



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002274

First-tier Tribunal No: PA/02961/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ADENIYI KEVIN ADEJUMO
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 21 April 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Garrett ('the Judge'), promulgated on 7 February 2002, in which the Judge dismissed the appellant's appeal on all grounds.
2. The appellant is a male citizen of Nigeria born on 22 August 1987 who entered the UK lawfully on 10 February 2020 with a visa valid to 11 June 2020. The appellant was questioned on arrival by an Immigration Officer who was not satisfied the appellant was a genuine visitor, as a result of which he was interviewed and during the process the appellant claimed asylum. His application for asylum was rejected on 11 March 2020 and it was the appeal against that refusal which came before the Judge on both protection and human rights grounds.
3. Although the appellant appears before the Upper Tribunal without the benefit of legal assistance he was represented before the Judge by a very experienced member of the Immigration Bar based in Manchester.
4. Following receipt of the Judge's decision the appellant sought permission to appeal with the assistance of his then instructed representative. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis that

whilst the Judge accepted the appellant was a vulnerable witness, and allowed the application to treat him as such, the Judge's decision is arguably flawed as he then failed to consider the impact of such vulnerability in the appellant's ability to recall events accurately or his evidence generally, as required by the Joint Presidential Guidance Note No 2 of 2010, with particular reference to paragraph 10.3. The judge who granted permission found that the findings on credibility are arguably flawed as a result of the failure to properly assess the evidence in light of the accepted vulnerability of the appellant.

5. The Secretary of State opposes the appeal. In her Rule 24 response dated 19 May 2022 she writes:

3. The Appellant was clearly treated as a vulnerable witness, the challenge being that this was not factored into the credibility assessment.

4. The FTTJ rejected the Appellant's claim that his visa documents were manufactured [49- 'In particular I refer to information about the appellant's work and banking and his overnight booked accommodation'], the FTTJ cogently notes that the visa application was commenced in 2019 [51] and therefore preceded the core events now relied upon that the Appellant asserts took place in 2020 [7-8]. It is clear that the 2020 events could not have 'prompted the community chairman to arrange for the appellant to leave Nigeria' when this post-dated the visa application.

5. The Appellant's proffered explanation for discrepancies with the SI (never amended at substantive interview) related to language difficulties [52] rather than due to memory/recall problems due to any vulnerability. The SSHD contends that the FTTJ's assessment [54] was cogently open to them, in particular noting the absence of any death cert for the Appellant's father [56] and media evidence [57] where other evidence from Nigeria was adduced. The FTTJ raised valid concerns with the documentary evidence for the Appellant's mother's & daughter's death [58]. It is clear that these issues are unconnected to any potential vulnerability with the Appellant, they are based on independent evidence or the lack thereof by date of hearing for a legally represented Appellant.

6. The FTTJ's comment [60] is not more than the medical evidence may be supportive of the claim, that is not an acceptance that in reality it was reflective of the true claimed context. The FTTJ going on [61-62] to find that the PTSD/depression even if true cannot account for the 'highly inconsistent claim' Credibility remains a matter for the FTTJ (see SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC).

7. The SSHD will invite the tribunal to conclude no material error is disclosed.

Discussion and analysis

6. The first thing to note is that the Judge is a very experienced judge of the First-tier Tribunal with considerable experience of assessing evidence and in dealing with appeals involving vulnerable witnesses.

7. The Judge specifically refers at [22] to the application being made by the appellant's barrister for the appellant to be treated as a vulnerable witness, having regard to a medicolegal report compiled following a telephone examination on 27th May on 3 June 2020, which concluded that the appellant suffers from PTSD and depression. The Judge agreed to the request although noted the appellant's representative did not ask for any special arrangements for the appellant to enable him to give evidence. The Judge records, however, at [23] having granted a short adjournment when the appellant became unsettled during cross examination but that apart from this there were no further problems or issues.

8. The Judge was not required to set out the content of the Joint Presidential Guidance provided it was taken into account, where appropriate.

9. The Judge sets out his findings and reasons from [44] of the decision under challenge.

10. At [49] the Judge concludes that the appellant has not told the truth about his reasons for seeking international protection in the UK. Specific reference is made to the evidence produced by the respondent about the circumstances of the appellant's arrival of the UK with a visit visa when compared to his subsequent denials of what was said by him on arrival, which point to the conclusion that the appellant is an economic migrant. The Judge found as true in particular the information about the appellant's work in banking and his overnight accommodation booking, despite the appellant claiming otherwise.
11. The Judge finds it was the events that occurred on the appellant's arrival that led to him claim asylum, especially when he realised his claim that he had come as a tourist was seen as suspect, which gave rise to the asylum claim.
12. The appellant must have accepted that before the Judge that there are contradictions in his evidence, revealed by his responses in the screening interview when compared with his subsequent claim made in his asylum interview, witness statement, and elsewhere, which he claimed was because of the absence of a Yoruba interpreter at the time of his arrival in the UK, but the Judge rejects that explanation on the basis the appellant indicated his main language and dialect is English, the language of the interview, and that another language he spoke was Yoruba, and that the appellant's main and supplementary statements are in English, signed by him on the basis that they are correct and that he read them over, with no indication an interpreter was used.
13. The Judge also noted at paragraph 47 (c) of his main statement that the appellant made comment about the screening interview and specifically claimed to be illiterate which the Judge rejected on the basis the appellant was a person who had been employed in Nigeria, even becoming vice chairman of the motorcycle taxi organisation of which his father was president, and had stated he was educated to college level.
14. The Judge properly considered the documentary evidence provided but found no weight could be placed upon the same for which adequate reasons were given.
15. In relation to the medical evidence, the Judge finds as follows:
 60. The medical evidence suggests that inconsistencies and discrepancies in the appellant's evidence can be explained by the diagnosis of PTSD and depression. In relation to the Rule 35 reports, the appellant has suggested that the report confirms that he was a victim of torture by the police. However, the only conclusion that I can find is that the appellant 'may' have been such a victim.
 61. The possible link to the events which the appellant has described are the scarring which is recorded in the medical reports. However, that cannot be conclusive in showing that the appellant was ill treated by police during a period of 40 minutes on the day that his daughter was killed. The scarring must be seen against the further inconsistencies in the appellant's evidence about this event. It is questionable whether the appellant was going to meet his daughter at school or whether she was on her way home on her own. The appellant claims to have been very severely beaten by police and has maintained that he did not go to the police station. He infers that, because of the shot which may have been that associated with the death of his daughter, his torture ceased and he was taken by the police to hospital. Yet in paragraph 37 of his statement, the appellant says that he went to the police station although the police denied being responsible for his daughter's death.
 62. The medical evidence is based upon the appellant's own accounts which have, themselves, contained inconsistencies. If the appellant's claims could be considered to be true, then I accept that a diagnosis of PTSD and depression might well relate to the appellant's ill-treatment, the loss of a daughter and his parents but, even taking into consideration the diagnosis of mental illness, I am not satisfied that it can support the appellant's highly inconsistent claims.

(my emphasis)

16. I find the Judge therefore did consider the impact of the appellant's medical condition and diagnosis upon the weight that could be given to his evidence. The Judge identified a number of discrepancies in the evidence that could not be explained by the medical diagnosis/ presentation as a reading of the determination clearly shows. An example of this is the appellant's claims in relation to language and being illiterate when this is clearly contrary to other aspects of the evidence, and untrue.
17. I do not find it made out the Judge did not adequately consider the Presidential Guidance. The Judge's findings are adequately reasoned. The point to make is that such reasons only need to be adequate, not perfect.
18. When asked at the hearing what was wrong with the Judge's decision the appellant's reply was to indicate that he wanted to stay in the UK. He claims to have lost everything in Nigeria and to have nothing at all.
19. The Judge found the claim in relation to events in Nigeria provided in the evidence lacked credibility.
20. When the appellant was asked whether he had told the Judge about the matters he was alluding to he claimed he did not. If he had not told the Judge about other matters the Judge cannot be criticised for not taking them into account.
21. The appellant also claimed that the appeal process was making him have to remember what had happened to him in Nigeria, which was something he was finding very difficult. He stated that he had told the doctor what had happened to him but that "more stuff had come out since". Again, the appellant confirmed he told the Judge what had happened to him.
22. The appellant stated he disagreed with the Judge's finding that he was not telling the truth repeating that he was telling the truth, but that is no more than a disagreement with the Judge's assessment of the evidence.
23. The difficulty for the appellant is that having assessed the evidence with the required degree of anxious scrutiny, including taking into account the appellant's medical needs, the Judge has found there was insufficient evidence to support the appellant's case.
24. Having considered the matter very carefully I have come to the conclusion that the appellant has not established that the Judge has erred in law in a manner material to the decision to dismiss the appeal.

Notice of Decision

25. No legal error material to the decision of the First-tier Tribunal has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 April 2023