



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003705

First-tier Tribunal No: PA/56052/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KF
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mrs. R. Arif, Senior Home Office Presenting Officer
For the Respondent: Ms. H. Masih, Counsel instructed by Braitch Solicitors

Heard at Birmingham Civil Justice Centre on 5 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision promulgated on 8 December 2023 I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade.
2. For the purposes of this appeal I refer to KF as the appellant, and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

The hearing

3. I heard oral evidence from the appellant. He was assisted by Mr. Gould, the interpreter, who confirmed before proceeding that they both fully understood each other. The language used was French. Both representatives made oral submissions. I reserved my decision.
4. I have taken into account the documents in the bundle provided for the remaking hearing (225 pages), and an updated skeleton argument. Although Ms. Arif had not received the bundle, it does not contain any new material, and she confirmed that she was ready to proceed.

Issues before the Tribunal

5. As stated in my error of law decision at [28] there was no cross-appeal against the finding that the appellant's claim did not fall within the Refugee Convention. This finding was therefore preserved. Therefore, although it was submitted in the skeleton argument that the appeal should be allowed on asylum grounds, it was confirmed at the start of the hearing that the appeal was brought on humanitarian protection, and human rights grounds, Articles 3 and 8, only. Ms. Masih submitted, in relation to Article 8, that the appellant met the requirements of paragraph 276ADE(1)(vi) of the immigration rules.
6. The appellant's account of events in Guinea and of his journey to the United Kingdom is accepted by the respondent. The respondent does not accept that there is a risk on return to the appellant on account of these events or on account of his personal circumstances.
7. The appellant is required to show that there are substantial grounds for believing that, if returned to Guinea, he would face a real risk of suffering serious harm, in which case he is to be granted humanitarian protection. Alternatively, he is required to show that returning him to Guinea would cause the United Kingdom to be in breach of its obligations under the ECHR, as he would be subject to a real risk of torture or inhuman or degrading treatment or punishment of sufficient severity to engage Article 3, or that the decision would breach his right to a private life under Article 8.

Decision and reasons

8. The appellant arrived in the United Kingdom on 16 September 2019. At the time he was 15 years old. He claimed asylum on 9 October 2019, but no decision was made on his claim until 19 December 2022, some three years later, when he had just turned 19 years old. He was therefore not granted leave as an unaccompanied asylum seeking child.

Humanitarian protection and Article 3

9. I find that the appellant has no identity documentation from Guinea, be that a birth certificate, a passport, or a national ID card. In his decision, the respondent stated when considering internal relocation:

“62. The source goes on to say that ‘The government requires all citizens older than 18 to carry national identification cards, which they must present on request at security checkpoints’.

63. According to external information, Guineans are able to obtain their passports from embassies, and the law permits Guineans to obtain replacement birth certificates.

64. Based on the individual circumstances of your claim and the background information set out above, it is considered reasonable to expect you to relocate to another area of your home country, such as Camayenne or Nzerekore.”

The respondent cited the following documents:

“USSD, 2021 Country Report on Human Rights Practices: Guinea, section D”.

“Refworld | Guinea: Passports and identity cards, including format; requirements and process for obtaining a passport and an identity card, both in the country and abroad; shortage of passports and identity cards (2014-September 2017); Refworld | Guinea: Requirements and procedure to obtain a birth certificate extract, including from abroad; information indicated on the document; incorrect or fraudulent birth certificate extracts (2009-September 2016)”.

10. I have carefully considered the background evidence relating to documentation and ID cards in Guinea. Ms. Masih referred me to the Refworld report cited by the respondent - “Guinea: Passports and identity cards, including format; requirements and process for obtaining a passport and an identity card, both in the country and abroad; shortage of passports and identity cards (2014-September 2017)”, (the “2017 Refworld report”). In relation to passports, at 1.2 under the heading “Requirements and Process for Obtaining a Passport Abroad” it states that “applications for biometric passports have to be made in person, which makes it difficult for Guineans in other countries whose passports have expired to obtain one”. There are “enrolment missions” when passports can be obtained from abroad.

11. In relation to the documents needed it states:

“According to sources, the following documents are required to obtain a biometric passport in Germany, Belgium, Canada, Spain, France and the United Kingdom:

- a copy of a birth certificate extract [or judgment in lieu of a birth certificate and its transcription (Guinea n.d.)];
- a copy of the consular card;
- two identity photographs with a white background;
- a form to be completed, which is to be supplied by the enrolment team (Guinée 360 12 Apr. 2016; Guinea n.d.).”

12. The appellant is not in possession of a birth certificate to be able to obtain a passport from abroad. In relation to the appellant’s lack of a birth certificate, I was referred to the Refworld report entitled “Guinea: Requirements and procedure to obtain a birth certificate, including from abroad; information

indicated on the document; incorrect or fraudulent birth certificate extracts (2009-September 2016)” (the “2016 Refworld report”). This sets out Article 183 from the Guinean Civil Code as follows:

“Aside from the public prosecutor, the child, direct ascendants and descendants, the spouse, and the guardian or legal representative, no person, if they are a minor or incapacitated, may obtain a true copy of a birth certificate other than their own, without authorization issued at no cost by the president of the civil jurisdiction of the region where the certificate was received and upon written application by the person concerned.”

13. It then states that “in order to obtain a birth certificate extract, an individual must contact the city hall of their place of birth and, upon presentation of a piece of identity, apply for a duplicate of their birth certificate”.
14. There is then information about obtaining an “auxiliary ruling” in the absence of a birth certificate, when “a birth is not declared within the legal deadline”. In order to obtain one an applicant must go to court, and provide “a handwritten letter indicating their filiation, in particular, the surname, given names, profession and place of residence of their father and mother. Proof of identity for the applicant, required by the court of first instance, may include the family booklet, the military booklet or testimony of relatives.”
15. At 3.2 under the heading “Requirements and Procedure Abroad” it states:

“in order to apply for a birth extract from abroad, power of attorney may be given to someone so that they may apply for the birth extract in the municipality of the birth. It is not possible to obtain a birth extract in any other way from abroad. For example, an embassy is not legally authorized to issue a birth extract)

According to that same source, the documents required to give power of attorney to someone are: a photocopy of the applicant’s piece of identification and a written declaration from the applicant authorizing the individual to request the birth extract (ibid.).”

16. The appellant said that he did not know whether he had had a birth certificate. Ms. Masih submitted that, as the appellant had attended school in Guinea, he had probably had a birth certificate as one is required to access education. This would mean that an “auxiliary ruling” would be of no use to the appellant if his birth was declared within the legal deadline”.
17. The evidence above shows that in order to obtain a birth certificate the appellant would have to return to “the city hall of their place of birth and, upon presentation of a piece of identity, apply for a duplicate of their birth certificate”. From abroad, the appellant would have to give power of attorney to someone to obtain it, but he could only give power of attorney by providing “a photocopy of the applicant’s piece of identification”, and he has no identification. He therefore could not obtain a birth certificate from abroad so as to be able to obtain a passport from abroad. Neither could he obtain one in person in Guinea.
18. At 2.1 the 2017 Refworld report sets out the requirements and process for obtaining a national ID card. It states that an applicant:

“must go to the police station in their region, pay a fee of 15,000 GNF [approximately C\$2] and provide the following documents: a birth certificate extract, four recent photographs, a residence certificate and, if there is any doubt

about the applicant's nationality, a nationality certificate. [.....] Sources add that the applicant must appear in person and undergo an interview, and must also provide a fiscal stamp in the amount of 5,000 GNF.”

19. I have found above that the appellant does not have a birth certificate extract or the means to obtain one.
20. Ms. Masih referred me to the US State Department Human Rights Report 2022. Section 2(d) is entitled “Freedom of Movement and the Right to Leave the Country”. This states:

“In-country Movement: The government requires all citizens older than 18 to carry national identification cards, which they must present on request at security checkpoints”.
21. She referred to the advice on the FCO website which states:

“Police and local militia maintain checkpoints across the country. They check vehicle and passenger documentation and baggage. Corruption and extortion are common at roadblocks.”
22. The appellant gave evidence at the hearing that a national ID card was needed to work, to get accommodation, to travel and at check points. Although he had not needed one in Guinea as he had left before he turned 18, he gave evidence that he had seen others being asked for their ID. This is consistent with the background evidence provided.
23. I find that the appellant is not in contact with anyone in Guinea. The appellant’s father died in 2017. He had been living with his mother and maternal grandmother as his parents had separated. When he returned to his father’s village for the funeral ceremonies he was kept there and forced to live with his step-mother. It was at this point that he became a victim of domestic abuse at the hands of his step-mother, as accepted by the respondent.
24. The respondent has accepted the appellant’s account of his journey to the United Kingdom. The appellant’s mother died while the appellant was travelling to the United Kingdom. He travelled with his maternal uncle but they were separated in Italy and he has not seen him since. He said that his uncle had not had a mobile phone when they were in Italy and he did not know his phone number from Guinea. I accept this evidence. The appellant was 15 years old at the most when he left Guinea, some four and a half years ago. I would not expect him to remember the Guinean phone number for an uncle who he last saw in Italy in 2019.
25. It was submitted by Mrs. Arif that the appellant could try to make contact with his relatives in Guinea so that they could assist him to obtain his documentation. Ms. Masih submitted that until this point, the respondent’s position had been that the appellant would have no need to contact his family, as he was an adult who could relocate without their support. The suggestion that he could contact his family would bring him into direct contact with those who had previously ill-treated him, and it was not reasonable to expect him to make contact with his abusers.
26. I find that there is no suggestion in the decision letter that the appellant should have to get in contact with people who the respondent has accepted abused him

in Guinea. The respondent accepted that the appellant had a fear of returning to Banko [59], where his father's family live, but found that he could relocate. He did not in the decision letter suggest that the appellant should return to Banko as he considered that the appellant could relocate elsewhere in Guinea [64], and obtain ID documents himself.

27. The respondent has not addressed how the appellant could obtain a national ID card in the decision letter, but by citing evidence that the appellant could obtain a passport and replacement birth certificate, assumed that he would be able to obtain his national ID. This is the extent of his consideration of the issue. There is no consideration of the processes or requirements. As set out above, he would need a birth certificate extract, which he cannot obtain from abroad as he cannot give power of attorney to anyone as he does not have any ID. He cannot obtain it in Guinea as he has no identity to present in order to apply for a duplicate birth certificate. The whole procedure is circular. Without one document, he cannot obtain the other.
28. In relation to the suggestion made for the first time at the hearing that the appellant could make contact with his paternal family, this would only be of any use if his family had, and were prepared to give him, his birth certificate. In order to apply for an auxiliary ruling, if this were possible in the event that he never had a birth certificate, the family would have to give him the family booklet, the military booklet or themselves give testimony. The appellant last saw family members over five years ago when he ran away from them due to the abuse he was receiving. It is not reasonable to expect him to return to them. Although he is no longer a child, he would still be vulnerable to exploitation by them, especially as they would know that he was in a position where he could not obtain any of the documentation needed to live in Guinea without their help. He is not in contact with any maternal family. His mother has died and he does not know the whereabouts of his maternal uncle. They were powerless when he was forced to live with his paternal family and subjected to domestic abuse.
29. I find that the appellant would therefore be unable to obtain a national ID card. I find that there is a risk of harm to the appellant without an ID card. He would be in danger at checkpoints, as set out above. Without it he would not be able to access employment or accommodation. There is a real risk that he will become destitute. He does not have any family support. He left Guinea as a child and has never lived there as an adult. He has no other support network. He has never been employed in Guinea. The respondent said in his decision that the appellant was "reasonably educated". It is not clear what he means by this, but I find that the appellant attended school only until he was "the age of 12/13". He has studied English in the United Kingdom but that is all. He has no qualifications or employment experience. In addition to not having an ID card, he has no skills which would enable him to find employment.
30. I find that without a national ID card the appellant is at risk of harm, destitution and exploitation. I find that there are substantial grounds for believing that, if returned to Guinea, he would face a real risk of suffering serious harm and is entitled to humanitarian protection. For the same reasons, he is at risk of suffering treatment contrary to Article 3.

Article 8

31. I find for the same reasons as set out above in relation to Article 3 that the appellant has shown that he meets the requirements of paragraph 276ADE(1)(vi). I find that the appellant has shown that there would be very significant obstacles to his integration into Guinea and that he would not be able to establish a private life in Guinea. In particular I have taken into account that the appellant left Guinea as a child having escaped from a situation of domestic abuse. He has never lived there as an adult. He is not able to obtain the documentation required to travel safely and to access accommodation and employment. He has no family or other support network in Guinea. He has not had any contact with anyone in Guinea since he spoke to his mother when he was in Algeria on his way to the United Kingdom. She has since died. He has had no contact with his uncle since they were separated in Italy. He is supported in the United Kingdom by social services. He said that they did everything for him including providing his accommodation and ensuring that he has enough money to eat etc. They arrange all appointments for him and give him advice. He was accompanied by a support worker at the hearing. He would not have any support in Guinea at all.
32. Following the steps set out in Razgar [2004] UKHL 27, I find that the appellant has been in the United Kingdom for over four years. He arrived when he was still an minor. He has built up a private life during this time sufficient to engage the operation of Article 8. I find that the decision would interfere with his private life.
33. I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.
34. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the Appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules so there will be no compromise to effective immigration control by allowing his appeal.
35. Following TZ (Pakistan) [2018] EWCA Civ 1109, I find that the appellant's appeal falls to be allowed. This case states at [34]:-
- “That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed.”
36. In line with this, the headnote to OA and Others (human rights; 'new matter': s.120) Nigeria [2019] UKUT 00065 (IAC) states:
- “(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a

particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied.”

37. The appellant used an interpreter but I find that he can speak some English (section 117B(2)). He is not financially independent (section 117B(3)). Although section 117B(4) provides that little weight should be given to a private life where a person has not had leave I find that the appellant came to the United Kingdom as a child. He was not granted leave as an unaccompanied asylum seeking child owing to the respondent’s delay of over three years in considering his claim. Had the respondent considered the appellant’s claim without this delay, he would have been granted leave to remain. Instead he was left as a minor without status. Sections 117B(5) and (6) are not relevant.
38. Taking all of the above into account, I find that the appellant has shown that the decision is a breach of his right to a private life under Article 8.

Decision

39. The appeal is allowed on humanitarian protection grounds.
40. The appeal is allowed on human rights grounds, Articles 3 and 8.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
10 March 2024