



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

Appeal Number: PA/03181/2020 (V)

**THE IMMIGRATION ACTS**

**Heard by a remote hearing at Bradford  
IAC  
On the 25 August 2021**

**Decision & Reasons  
Promulgated  
On the 5 October 2021**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**L MF  
(ANONYMITY DIRECTION MADE)**

Appellant

**AND**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G. Patel, Counsel instructed on behalf of the appellant  
For the Respondent: Mr S. Kotas, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction:**

1. The appellant, a citizen of the Central African Republic ("CAR"), appeals with permission against the decision of the First-tier Tribunal (Judge Caswell) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 15 March 2021.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The hearing took place on 25 August 2021, by means of *teams* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video. There were no issues regarding sound, and no technical problems were encountered during the hearing, and I am satisfied both advocates were able to make their respective cases by the chosen means. I am grateful to both advocates for the clear and helpful submissions they have provided.

Background:

4. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle.
5. The appellant is a citizen of the Central African Republic (hereinafter referred to as "CAR"). He and his family members were all Christians and in 2012 -2013 when staying at the home of his aunt and uncle the appellant witnessed an attack upon his family members by the Muslim militia called Seleka. They raped his aunt and attacked his uncle and other family members were killed. The appellant asserted that the appellant's uncle was the leader of a political group. The appellant escaped and ran into the forest where he stayed for a month and later went to live at a refugee camp. He later went to Ghana in 2016 and studied there.
6. In 2018 the appellant returned to CAR and attended the Fatima church. The church was attacked by the Muslim militia in May 2018 and many people injured and killed. The appellant claimed to have been stabbed in the arm.
7. In his oral evidence the appellant stated that in or about June 2019, he sustained another attack and was tortured.
8. He left CAR in July 2019 travelling to Cameroon and other countries before eventually arriving in the UK. He did not claim asylum immediately on arrival, as he did not know the process and was not sure what to do. However, on being questioned, he claimed asylum.
9. The appellant is an active Christian in the UK and attends a church.

10. The appellant fears that he will be killed and/or tortured by the Muslim militia.
11. The respondent considered his claim in a decision dated 19 March 2020 and whilst the evidence as to his religion as a Christian was considered to be detailed and consistent, the respondent did not accept that the appellant had given a consistent and credible account that he was present at an attack upon his family relatives in 2012 – 2013 nor that he was present or attacked in the church on the date the appellant gave as March 2019. The respondent cited the background country material which referred to an attack on the church but that it was in May 2018 and not 2019 as he had claimed. The decision letter concluded that the appellant’s fear was not subjectively genuine as the evidence did not confirm that he was a direct known target for the Seleka group. Furthermore, the respondent considered that his fear was not objectively well-founded because there were sufficiency of protection provided by the authorities in the CAIR for the reasons set out at paragraphs 69 – 88. The remainder of the decision letter considered Article 8.
12. The appellant appealed that decision came before the FtT by way of a hearing on 10 March 2021.
13. In a decision promulgated on the 15 March 2021 the FtTJ dismissed his appeal. In summary, the judge rejected his account having found that he was not a credible or reliable witness relating to matters that went to the heart of his case. The judge was not satisfied that he was ever attacked by Seleka in 2018 and also rejected his claim that there was any subsequent attack on him shortly before he left the country. The judge set out the inconsistent evidence given by the appellant concerning the factual aspects of his claim. At [24] the judge also concluded that the appellant would not be a target for any violent groups.
14. Permission to appeal was sought and permission was refused by FtTJ but on renewal was granted by UTJ Keith on 21 June 2021 for the following reasons:

“It is at least arguable that in her decision the judge failed to make findings in relation to the claimed attack in 2012/13; and relatives being granted refugee status in France. The FTT records these issues at [5] and [14], but arguably fails to resolve those issues, which may be relevant to the central issue of the appellant’s credibility. While the 1<sup>st</sup> 2 grounds appear to be weaker, the grant of permission is not limited in its scope. Permission to appeal is granted on all grounds.”

#### The hearing before the Upper Tribunal:

15. In the light of the COVID-19 pandemic the Upper Tribunal issued directions on the 30 June 2021, inter alia, indicating that it was of the view that the error of law issue could be determined without a face-

to-face hearing and that this could take place via Microsoft teams. Further directions were given for the service of documents.

16. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. I am grateful for their assistance and their clear oral submissions.
17. M Patel, who appeared on behalf of the appellant before the FtTJ and had drafted the grounds appeared on behalf of the appellant. She relied upon the written grounds of appeal to the Upper Tribunal dated 15 May 2021.
18. Her oral submissions followed the matters set out in the written grounds of challenge. She submitted that there were 2 grounds relied upon; firstly the judge failed to consider material matters and secondly, the judge failed to make findings on material evidence. Dealing with the 1<sup>st</sup> ground, she submitted that the assessment of credibility failed to take into account the circumstances surrounding the interview which gave rise to the issue of whether or not the appellant had given discrepant evidence. The interview lasted for a very long period of time and whilst there were 2 breaks on any account it was a long interview. During the interview itself the appellant had taken painkillers for the reasons given at question 42 that he got headaches when asked to recall events. She submitted that the FtTJ failed to take account of that evidence. Miss Patel, in particular, referred to paragraph [19] and the explanation given by the appellant that he did not raise the issue with the interviewer because he felt that it would be held against him. She submitted that whilst the judge made reference to it the appellant was not complaining about the interviewer himself but the way that he would be perceived.
19. Ms Patel submitted that it had been accepted by the respondent that traumatic events and anxiety and depression may affect the ability to recall specific detail, but the judge did not take that into consideration. She submitted during the hearing he became distressed when talking about the events in 2019. This was accepted in the decision letter at [48] but the judge had not looked at what the respondent had accepted about the effect of traumatic events and the ability to recall greater detail.
20. Ms Patel submitted that the judge failed to consider that he was taking medication for depression /anxiety and that this might impact his recall. There were photos of the medication which was consistent with his oral evidence. Whilst the judge mentioned there was no medical report before the tribunal, the absence of such evidence did not mean that the tribunal could not consider other evidence available such as the photographs of his medication and also the photographs of the injuries of his scarring. Thus she submitted the

errors were material to the outcome and the assessment of credibility.

21. As to ground 2, she submitted the judge failed to make findings of fact on material evidence and that at both paragraphs [5] and [14] of her decision the judge noted the factual evidence relied upon by the appellant concerning an earlier attack in 2012 - 2013 and that the appellant's account was that following the events his family relatives were then accepted as refugees in France and had provided evidence in support in the bundle. Whilst the respondent had not accepted this, the judge made no factual findings upon this previous attack or made any reference to the activities of his family members including his uncle and aunt.
22. During her submissions Ms Patel indicated to the tribunal the parts of the lengthy interview where the appellant gave a factual account of what had occurred in the CAR during that period of time and where he had given an explanation of the reasons for the attack. However the judge made no factual findings on that issue, nor the relevant documentation provided to demonstrate that his family relatives had been granted asylum.
23. The last point made by Miss Patel was at the judge did not make any findings on the injuries the appellant claimed to have sustained. She submitted that whilst there was no medical report it would not have assisted the judge in any event in light of the timescale of the injuries to the appellant.
24. Ms Patel invited the Tribunal to set aside the decision and to remit the appeal to the FtT.
25. Mr Kotas stated that he did not rely upon the Rule 24 response issued on behalf of the respondent dated 13 July 2021 because the finding at paragraph [24] could not be considered as an alternative finding taking the appellant's account at its highest.
26. When considering the 2<sup>nd</sup> ground raised by Miss Patel he submitted that if there was an error in relation to that ground he would accept that it was material as this was evidence or material which had not been considered and was relevant to the asylum claim in relation to the appellant's family members.
27. Dealing with 1<sup>st</sup> ground he submitted that the judge did take into account the length of the interview but that the FtT gave consideration to the appellant's evidence but did not accept it to be the case. As to the issue of his mental health, there was no medical evidence in support of his claim and the judge expressly took into account the photographs provided in the appeal and the submission that the appellant had memory problems. However the critical point to take into account was that there was no medical evidence on this

point as identified by the FtTJ. He submitted that there were no GP notes, and it would have been an error for the judge to make the evidential leap that in the absence of that evidence his reliance on medication would impact his ability to recall events. This was out with the judges domain.

28. As to the failure to consider the photographs of his injuries, there was no medical evidence in respect of this either. An expert would be able to look at the scarring and provide a diagnosis. It was not a matter for the judge to assess in the absence of a medical report.
29. In his oral submissions he returned to ground 2 and accepted that the judge did not deal with the factual account referring to the events that took place in 2012 - 2013. However he submitted that the events did not cover the discrepancies in his evidence and the documents in the bundle referred to a grant of asylum, but no explanation was given in the documents as to the basis it was granted. Thus he questioned the materiality of the omission.
30. By way of reply to Ms Patel submitted that the omission to consider that part of account was relevant to the central issue of credibility and also related to the issue of whether he had been targeted by the militia group and as a result not be protected and therefore it was material to the outcome.
31. In relation to the photographs of the scarring, she submitted that the appellant in his asylum interview had shown the scars to the interviewing officer a question 103.
32. At the conclusion of the submissions, I reserved my decision which I now give.

Decision on error of law:

33. The first ground challenges the FtTJ's assessment of credibility set out in paragraphs [8]-[23] on the basis that the judge failed to consider material matters. Ms Patel summarised those material considerations as follows; the length of the asylum interview of 6 and half hours and that the appellant had been asked 195 questions and at one stage took painkillers (question 42); his explanation that it would have negatively affected his case if he stated that he was not well enough to continue with the asylum interview and for it to be adjourned to a different day; that the judge failed to consider the medicine taken for his anxiety/depression and the appellant's account was described as a chaotic situation and therefore the appellant was not able to give a coherent account in chronological order and there was also a risk of re-traumatisation.

34. Having read the decision of the FtTJ and in the light of the evidence I am satisfied that the grounds of challenge in this respect are not made out.
35. At [18] the FtTJ recorded the appellant's claim that the events which caused him to leave his country of nationality in 2019 occurred in March 2019 during the attack by the Seleka and that he left in July 2019. No other references were made to any other attack and the judge contrasted the evidence set out in the objective material which stated the attack on the church identified by the appellant took place in May 2018 and not March 2019 as the appellant had claimed. The judge also recorded that after this had been pointed out to the appellant in the decision letter, he stated that he was mistaken about the date in the interview because he was "stressed and confused" and that he was there in May 2018.
36. Contrary to the submission made by Ms Patel, the FtTJ plainly engaged with the explanation offered by the appellant to explain the inconsistency in his evidence which was set out at [19] and the judge also properly engaged with the submission made by Ms Patel to support his explanation. Rather than failing to take account of the length of the interview as the grounds assert, the judge did take that into account and also referred to the appellant having taking paracetamol during the questioning. However in my view it was open to the FtTJ to consider the interview as a whole. The judge was entitled to identify that the interviewer had been careful to confirm with the appellant that he understood the questions and that he understood the French interpreter and that he was fit enough to continue with the interview. The judge was also entitled to place weight on the absence of any reference to being stressed and confused during the interview or the failure to mention having any problems with his memory.
37. Furthermore and contrary to the grounds, the FtTJ expressly engaged with the appellant's explanation given in his oral evidence when he was asked to account for his failure to mention any problems to the interviewer. The judge recorded his evidence at paragraph [19] where the appellant stated that he thought if he mentioned any problems it would be held against him. I can see no error in the FtTJ's assessment of that evidence, and she was entitled to reach the conclusion based on the overall conduct of the interviewer, who the judge described as "sensitive and solicitous on a number of occasions" that this undermined the explanation as to why he had failed to mention the problems to the interviewer.
38. In this context Ms Patel submitted it was the appellant's perception that was important. Be that as it may, the judge was entitled to reject the explanation or the appellant's perception based on her assessment of the evidence concerning the conduct of the interview taken as a whole.

39. As Mr Kotas submitted, there was no medical evidence before the tribunal (or now) to demonstrate that the appellant had any problems with his memory or was suffering from any medical condition which affected his recall or ability to give consistent evidence.
40. At [20] the FtTJ reached a further adverse credibility finding taking into account the appellant's corrected claim that it was May 2018 and not March 2019 that he was attacked and when asked if any other events had occurred, he then for the 1<sup>st</sup> time stated had been tortured in June 2019.
41. Ms Patel submits that the FtTJ erred in law in reaching her conclusion at [23] by rejecting his account of being attacked in the church in 2018 and the subsequent attack. The challenge again is based on the assertion that the judge failed to take into account material or relevant evidence.
42. Again I am not satisfied that that submission is made out. At [20] the judge recorded the appellant's account and that this was the first time that he had ever mentioned an attack in June 2019. The judge also recorded the appellant's explanation for the failure to mention such a relevant incident and that it would make him "stressed and give him flashbacks" and that he had not mentioned it earlier because he had not been asked about it but that he had mentioned it to his solicitor.
43. At paragraphs [20 - 22] the judge plainly engaged with the evidence and the submissions made by Ms Patel. The judge was correct to find that contrary to the appellant's account that he had mentioned it to his solicitor, there was no such incident referred to in the witness statement filed on his behalf nor was there a "corrections letter" sent by his solicitors (see FtTJ decision at [20]). Furthermore the FtTJ properly engaged with the point raised by Ms Patel that those who suffer from PTSD or experienced dramatic events may struggle to recount them due to the risk of flashbacks. However, in my judgement the FtTJ was entitled to consider that submission in the light of the evidence given of the incident. The judge noted that the description of the June 2019 incident was "very vague" and only emerged after the gap of over a year between the attack in the church and the appellant leaving the country. The judge was entitled to take into account that there was no reference to this incident having taken place despite the appellant having been represented throughout the appeal process.
44. A more relevant consideration is the absence of any medical evidence advanced on behalf of the appellant (then or now) to support the claim that he suffered from stress or that any condition he suffered from affected his ability to recall incidents with any consistency.



45. As the FtTJ observed at [22] there no medical report and not even a prescription list or GPs notes in support of such a claim. If the appellant had been suffering from any relevant condition which affected his ability to give evidence and recall incidents consistently, it was reasonable to assume that that would have been evidenced during the appellant's representation through the asylum process.
46. In her submissions Ms Patel submitted that in reaching her conclusions on this issue the judge ignored the evidence relating to his medication. I do not accept that submission. The judge plainly engaged with the evidence at [22] where she referred to the photographs of the medication. I have looked at the photographs exhibited at page 21 showing amitriptyline and Propranolol and I observe that they give no indication as to when the medication was prescribed or for what purpose. Ms Patel submitted that the medication he takes impairs his concentration and recall. However there is no medical evidence to support such a submission and it was not for the judge to speculate about this in the absence of any such evidence.
47. In any event the FtTJ did refer to the photographs of the medication and whilst they may be prescribed for depression that by itself did not itself support the claim made that the appellant's mental health was such that the appellant could not remember or recount his experiences. I find no error in the FtTJ's assessment based on the submission that the judge failed to consider those material matters.
48. In this context I have considered the submission made that the judge failed to treat the appellant as a vulnerable witness. I am satisfied that this submission is also not made out. I can see no reference to this issue being raised before the tribunal either before the hearing or at the hearing itself as consistent with the practice direction and the decision of AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 in which Sir Ernest Ryder, Senior President, referred to the Joint Presidential Guidance Note No. 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant ("the guidance note") and also the Practice Direction, First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses.
49. The only evidence that was advanced on behalf of the appellant was a photograph of the medication and in the absence of any cogent medical evidence in the support of any vulnerability which might affect his evidence, I can see no basis upon which the judge could properly have treated the appellant as a vulnerable witness.
50. I also reject the submission made by Ms Patel that the judge failed to make a finding on the photograph of the injuries.

51. At [22] the judge considered the evidence to support his claim to have been tortured and properly noted the absence of any medical evidence in support of the causation or timing of the scarring.
52. Ms Patel in her submissions to this tribunal repeated the submission that she made to Judge Caswell and which was recorded at paragraph [22] that several years after the event there would be little value in obtaining such a report. Mr Kotas has made the point that the colour photographs showed what could be described as legions but that it was not clear on the photographs whether they were birthmarks or what in fact they were. The assertion by the appellant did not take matters any further and this is why expert evidence is necessary. He submitted that it would have been an error for the judge to make an assessment of the scars as corroboration of his account in the absence of expert evidence. I agree with that submission. Whilst judges of the FtT are likely to have experience in considering scarring it is in the context of expert evidence which is undertaken by taking account of the Istanbul Protocol and setting out the likely causation of the injuries and the consistencies of those injuries taken in the context of the account given by the particular appellant. In this appeal there was no such evidence before the FtT and thus it cannot be said that the FtT was in error in making no further assessment of those photographs.
53. I now turn to the last ground advanced on behalf of the appellant and this relates to paragraph 8 of the grounds where it is said that the judge failed to make a finding on the previous attack upon the appellant which took place in 2012 - 2013 due to the activities of his uncle and aunt.
54. Ms Patel behalf the appellant submits the appellant gave an account in his interview at length where he described the nature of the attack, the people who were involved in the reasons for the attack. She also pointed out that he had provided documentary evidence that his family relatives had been granted refugee status in France as a result.
55. As Upper Tribunal Judge Keith observed when granting permission, the judge did record those issues at paragraphs [5] and [14] of her decision but did not make findings of fact upon that part of his factual claim.
56. Mr Kotas on behalf of the respondent accepted that the judge did not deal with the evidence relevant to those factual issues and further submitted that if this was material evidence that the judge had not considered which referred to his asylum claim and related to members of his family, he could not say that it was not material.
57. However he properly made 2 points. Firstly that the evidence did not account for the discrepancies identified by the judge and secondly the documents in the bundle did not demonstrate the basis upon which

the family relatives had been granted asylum. Thus he questions the materiality of this.

58. In my judgement those points made by Mr Kotas are entirely valid. However the point also relied upon by Ms Patel that this was a relevant part of the appellant's history and claim relating to have been targeted by the Seleka group in 2012 - 2013 in the light of his membership of the family. The interview questions identified by Ms Patel and accepted by Mr Kotas go into detail concerning the events that allegedly occurred in 2012 - 2013 and the reasons for the attack. The appellant had stated also made reference to some of the people responsible he had known from the local area. It is not the case of a passing reference in the appellant's claim, but detailed evidence was given in his interview about that attack and that it was this which had led to the appellant's relatives to leave the country and to subsequently claim asylum in France.
59. I have had to consider with care this omission from what was an otherwise very careful decision of the FtTJ. Having done so I consider that Mr Kotas was right to accept if material evidence had not been considered in relation to the appellant's asylum claim and which related to family members, it is difficult to say it could not be material to the outcome as it related to the overall credibility assessment.
60. Therefore having considered the second ground advanced on behalf of the appellant I am satisfied that the FtTJ fell into error in the way the ground sets out and given the central importance of credibility to the appellant's claim, the error was or could have been material to the outcome.
61. Consequently, I am satisfied that as this was a protection claim and thus the requirement of anxious scrutiny applied, the decision cannot stand.
62. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision should be set aside.
63. I have considered whether any of the factual findings can be preserved and in doing so have considered the decision in *AB (preserved FtT findings; Wisniewski principles)* [2020] UKUT 268. The decision makes it plain that there is no hard-edged answer to whether findings of fact have been "undermined" or "infected" by any "error or errors of law". The decision also identifies the legal error in the task of assessing an individual's overall credibility is in general likely to affect the conclusions as to credibility reached by the First-tier Tribunal. When looking at the decision in this appeal, the grounds of challenge sought to undermine the approach to the appellant's credibility taken by the FtTJ by reference to the omission of any factual assessment made relating to his account of events in 2021-

2013. Having considered this issue I have reached the conclusion none of the findings of fact should be preserved.

64. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

65. Ms Patel submits that the venue for hearing the appeal should be the FtT. I have carefully considered the submissions of the advocates and have done so in the light of the practice statement recited above and by reference to the appeal. It will be necessary for the appellant to give evidence and to deal with the evidential issues, and therefore further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant documentary evidence, and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the First-tier Tribunal for a hearing.

### **Notice of Decision**

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside. The decision shall be remitted to the FtT.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent.

Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds

Dated 26 August 2021