IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-002280
First-tier Tribunal No: PA/01207/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HELDER DA CONCEICAO LOPES
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr Tony Melvin, Senior Home Office Presenting Officer
For the Respondent: Ms E Stuart-King, Counsel instructed by Duncan Lewis and Co

Heard at Field House on 18 March 2024

Although the Secretary of State is the appellant in this appeal, for ease of reference I shall refer hereafter to the parties as they were before the First-tier Tribunal.

DECISION AND REASONS

1. The Secretary of State appeals from the decision of First-tier Tribunal Judge Bird promulgated on 28 February 2023 ("the Decision"). By the Decision, Judge Bird allowed on human rights grounds the appellant's appeal against (a) the initial decision of the Home Office made on 10 September 2020 and (b) the undated supplementary decision of the Home Office made in or about August 2022 pursuant to the directions of the

First-tier Tribunal dated 27 May 2022, to refuse the appellant his protection and human rights claims and also to refuse to revoke a deportation order signed on 22 January 2018, pursuant to which the Secretary of State was seeking to deport the appellant to Angola.

Relevant Background

2. The appellant is a foreign criminal who has used multiple false identities and who is liable to deportation having, between 11 October 1996 and 6 March 2014, amassed 13 criminal convictions for 18 offences, culminating in a conviction at Truro Crown Court on 6 March 2014 for the offence of wounding with intent to do grievous bodily harm, for which the appellant was sentenced to 8 years' imprisonment.

3. The Secretary of State's case in the supplementary decision letter was that the appellant was believed to be an Angolan national, whose date of birth was 3 July 1974, and whose name had been confirmed by the Angolan authorities as being Helder da Conceicao Lopes ("HCDL"). This was following an interview between the appellant and the Angolan Consulate General on 13 November 2019: see the supplementary decision, para 82.

4. As stated in the supplementary decision letter at para 75, following the interview on 13 November 2019 the Angolan authorities confirmed that he was an Angolan national with the above details, and agreed to issue him with an emergency travel document ("ETD") in order to facilitate his return to Angola. A copy of the letter from the Angolan authorities confirming their agreement to issue an ETD to the appellant was said to be attached.

5. By the time of the appeal hearing, the Secretary of State had modified her position that the appellant's true date of birth was 3 July 1974. As a result of further information received from the Angolan Consulate General in August/September 2022, her alternative case was that the appellant's true date of birth was 25 January 1966.

The Hearing Before, and the Decision of, the First-tier Tribunal

6. The appellant's appeal came before Judge Bird sitting in the First-tier Tribunal at Yarl's Wood on 23 January 2023. Both parties were legally represented, with Ms Stuart-King appearing on behalf of the appellant.

7. In her ASA for the hearing dated 23 January 2023, Ms Stuart-King submitted that the appellant was born on 22 September 1969 in what was then the Portuguese province of Angola. In 1974, when he was 5 years old, he moved with his family to Portugal to avoid the civil war in Angola. Angola gained its independence from Portugal in 1976. The appellant's parents were given leave to remain in Portugal as returnees, and subsequently obtained Portuguese nationality. When the appellant was 18 years of age, he was issued with a five-year residence card which was

valid from 1987 to 1992. He renewed this in 1992 and was issued with a further five-year residence card until 1997. After spending some time in other European countries, he arrived in the UK in January 1995. In 2006, the appellant attempted to return to Portugal, in the hope of renewing his residence card there. He obtained a fake EU residence card in the name of Paulo Veiga. He was detained by immigration officials at Dover, and on 22 December 2006 he was convicted of possession of false documents and sentenced to 8 months' imprisonment. On 21 March 2007 the appellant had an interview with the respondent during which he disclosed his true name and date of birth. He provided the respondent with a copy of his Angolan birth certificate.

8. Ms Stuart-King submitted that the first issue to be determined in the appeal was whether or not the appellant was an Angolan national, or was entitled to Angolan nationality. The appellant maintained that he had no such entitlement. The respondent claimed to have obtained an agreement with the Angolan authorities for the appellant to be issued with an ETD in the name of Helder da Conceicao Lopes ("HDCL"), but with alternative dates of birth. She submitted that the question of the appellant's entitlement to Angolan nationality was determined by the balance of probabilities. As the appellant had exhausted all reasonable steps in proving his nationality, the Secretary of State was required to take reasonable steps to provide the necessary evidence for the matter to be determined, citing *AS (Guinea) -v- SSHD* [2018] EWCA Civ 2234.

9. In her summary at paras 30 and 31, Ms Stuart-King submitted that the appellant was not a national of Angola and could not be removed there. The decision to remove him to that country was contrary to his rights under Articles 3 and 8 ECHR. Further and in the alternative, removing the appellant to Angola would cause significant harm to his mental health and might leave him destitute. This would be contrary to his rights under Article 3 ECHR and it would amount to very compelling circumstances, contrary to Article 8 EHCR.

10. In the Decision, Judge Bird recorded at para [16] that Ms Stuart-King had submitted at the outset that if the Judge found that the appellant was not an Angolan national, then he could not be returned to Angola, and the refusal of his asylum and human rights claims would fall away, as the appellant could not be deported to that country. Judge Bird also recorded that Mr Beer on behalf of the Secretary of State accepted that this was the correct approach.

11. At para [37] onwards, the Judge addressed the question of whether the appellant was entitled to Angolan nationality. She observed that the issues in the appeal had been complicated by the appellant using various identities which did not belong to him. The appellant had now accepted his true identity and had produced a birth certificate showing that he was born in Southern Angola on 22 September 1969. The appellant had produced this birth certificate in his documents, and it had been seen by

the Angolan Consulate General in the UK. On the basis of the birth certificate, the Consulate General notified the Home Office that the appellant was an Angolan national. There had, however, been conflicting statements from the Consulate on this issue.

12. The Judge noted that in their latest statement, they confirmed the appellant to be an Angolan national. However, no date of birth for the appellant was given, and certain aspects of the letter were redacted.

13. By way of contrast, the Judge went on to quote in full an earlier letter that had been written by the Consulate to the Home Office Immigration Enforcement Unit on 26 January 2022. In that letter, the Consulate said that the data provided did not comply with the necessary requirements to confirm the appellant's Angolan nationality, or even the nationality of his parents. Besides that, the appellant did not have any Angolan identity card or passport, and the copy of the birth certificate provided was "*not eligible and certified.*" Therefore, the Consulate regretted to inform the Home Office that it was impossible to issue any document to prove the appellant's Angolan nationality.

14. The Judge observed that this document categorically denied the appellant's Angolan nationality, despite what was subsequently said in a very brief redacted statement, that the respondent sought to now rely upon.

15. At para [49], the Judge held that the document sought to be relied upon by the respondent contradicted an earlier document which stated that he was not an Angolan national, and gave the reason why. Therefore, she said she preferred the letter that had been provided to Immigration Enforcement in January 2022 by the Angolan Consulate General.

16. The Judge held at para [51] that, in light of what was said by the Country Expert, Dr Amundsen, it was unlikely that the appellant would be able to acquire Angola nationality, because he would not be able to prove his entitlement.

17. At para [53] the Judge concluded that at present the appellant had no nationality and was unable to return to the country of his birth.

18. At paras [55] to [63], the Judge gave reasons as to why there were very compelling circumstances which outweighed the public interest in the appellant's deportation to Angola.

The Reasons for the Grant of Permission to Appeal

19. Judge Mills held that the challenge disclosed arguable errors of law in the Judge's decision. In particular, it was arguable that the Judge had erred in failing to take the most recent information from the Angolan authorities as being their current position on the appellant's Angolan nationality.

The Rule 24 Response

20. In the Rule 24 response dated 30 January 2024, Ms Stuart-King gave the appellant's reasons for opposing the appeal.

21. As to Ground 1, the evidence presented by the Secretary of State was contradictory, and failed to take into account the existence of Mr Lopes's birth certificate, which the Secretary of State at no point challenged as being a forgery or as not belonging to Mr Lopes.

22. Even if (which was denied) Judge Bird made an error of law in her reasoning, there was no material error, as there was no other rational conclusion that the Judge could have reached from the evidence before her, as the evidence relied upon by the Secretary of State was not sufficiently probative to demonstrate that the appellant's date of birth was 25 January 1966.

23. As to Ground 2, Judge Bird had expressly referenced the public interest in the fact that the appellant had been convicted of a very serious offence. While she did not break down her analysis to discuss revulsion and deterrence etc, it was clear that she considered and balanced the public interest against the difficulties that the appellant would encounter on return.

24. In summary, the grounds amounted to no more than an expression of disagreement with the First-tier Tribunal, and they revealed no material error of law.

The Hearing in the Upper Tribunal

25. At the hearing before me to determine whether an error of law was made out, Mr Melvin developed the grounds of appeal which had been settled by a colleague. With the assistance of both representatives, I identified within the composite bundle, which runs to 909 pages, the location of the key documents.

26. On behalf of the appellant, Ms Stuart-King developed the reasons she had given in the Rule 24 response for opposing the appeal on the two grounds raised.

27. After briefly hearing from Mr Melvin in reply, I reserved my decision.

Discussion and Conclusions

28. As the grounds of appeal impugn the Judge's reasoning process, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS*

compliance - "Issues-based reasoning") Zimbabwe [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

Ground 1

29. Ground 1 is that the Judge failed to give adequate scrutiny to the Angolan authorities' change of mind, as set out in correspondence received from the Angola High Commission on 9 August 2022, which was recorded in a CID Note of 6 September 2022.

30. The grounds of appeal set out the content of the CID Note of 6 September 2022. According to the CID Note, the appellant's name was confirmed as HDCL and his date of birth was confirmed as 25 January 1966.

31. It is pointed out in the grounds of appeal that this evidence post-dates the evidence of January 2022, on which the Judge relied at para [46] and it is submitted that the Judge failed to factor into her consideration process an assessment of the appellant's credibility, having regard to the litany of his dishonest dealings with the Home Office. As a consequence, it is submitted that the Judge's finding at para [53] - that the appellant is stateless – was not reached by the very careful analysis that the Upper Tribunal said was required on the issue of statelessness, in *R(Semeda) -v- SSHD* [2015] UKUT 658 (IAC).

32. As was clarified during the hearing before me, Ground 1 is flawed in relying on the CID Note, as this CID Note was not placed before Judge Bird. What she had was an undated letter from the Consulate General addressed to the Home Office UK Border Agency. The letter reported the results of the cases interviewed between 27 November 2019 and 29 January 2020. Sandwiched between three redacted entries, there was an unredacted entry for HCDL (ref: V1069946). The unredacted entry went on to state that: *"We confirm that [HDCL] is an Angolan citizen."*

33. Although the document itself did not state the appellant's date of birth, the ASA referred to a letter from the Secretary of State dated 16 January

2023, which said that the Angolan authorities had stated in August 2022 that the appellant's date of birth was 25 January 1966.

34. I consider that the Judge misdirected herself in her assessment of the evidence in two material respects.

35. Firstly, she misdirected herself at para [39] in taking as her starting point the proposition that it was not now in dispute that the appellant was born in Angola on 22 September 1969. On the contrary, as was acknowledged by Ms Stuart-King in the ASA, this was not accepted by the respondent. In the supplementary decision letter, the respondent gave reasons as to why the birth certificate was not reliable, and adhered to the case that the appellant had in fact been born in 1974. As was also acknowledged in the ASA, the Secretary of State was now asserting an alternative date of birth of 25 January 1966, as this was the date of birth that the Angolan authorities now assigned to the appellant, as from August 2022.

36. There was no legal burden on the Secretary to State to prove that the birth certificate was a forgery or to prove that the appellant was not born on 22 September 1969. But in any event, the Judge did not purport to resolve the dispute over the appellant's true date of birth on the basis that she preferred the evidence of the appellant on this issue over that emanating from the respondent or the Angolan authorities. The Judge simply treated the appellant's asserted date of birth of 22 September 1969 as being an agreed or indisputable fact, and she was wrong to do so.

37. Ms Stuart-King submits that on the evidence as it stood – and as it still stands currently - the Judge could not rationally reach any other conclusion than that the date of birth of 25 January 1966 that was now allegedly being assigned to the appellant by the Angolan authorities was wrong, and that it could be a case of mistaken identity i.e. that the Angolan authorities have confused the appellant, who continues to insist that his true date of birth is 22 September 1969, with someone else who was born in Angola on 25 January 1966.

38. While it is true that there was – and is – no explanation from the Angolan authorities as to how they have arrived at a decision that the appellant is an Angolan national whose date of birth is 25 January 1966, and not 22 September 1969, this does not detract from the fact that by the date of the hearing they had confirmed in writing that they accepted that the appellant was an Angolan national. In addition, the fact that they had not revealed the internal processes which led to this confirmation, or to the decision that the appellant was born in Angola on 25 January 1966, did not entail that the Judge could not reach any other conclusion than that the date of birth assigned to the appellant by the Angolan authorities was wrong.

39. Moreover, even if the Angolan authorities had assigned the wrong date of birth to the appellant, it did not follow that that they were not sincere in their confirmation that he was an Angolan national.

40. The Judge's error in treating the appellant's claimed date of birth as an agreed or indisputable fact was highly material, as it clearly impacted upon the Judge's assessment of the probative value of the latest communication from the Angolan authorities. It led the Judge to treat their earlier rejection of the appellant's postulated Angolan nationality as being more authoritative, precisely because the latest communication did not include confirmation of what the Judge had already wrongly decided was definitely the appellant's true date of birth. The Judge's other reason for giving the earlier rejection letter decisive weight was because it contained an explanation as to why the data provided did not comply with the necessary requirements to confirm the appellant's Angolan nationality. The Judge thereby failed to recognise that her reasoning was internally contradictory.

41. Part of the stated explanation given by the Consulate in January 2022 as to why they were refusing to confirm that the appellant was an Angolan national was that they did not accept that he had been born in Angola on 22 September 1969. As the Angolan authorities had expressly rejected the birth certificate relied upon to prove this date of birth, the logical inference that the Judge ought to have drawn was the opposite of her starting point. The Judge could not simultaneously hold the belief that the appellant's claimed date of birth was an established fact and the belief that the rejection letter was authoritative and should be given decisive weight, as the contents of the rejection letter contradicted the thesis (a) that the birth certificate was reliable and (b) that the appellant's claimed date of birth as shown in the birth certificate was indisputably correct.

42. Secondly, the Judge materially erred in law by wrongly reversing the burden of proof. In *AS (Guinea),* Lord Kitchin, giving the leading Judgement of the Court with which the other Judges agreed, reviewed the relevant principles and authorities relating to the issue of statelessness and concluded as follows at para [57]:

> "These authorities reveal a consistent line of reasoning. The person claiming to be stateless must take all reasonably practical steps to gather together and submit all documents and other materials which evidence his or her identity and residence in the state or states in issue, and which otherwise bear upon his or her nationality. The applicant ought also to apply for nationality of the state or states with which he or she has the closest connection. Generally, these are steps that can be taken without any risk. If, in the words of Elias LJ, the applicant comes up against a brick wall then, depending on the reasons given, the adjudicator will decide whether the applicant has established statelessness, and will do so on the balance of probabilities."

43. The appellant had not come up against a brick wall. On the contrary, on the evidence before the Judge he had come up against a temporary obstacle which the Secretary of State had now succeeded in removing. As a result of the Secretary of State pursuing enquiries of the Angolan authorities, the Consulate had renewed an earlier commitment to issue the

appellant with an ETD and had also communicated in writing their confirmation that the appellant was an Angolan national. It was thus not incumbent upon the Secretary of State, as the Judge went on to suggest, to obtain written confirmation from the Angolan authorities that they really meant what they had said.

44. On the contrary, in line with the above authority, there was a continuing burden on the appellant to apply for an Angolan passport from the Angolan Consulate. As the positive response from the Angolan authorities had only been disclosed relatively recently, arguably the appellant had not had sufficient time to test the reliability of the confirmation. However, equally it could not be said that, as at the date of the hearing before Judge Bird, the appellant had taken the necessary steps to show that the purported confirmation was hollow (because, for example, they had mixed him up with someone else who was born in Angola on 25 January 1966) and that, upon further inquiry, the Angolan authorities would renege on their implied undertaking to issue him with an Angolan passport and/or that they would renege on their express undertaking to issue him with an ETD so as to enable him to be removed to Angola where he would be received by the Angolan authorities as an Angolan national who was entitled to the rights and privileges of Angolan citizenship.

Ground 2

45. The premise which underlies Ground 2 is that the Judge did not make a free-standing finding that the appellant qualified for human rights protection on Article 3 EHCR grounds. This is also the premise of the Rule 24 response which does not seek to defend the Judge's findings on *"very compelling circumstances*" on the grounds that they also underpin a sustainable finding under Article 3 ECHR, and therefore the public interest is irrelevant.

46. Accordingly, I do not treat the Decision as containing a distinct or sustainable finding that the appellant's removal would be in breach of Article 3 ECHR, and I focus exclusively on the question whether the Judge failed to give adequate reasons for finding that the factors on the Article 8(1) side of the equation outweighed the public interest in his deportation as a serious offender.

47. In the decision letter at para 155, it was said that the nature and severity of the appellant's offending were factors which fully engaged the public interest in securing his removal from the UK, firstly, in order to prevent any further offending on his part; secondly, in establishing a deterrent to others; thirdly, in expressing society's revulsion of serious criminality; and fourthly, in building and maintaining public confidence in the consistent treatment of foreign criminals.

48. As Ms Stuart-King accepts, the Judge did not acknowledge the public interest in deterrence or the public interest in maintaining public

confidence in the consistent treatment of foreign criminals who have committed serious crimes. In consequence, I consider that the Judge did not give adequate reasons for her conclusion that the public interest in the appellant's deportation was outweighed by very compelling circumstances in the appellant's favour. Accordingly, Ground 2 is made out.

Future Disposal

49. In light of the errors of law that are made out, the appropriate course is for this appeal to be remitted to the First-tier Tribunal at Taylor House for a fresh hearing, with none of Judge Bird's findings of fact being preserved.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law, and accordingly the decision is set aside.

Directions

This appeal shall be remitted to the First-tier Tribunal at Taylor House for a fresh hearing, with none of the previous Judge's findings of fact being preserved.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
9 April 2024