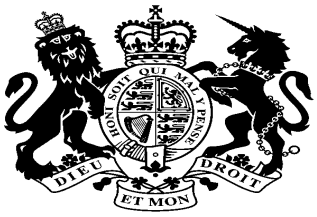

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-000185**

HU/04190/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 19 August 2022	**On 6 October 2022**

Before

Upper Tribunal Judge BLUNDELL
Deputy Upper Tribunal Judge MANUELL

Between

I S T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms G Capel, Counsel
(instructed by Sutovic and Hartigan Solicitors)
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Permission to appeal was granted by First-tier Tribunal Judge Cartin on 1 March 2022 against the decision to

dismiss the Appellant's Articles 3 and 8 ECHR private life appeal made by First-tier Tribunal Judge Sullivan in a decision and reasons promulgated on 29 December 2021.

2. The Appellant's true identity was a matter of contention. He claimed that he was a national of Guinea, born on 1 January 1952. He claimed that after his arrival in the United Kingdom on 2 January 2000 he had adopted the identity of David Decnerole ("DD"), a French national born on 12 October 1973, which identity the Appellant said he had used until 2017. On 10 July 2020, in what he claimed was his true identity as in the title of this appeal, the Appellant applied for leave to remain on long residence (twenty years) and on human rights grounds, with particular emphasis on his health. The application was refused by the Secretary of State for the Home Department on 29 July 2021.

3. Judge Sullivan found that the Appellant had not proved that he had remained in the United Kingdom continuously for a period of at least 20 years, in either of his claimed identities. He could return to Guinea without encountering very significant obstacles. He would have access to adequate health care provision for his HIV+ and heart condition in Guinea. His private life could continue. There were no exceptional circumstances and there was no Article 8 ECHR disproportionality, within or outside the Immigration Rules. Hence the appeal was dismissed.

4. Permission to appeal granted by First-tier Tribunal Judge Cartin because it was considered arguable that the judge had failed to treat the Appellant as a vulnerable witness and to consider what impact his vulnerability may have had on his evidence. Permission to appeal was granted on all grounds. No less than eight material errors of law were asserted in those grounds – (1) failure to treat the Appellant as a vulnerable witness; (2) failure to apply AM (Zimbabwe) [2020] UKSC 17 in relation to the Article 3 ECHR claim; (3) inadequate assessment of the evidence of the availability of cardiac treatment in Guinea, (4) inadequate assessment of the Appellant's private life claim, (5) inadequate findings as to the Appellant's identity, (6) procedural unfairness, (7) inadequate findings as to the evidence of long residence and (8) inadequate findings as to the gaps in such evidence.

5. Ms Capel for the Appellant applied for leave to amend the grounds in order to add a further ground, namely that the judge had erred on a question of fact, namely her understanding of the evidence concerning healguru.in, a healthcare website, referred to in the determination. The application was opposed by Mr Clarke, who (among other matters) pointed to the lateness of the application. We granted the application despite its admitted if not extreme lateness, mainly because it related to a matter of interpretation of evidence previously served and so did not raise any new issue which placed Mr Clarke in any real difficulty.

Submissions

6. Ms Capel (who had not drafted the onwards grounds) indicated that she placed no reliance on ground (5), the identity point. Otherwise she relied on the grounds submitted and the grant of permission to appeal. Addressing first grounds (2) and (3), counsel argued that the judge had reached inadequate findings on the medical evidence as to the availability of treatment for the Appellant in Guinea, and as to the suffering the Appellant would face in the absence of such treatment which would exceed the AM (Zimbabwe) (above) threshold. The Appellant's condition required regular monitoring as well as a number of different drugs. It was unclear whether substitute drugs were available in Guinea. There were no proper findings about cardiac care in Guinea and the consequences of its absence.

7. Turning to grounds (1) and (6), in essence both procedural fairness points, counsel submitted that the judge had erred in her treatment of the evidence surrounding the identity card. The actual conduct of the hearing was not criticised. The Appellant's vulnerability had not been factored into the evaluation of the assessment of the evidence. The Presidential Guidance had not been followed. The judge should have raised her concerns at the hearing, in accordance with MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC).

8. As to ground (7), the judge's long residence findings, counsel submitted that these were inadequate. There was no finding as to how long the Appellant had been in the United Kingdom. This error compounded the judge's failure to address paragraph 276ADE(1)(vi) of the Immigration Rules, the very serious obstacles to the Appellant's reintegration into Guinea, as part of the evaluation of the Appellant's private life claim. The

judge's determination was unsafe and should be set aside. The error of law appeal should be allowed.

9. At the tribunal's invitation, Mr Clarke for the Respondent limited his submissions to the challenge set out in grounds (2) and (3). He submitted that there was no material error of law in the First-tier Tribunal's determination and the judge's findings had all been available to her. The GP's letter on which reliance had been placed for the Appellant was ambiguous and gave no information about pain or imminence of death. It was plain from the determination that the judge had given the letter full consideration. The judge had set out the relevant test and had also given full consideration to the care which the Appellant would be able to access on return to Guinea. There had been no evidence that the Appellant was unable to work. It could not be an error for a judge to fail to address evidence which was not before her. The heart failure treatment issue in ground (3) had been properly examined and sustainable findings reached. The onwards appeal should be dismissed.

10. Ms Capel reiterated the points she had made earlier by way of reply. Article 3 ECHR would be breached by the Appellant's removal.

Discussion

11. The grant of permission to appeal was in the tribunal's view an over generous one. The grounds supporting the application were unacceptably long, at 14 pages nearly as long as the judge's decision which was of 15 pages. Grounds of such length are rarely of assistance to anyone, as Hickinbottom LJ explained at [52] to [59] of Harverye v Secretary of State for the Home Department [2018] EWCA Civ 2848. Part of the length was caused by the summary of the judge's decision, but such summaries are unnecessary as the decision under appeal will invariably be read by the judge considering the permission to appeal application. What is needed is a clear and succinct identification of one or more arguable material error(s) of law. That the prolix grounds signally failed to achieve and Ms Capel (who was not responsible for the grounds) was right to attempt to attempt to reformulate them.

12. The newly added claim of a mistake of fact, based on an alleged misreading or misunderstanding by the judge of a web page, took the Appellant's case no further. From

[43(a)] of the determination it is clear that the judge gave no weight to the webpages in question, which were advertising blurb for an Indian medical company: "The only conclusion I feel I can safely draw from this webpage is that there is an Indian based company purporting to offer affordable cardiac care in Guinea". The word "purporting" shows that the judge was under no illusions about the provider, as indeed the ironic extracts from the sales hyperbole indicate. The findings as to medical facilities in Guinea were mainly in [42] of the determination, in particular the finding that there are well stocked pharmacies in Conakry, obviously directly relevant to the Appellant as his heart condition and HIV+ are controlled by drugs.

13. The mistake of fact submission led into the submission that the judge had not dealt adequately with the medical evidence as a whole, i.e., ground (2). As it is often necessary to point out in error of law hearings, determinations must be read as a whole. The judge's observation that the doctors who provided reports seemingly failed to notice that the Appellant was fully twenty years older than the age he had previously claimed to be was highly relevant to the evaluation of the medical evidence. It is well known that estimating age accurately is not an exact science, but a gap of twenty years is a large one and obviously has a direct bearing on the diagnosis of any patient as well as on identification issues which arose in this appeal: see [29] of the determination.

14. The judge's detailed discussion of the medical evidence, of which there was a considerable volume, begins at [35] of the determination, and continues at [38] to [40]. It is clear that the judge had studied all the medical evidence in depth, so was entitled to find that it failed to show that deterioration in the Appellant's health on return to Guinea if his medication were interrupted (which as the judge explained need not be the case) would be rapid or irreversible, such that it would create an imminent risk of death or intense suffering, i.e., the AM (Zimbabwe) (above) threshold would not be breached.

15. The contention that the judge had not dealt with the Appellant as a vulnerable witness was palpably incorrect. At [9] of the decision the judge described the steps taken at the hearing which ensured compliance with the Joint Presidential Guidance on Vulnerable Witnesses. There was no suggestion that the Appellant

had been inhibited from giving evidence at his First-tier hearing for any reason. At [34] the judge records the clarification she sought from the Appellant about the proforma supporting witness statements which had been produced.

16. Ms Capel submitted that the judge had erred by failing to factor the Appellant's vulnerability into the assessment of his evidence, but that is plainly wrong for at least two reasons. There was no medical evidence to suggest that the Appellant's evidence was likely to be diminished by reason of his vulnerability (we note he is a graduate and is described as an "economist" in some of the documents he produced), or had any other problems of memory or articulation. At [19] the judge noted the types of problems that a person in the Appellant's position might face and clearly factored those into her assessment. Her treatment of the evidence relating to Article 3 ECHR issues demonstrated abundant anxious scrutiny.

17. Ms Capel submitted that the judge had failed to address paragraph 276ADE(1)(vi) of the Immigration Rules. Here it should be noted that no skeleton argument was provided at the First-tier hearing by the Appellant's representative who had to be reminded (see [13]) to confine her submissions to the evidence. As would be expected from an experienced judge, the obvious relevance of paragraph 276ADE of the Immigration Rules was identified early in her decision at [8], where the leading cases relevant to the issues raised in the appeal were stated together with their correct citations. At [49] the judge again referred to the Immigration Rules and whether they made sufficient provision or that the Appellant's removal would be unjustifiably harsh. We are satisfied that this final reference embraced all of the relevant elements of the Appellant's Article 8 ECHR private life claim, such as it was.

18. The judge reached full findings as to paragraph 276ADE of the Immigration Rules, including whether or not the Appellant would face very significant obstacles on return to Guinea where on his own case he had been educated and spent the larger part of his life. The judge discussed living conditions in Guinea in realistic terms drawn from the country background evidence, noting that the Appellant was not in the group said to be most affected by unemployment. The judge found that the Appellant had worked in the past in Guinea and had not made full disclosure of the extent of his past work in the

United Kingdom. There was no evidence before the judge to show that he was unable to work by reason of ill health and would be unable to support himself. He stated in evidence that he wished to undertake training or an internship if he remained in the United Kingdom.

19. There was no requirement for the judge to make any specific finding as to the length (whether unbroken or otherwise) as to the Appellant's stay in the United Kingdom. It was for the Appellant to prove that he had been in the United Kingdom for 20 years and the judge gave cogent reasons for finding that the Appellant had failed to do so. The judge amply explained why she made that finding: see [36] and [37] of the decision. The judge was entitled to give little weight to the series of proforma and brief witness statements, nearly identical in form, all provided by persons who failed to attend the hearing and whose limited evidence was untested.

20. The evidence and submissions advanced on behalf of the Appellant were all fully dealt with and disposed of by the experienced First-tier Tribunal Judge in the course of a comprehensive and careful decision. The judge accepted without question that the Appellant was a vulnerable witness and ensured that the Appellant was treated in accordance with Presidential Guidance and the Equal Treatment Bench Book.

21. In the tribunal's judgment the experienced First-tier Tribunal Judge reached sustainable findings, in the course of a balanced determination, which securely resolved the issues. The prolix grounds amount to nothing more than an extended disagreement with the judge's decision and reasons. The tribunal finds that there was no material error of law and the onwards appeal must be dismissed. The anonymity direction previously made is undisturbed.

DECISION

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed **R J Manuell** **Dated** 24 August 2022

Deputy Upper Tribunal Judge Manuell