis did not develop until 2016. I believe this is a statement designed to garner support for her claim to international protection."

17. I said above that the appellant needed to deal with these aspects of her history. It is clear from the grounds, and not challenged by Mr Avery, that the appellant did provide an explanation, based on the history of the anglophone separatist movement in Southern Cameroon. The last two sentences of the extract above is the total of the judge's reference to that explanation.

18. A judgment on credibility has to be made on the basis of all the available evidence, accurately represented. Again, despite Mr Avery's submissions, I cannot accept that the judge has simply made unimportant slips, leaving the substance of his assessment unimpaired. On at least two respects (the NCNC history and the countries where she might claim asylum between South Africa and the United Kingdom) the judge counted against the appellant's credibility matters which appear, on the evidence, to have no bearing on it. On the other hand, he failed to take any proper account of the full explanation going to the respondent's attack on her credibility.

19. To sum up, the decision of the First-tier Tribunal shows a general lack of attention, and a number of clear mistakes on important matters. It cannot stand as an assessment of the appellant's appeal. I set it aside for error or law, and direct that the appellant's appeal be decided afresh by a different judge of the First-tier Tribunal.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 26 October 2020