Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: LP/00139/2020

THE IMMIGRATION ACTS

Heard at Manchester (via Microsoft teams)	**Decision promulgated**
On 8 July 2021	**On 11 August 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

FODAY DABOH
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S. Khan instructed by Broudie Jackson Canter Solicitors.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of Sierra Leone, born on 3 January 1975, who appeals against the decision of First-tier Tribunal Judge Cole ('the Judge'), who dismissed his appeal against the refusal of his protection appeal or for leave to remain in the United Kingdom on any other basis, promulgated on 31 March 2020.

2. The appellant's application for permission to appeal was refused by a Resident Judge of the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal, the operative part of the grant being in the following terms:

> This is an unusual case, in which the appellant claims to be at risk as a result of his association with his former employer in Sierra Leone. That risk is said to have increased significantly as a result of the appellant having given evidence before the High Court in London in 2018. Judge Cole accepted all that he said and found that he would be at risk on return to his home area for these reasons. The judge concluded that any risk to the appellant in a place of relocation was too remote, however, and dismissed his appeal on grounds of internal relocation. I am satisfied that it is arguable that the judge erred in reaching that conclusion, in that he arguably left out of account the matters noted in grounds one and two. I consider grounds three decidedly less impressive, but it is just arguable that the judge left out of account the relevant background material in concluding that relocation would be reasonable. In the circumstances, permission is granted on all three grounds.

3. At [53 – 54] of the decision the Judge wrote:

> 53. I therefore find that the appellant would be safe in Lungi, Pepple or Freetown. Thus, it is necessary to assess whether it would be reasonable for him to relocate. The Appellant asserts that he will be unable to find work and housing in another part of Sierra Leone. I accept that this may be difficult for the Appellant, especially as he worked for one employer for such a long time. However, the Appellant clearly has skills having worked as a carpenter and doing building works as well as working as a driver. He has no significant health problems or other impediments. There is no evidence to suggest that the Appellant would not be able to find work to support himself and his family if they were to relocate to the capital, Freetown, or another part of Sierra Leone. I find that relocation may be difficult, but it will not be unduly harsh and it would not be unreasonable.
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> 54. Therefore, in summary, I find that the Appellant is a generally credible witness who has established to the lower standard of proof that he will be at real risk of serious harm in his hometown of Bumbuna. However, I find that internal relocation to somewhere such as Freetown, Lungi or Pepple would be safe and reasonable for the Appellant.

Error of law

Background

4. As noted by the judge granting permission this is an unusual case. In addition to the appellant's activities in Sierra Leone he was also a witness in a case in the Administrative Court in the UK, reported as Kadie Kalama & Ors v African Minerals Ltd & Ors [2018] EWHC 3506 (QB), in which Turner J dismissed claims arising from African Minerals Ltd (AML) mining activities in Tonkolili in Sierra Leone. The appellant was one of the witnesses for AML before the High Court and his evidence is referred to in that judgement.

5. The appellant relies on three grounds of challenge to the Judge's decision. Ground 1 challenges the reasonableness of internal relocation by reference to the situation in Sierra Leone and cross-references to aspects of the decision of the High Court before concluding at [25]:

> 25. It is therefore submitted the FTT has erred in its finding that A's fear of being identified in all locations is "*speculative":* given period of time A was visibly employed by and associated with AML in all three locations, Lungi, Pepel and

> Freetown, given the acceptance of the high profile. AML had within Sierra Leone as a result of its business activities within the country and the High Court challenge against it, and of the clear resentment held by members of the Bumbuna community against AML and the threats made against witnesses, it is submitted that rather being "*remote*" A has established to the low standard the real possibility of being identified in all locations, of that information being sent back to Bumbuna, and thus placing A at real risk in all potential identified locations from members of the Bumbuna community, of whom, the FTT has accepted, A has established he has a well-founded fear of persecution. It is reasonably submitted the FTT has erred in reaching its finding on the safety of A relocating to the identified locations.

6. Ground 2 refers to the appellant's political profile and that when employed by AML, during the 2012 Presidential Elections, the appellant campaigned for the APC candidate Mr Koroma; although that party lost in the 2018 elections to the SLLP. Since then, it is stated there has been violence against APC members and supporters. The appellant's past political activities were accepted as being credible by the Judge who is criticised for providing no reasoning for finding the appellant will not be perceived as a high-level support of the APC. It is also asserted the Judge failed to consider or provide adequate reasons for rejecting the appellant's claim during 2012 he went from department to department within the AML. It is also asserted at [32] of the Grounds:

> 32. Thirdly, A's evidence is that his political profile would not solely be limited to his explicit activities in the 2012 election. His political profile, imputed or otherwise, will be based on his high-profile association with AML having acted as their defence witness in the high-profile High Court case, together with his previous role as the chairperson of a five-member committee associated with the company. Given the findings by the Administrative Court confirming the close association between the former APC Government and AML, and given the acceptance by the FTT of ongoing political violence within Sierra Leone against APC supporters, it was A's evidence that the risk he faced based upon his political opinion was a result of both his past activities and his association with the AML, themselves associated closely with the APC. The failure of the FTT to consider this material evidence amounts to an error of law.

7. Ground 3 refers to the reasonableness of relocation and the appellant's evidence that to obtain employment depends upon having contacts and that without links to an area employment is not possible. It is stated, it was not disputed that the appellant's only previous connection within the three suggested relocation locations was based on his past employment with AML and is not disputed that the employment with AML no longer exists. At [37] of the grounds the appellant writes:

> Having found A to be generally credible, no reasoning has been provided as to why A's evidence on this matter is not accepted. The failure to provide any reasoning as to why A's evidence is disputed amounts to an error of law, as is the failure to consider material evidence.

8. Ms Khan in her submissions relied upon the pleaded grounds and argued that what was required was a fair and holistic assessment of all the issues which are interrelated, which makes internal relocation unreasonable.

9. . Mr Tan on behalf the Secretary of State accepted the final submission regarding the issues being entwined, but submitted the Grounds are no more than an attempt to reargue the case as the Judge set out the submissions at [38] in which there is specific reference to the points

made in Grounds including that regarding the publicity in the case and the link to the company and link to the APC political movement. It is also submitted that many of the points relied upon by the appellant are set out by the Judge at [40] and that the Judge accepted there was a real risk to the appellant in his home area and needed to look at the risk in other areas as part of the reasonableness assessment. It is argued that that is what the Judge did, and no legal error arises. It is argued that the challenge is, in reality, a rationality challenge to the Judge's conclusions which have not been shown to be irrational or outside the range of those available to the Judge on the evidence.

10. Mr Tan argued the Judge took into account the appellant's political activities and his role within the company, which was when he was based in Bumbuna. It is not disputed the appellant is no longer politically active or committed to politics, which means that if he internally relocates he is not likely to have a profile that places him at risk.

11. Mr Tan also argued that ground 3 is a reasons challenge with sufficient reasons having been given by the Judge for the findings made.

Discussion

12. It is not disputed there was a requirement upon the Judge to consider all the evidence with the required degree of anxious scrutiny and to give sufficient reasons in support of the findings made. Those findings commence from [40] of the decision under challenge.

13. At [38] the Judge refers to submissions made by Mr Bednarik, Counsel who appeared on behalf of the appellant before Judge Cole. A reading of the submissions shows the Judge was clearly aware of the points that were being raised on the appellant's behalf including any link to the appellant's support for the AMC in court, being a supporter of the APC, and any related risk that may arise.

14. At [40] the Judge confirms that he has considered all the evidence and there is no reason to believe that the Judge did not do so. This is not a decision a reading of which indicates that although such a statement appears the author of the determination clearly did not consider all the evidence with the required degree of anxious scrutiny. The Judge was not required to set out to the evidence verbatim and to record findings in relation to each and every aspect of that evidence. The fact he has not done so does not mean it was not properly considered.

15. At [54] the Judge finds the appellant is a generally credible witness who has established the lower standard of proof that he will be at risk of serious harm in his hometown of Bumbuna but who finds it internal relocation to somewhere such as Freetown, Lungi or Pepple would be safe and reasonable for the appellant.

16. Paragraph 339O of the Immigration Rules, which is intended to incorporate the Directive, states:

(i) The Secretary of State will not make: (a) a grant of asylum if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or (b) a grant of humanitarian protection if

in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.

17. In SSHD v AH (Sudan) and Others [2007] UKHL 49 the House of Lords pointed out that the test to determine whether internal relocation was available was the test set out in Januzi v SSHD [2006] UKHL 5, namely that the decision maker should decide whether, taking account of all relevant circumstances pertaining to the claimant and his or her country it would be reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him or her to do so. The test was one of great generality. In applying the test enquiry had to be directed to the situation of the particular claimant; very little was excluded from consideration other than the standard of rights protection which a claimant would enjoy in the country where refuge was sought. Baroness Hale said that all the circumstances of the case had to be assessed holistically, with specific reference to personal circumstances including past persecution or fear thereof, psychological or health conditions, family and social situations, and survival capacities, in the context of the conditions in the place of relocation, including basic human rights, security and socio economic conditions, and access to health care facilities: all with a view to determining the impact on the claimant of settling in the proposed place of relocation and whether the claimant could live a relatively normal life without undue hardship

18. That test was discussed further in AAH (Iraqi Kurds – internal relocation) (CG) [2018] UKUT 212 and also by the Court of Appeal in KS (Iran) v SSHD [2019] EWCA Civ 6 and, discussing Januzi and AH (Sudan), the decision of the Court of Appeal in AS (Afghanistan) [2019] EWCA Civ 873 in which the Court of Appeal said that they entirely agreed with AAH and that the test of whether relocation was reasonable or would be unduly harsh was of great generality save only that it excluded comparison of the conditions in the safe haven and the country of refuge. The applicant must be able to lead a relatively normal life in the context of the country concerned but the test is a holistic one.

19. It is not made out the approach taken by the Judge to the assessment of the relocation question was contrary to the guidance in relation to the method in which the reasonableness of internal relocation was to be assessed.

20. In relation to the place of relocation, the Judge does not find those three named locations are all those it is reasonable to expect the appellant to relocate to, clearly stating at [54] that they are places which

he could safely relocate to (note the use of the wording 'such as') without limiting the decision to only these places. In AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) the Tribunal held that there is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a well-founded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. In practice, the issue of internal relocation needs to be raised by the Secretary of State in the letter of refusal or (subject to procedural fairness) during the appellate proceedings. It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there.

21. The appellant's claim was effectively that as a result of his involvement in politics and with the AML case in the High Court, the combination of his profile and the feelings of those affected by the actions of the AML and of opposing political parties, this has created a real risk for him in all of Sierra Leone, and that there is no where he could live lead a relatively normal life in the context of the country concerned. The challenge can only be read in these terms as it is not conceded on any account by the appellant that there is anywhere else within the country to which he can reasonably relocate.

22. A map of Sierra Leone shows a number of urban settlement, the biggest city in a country of over 7,000,000 people, being the capital Freetown, which is located in the Western region of the country, and it is a major port city on the Atlantic Ocean whose economic growth is dependent on the harbour. The city has a culturally diverse population of different religions and ethnicities with no particular ethnic group that dominates the population since it is home to all of Sierra Leone's people. It was not found out that in such an environment the appellant will face a real risk of being identified or at risk of harm as a result of earlier political activities or his association with the AML. This has not been shown to be finding outside the range of those available to the Judge on the evidence. The mining town of Bumbuna is a town in the central of Tonkolili District in the Northern Province of Sierra Leone. The town lies about 30 miles from the district capital of Magburaka and approximately 124 miles (by road) northeast of Freetown. The appellant's assertion regarding the entwined links arising from matters considered by the High Court, his employment and, earlier political activities, were not found by the Judge to establish a real risk outside his immediate home area.

23. The city of Bo is located in the Southern Province of Sierra Leone, and the whole urban centre is commonly known as Bo Town. It is the second largest city in Sierra Leone and the biggest city in the southern province serving as the administrative centre and capital of Bo district. The population of Bo is estimated at about 233,684. The city has an ethnically diverse population, is about 120 miles or thereabouts from Bumbuna, with there being no evidence before the Judge that those who have been

found to have created a credible real risk of harm to the appellant in his home area would have sufficient influence connections or lines of communication to such that they will be aware of the appellant's return, or that those living in that area could themselves be interested in the appellant such as to create a real risk of harm to him.

24. Kenema in the Eastern Province of Sierra Leone is the third largest city in the country and, like Freetown and Bo, is home to an ethnically diverse population.

25. There are other urban settlements within Sierra Leone, both cities and towns, and I find the appellant failed to produce before the Judge sufficient evidence to establish a real risk in other than his home area, as found by the Judge, or that expecting him to relocate to another area other than that identified as creating the real risk, would be unreasonable in all the circumstances. At [50] the Judge writes:

> 50. The core issue in this case is whether it will be safe and reasonable for the Appellant to relocate to another part of Sierra Leone. It is of note that the Appellant previously relocated to Lungi and Pepple and did not have problems in those areas. I acknowledge, though, that this was before the Appellant gave evidence for AML and so it is likely the tissues have escalated since this time (as evidenced by the attack on the family home that led to the Appellant's daughter serious injuries). However, this does not necessarily mean that a higher degree of risk in Bumbuna means heightened risk across Sierra Leone.

26. As noted above, the burden of proving his case was upon the appellant and the decision in the High Court whilst recording aspects of the evidence was not a decision on the reasonableness of relocation of the appellant to any part of Sierra Leone. It was a civil commercial dispute in which the High Court gave reasoned findings on the matters appertaining to the issues before it on the evidence. It is also the case that the High Court received no submissions on the reasonableness of internal relocation.

27. It is accepted that an employee of AML died in 2013, which the country information indicates was as a result of a road traffic accident on his motorbike whilst travelling to Bumbuna. This individual had been responsible for events leading to the strike in Bumbuna in 2012 and had refused to testify against AML. Notwithstanding, there was insufficient evidence before the Judge to establish a real risk to the appellant in all of Sierra Leone in light of his own profile.

28. As it cannot be said that the Judge was unaware of or failed to take the evidence into account, and as the findings are reasoned, even if the appellant disagrees with them, there is merit in the submission of Mr Tan of the nature of the challenge to the Judge's findings.

29. It is necessary to read the decisions a whole, including [51] in which the Judge writes:

> 51. The Appellant argues that he is known as an AML employee in Lungi and Pepple, and so word may get back to the community in Bumbuna. In a similar vein, he submits that he was a driver for AML in Freetown, so once again he would be recognisable and so word may get back to the community in Bumbuna, I find this is far too speculative to establish a real risk in these areas. Even if the Appellant were recognised or questioned about his identity and origins in one of those areas, the prospect of such information getting back to Bumbuna is remote and then the prospect of a member of the community in Bumbuna then travelling to the

> Appellant's place of relocation to harm him is even more remote. I can understand the Appellant's objective, fear, but I do not find that they are objectively well-founded. Any risk in Lungi, Pepple or Freetown is so remote that it does not come close to reaching a real risk threshold.

30. The Judge therefore recognises the appellant's subjective fear but assesses whether such fear is objectively well-founded on the basis of the available evidence. Whilst the appellant disagrees with the Judge's findings that any risk is too remote to cross the requisite threshold, for the reasons stated, it is not made out the Judge's findings having considered the evidence as a whole are outside the range of those reasonably available to the Judge. AML is an iron ore mining company with no evidence that they have a presence throughout the whole of Sierra Leone or that the appellant's political activities or work undertaken whilst an employee of AML or as a witness will place him at risk in all of Sierra Leone. The Judge's assessment of the credibility of the claimed risk having assessed the evidence is supported by adequate reasoning and has not been shown to be outside the range of findings reasonably open to the Judge on the evidence.

31. At [52] the Judge writes:

> 52. The Appellant also asserts that he would be at risk because of his support for the APC during the 2012 election campaign. I agree with the Respondent that the Appellant's activities were at such a low level and so many years ago that they would not place him at real risk now. I accept that there is political violence in Sierra Leone and that supporters of the ruling SLPP to attack supporters of the APC. However, the Appellant accepts that he is not politically active or committed and he is more concerned about perceptions from events many years ago. Again, I do not find the Appellant's fear objectively well-founded. I do not find that the Appellant would be perceived as a high-level supporter of the APC such as to place at real serious risk of harm in Sierra Leone.

32. It has not been shown this is a finding outside the range of those available to the Judge on the evidence, especially as the basis of this aspect of the appellant's claim appears to arise from historical events in 2012 rather than current ongoing contemporary political activity and that there was nothing in the evidence before the Judge to show that even if those identified as being supporters of the APC now face a real risk, this means that those with historical connections, with no ongoing political activity or commitment to the APC, especially if they are relocated to an area where they have not been politically active in the past, will face a real risk of harm for this reason.

33. The reference in the grounds to the comments by the High Court, said to confirm implicit difficulty in finding employment, is not a decision of a judicial body specifically tasked with analysing the evidence in connection with reasonableness of internal relocation. Such comments will be obiter at their highest and whilst it is accepted that the unemployment rate in Sierra Leone is high, with certain sections of the population having to live in relative poverty, it was not made out that with the appellant's past employment history and skills, as identified, that he will not be able to obtain employment or secure an income sufficient to meet his basic needs and those of his family, such as to make it unreasonable in the circumstances for him to internally relocate.

34. As noted above, whilst the appellant's subjective fears are not challenged by the Judge it has not been shown that the Judges ultimate decision to dismiss the appeal on the basis of an availability of a reasonable internal relocation option, enabling the appellant to avoid any real risk from the nonstate actors the appellant claims to fear, is a finding outside the range of those reasonably open to the Judge on the evidence such as to amount to an irrational, unlawful, or unfair finding.

35. Whilst the appellant may wish to remain in the United Kingdom the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. The Judge clearly took the evidence into account and has given adequately reasoned findings in support of the conclusions in relation to the reasonableness of internal relocation within Sierra Leone.

Decision

36. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

37. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

38. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 21 July 2021