



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: DA/00036/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3 November 2014**

**Determination
Promulgated
On 11 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

**Between
MISS ALICE MUKAKA
(Anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Miss Dhaliwala of Counsel
For the respondent: Mr Smart, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with permission to the Upper Tribunal against the determination of First-tier Tribunal Judge Grimmett sitting with Dr Tokitipi promulgated on 22 July 2014, dismissing the appellant's appeal against the decision of the Secretary of State made on 16 December 2013, to deport her from the United Kingdom under section 32 (5) of the UK Borders Act 2007

The appellant's case and immigration history

2. The appellant's case is as follows.

3. The appellant entered the United Kingdom in July 2008 as a visitor. She thereafter returned to the United Kingdom the same year as a student. She had leave to remain as a Tier 1 Highly Skilled Migrant until 17 December 2011. On 16 December 2011 she made an application for indefinite leave to remain and on 3 May 2012 she claimed asylum. Her asylum claim was refused against which she appealed and this was dismissed on 27 July 2012. She sought permission to appeal to the first and the Upper Tribunal but was refused on both occasions and became appeal rights exhausted on 4 January 2013.
4. On 17 February 2013 the appellant was arrested at Heathrow airport attempted to board a flight to Canada using a false passport. She was convicted on 26 February 2013 at Cambridge Crown Court of possession or control of identity documents with intent and sentenced to 12 months imprisonment.
5. The appellant was appointed in 2005 as the personal assistant to a Rwandan Minister of youth and culture and sport who is a family friend. She remained in this job until September 2008 when she came to the United Kingdom to study. In 2007 her father was sentenced to 25 years in prison after having been found guilty of complicity in the genocide in Rwanda.
6. In July 2009 she returned to Rwanda and was approached by Mr Bayingana who asked her to gather information on Rwandan exiles in the United Kingdom, in particular, Dr Gafaranga a university lecturer in Edinburgh. The appellant met Dr Gafaranga on many occasions but did not provide information about him. In January 2011 she was asked to find information about another individual Mr Mugenzi. She was promised that her father would be released from prison if she did so. She gave no information to the authorities. In May 2011 Mr Mugenzi received a warning from the Metropolitan police that they had discovered an assassin threat against him. She contacted him and told him about the threat and to be careful. She did not tell him that she was asked to report on his activities.
7. In June 2011 she refused to help the Rwanda Embassy who wanted to organise a youth camp to be held in UK in late July 2011. In 26 November 2011 she participated in a memorial event to commemorate Rwandans killed in the Congo in 1996 and gave testimony there about the experience of her family and her father. The appellant fears harassment and persecution from the Rwandan government.

The respondent's reasons for refusal

8. The respondent in their reasons for refusal letter stated in summary the following.

9. The appellant's previous asylum claim was dismissed on appeal. The respondent does not accept that the appellant would be at risk if returned to Rwanda. The appellant's employer in Rwanda has resigned from his duties in 2011 almost one year prior to her first appeal hearing even though she had relied on that claim to support a claim for asylum. The previous Tribunal found that the appellant was not engaging in espionage on persons of interest of the Rwandan authorities and found not to be a credible witness due to her failure to seek asylum until 2012 despite having been in the United Kingdom for some four years. The appellant made no claim to have received ill-treatment as a result of ethnicity. She had claimed that she had given public testimony against the Rwandan government abuse of human rights and injustice towards young people on 26 November 2011. The previous Tribunal had found that the appellant had already raised her father's case with the senior member of the ruling party and had come to no harm as a result.

The First-tier Tribunal findings

10. First-tier Tribunal Judge Grimmett gave the following reasons for refusing the appellant's appeal.
 - i. The principles set out in **Devaseelan [2002] UK IAT 000702** states that the findings of an earlier Tribunal is the starting point in any appeal by the same appellant. The previous Tribunal made the following findings. The appellant was employed by the Rwandan government prior to her move to the United Kingdom. The appellant's father is currently serving a sentence of imprisonment following his conviction with the involvement of genocide. The appellant did not rely on harassment that other family members suffered and there were no adverse consequences in Rwanda due to her father's imprisonment. Mr Bayingna who the appellant said was not a friend asked her to gather information about Rwandan exiles was in fact known to her mother who hoped he could help her in the release of the appellant's father was not a purely professional association and could not be interpreted as putting pressure on her to spy for the Rwandan government.
 - ii. The appellant's account of being asked to obtain information about Mr Gafaranga was not credible. It is not credible that the appellant would have been asked to gather information about Mr Mugenzi 18 months after she failed to gather information about Mr Gafaranga. It is not credible she would not have reported this to the police. It is not credible that she only suffered an adverse reaction from the Rwandan authorities after declining to organise a youth camp for the Rwandan Embassy. The appellant's attendance at a workshop in November 2011 did not add to the appellant's claim as Mr

Bayingana, a senior officer in the ruling party, already knew the appellant's views about her father's case.

- iii. The appellant's evidence has many inconsistencies about her dealings with Dr Gafaranga. In respect of Mr Mungenzi, in his witness statement he did not mention that the appellant warned him in May 2011 about a plot to kill him. It was only in his oral evidence did he say that she had telephoned him and told him and they arranged to meet in London. The appellant does not say that they decided to meet in London. This demonstrates that both the appellant and Mr Mungenzi are not telling the truth.
- iv. The appellant claims that she was asked in June 2011 to be involved in the youth camp. She however discovered that it had not taken place but she does not know why. The appellant has been inconsistent about her evidence about whether or not she agreed to take part in this youth camp. Mr Mungenzi in his witness statement said that the youth camp had been cancelled by the authorities but does not suggest that he or the appellant had any part in the cancellation. The significant inconsistencies show that the appellant was not asked to become involved with the youth camp or that she declined to help.
- v. The appellant states that she attended an event where she spoke about her family. It was her evidence that she did not notice anyone from the Rwanda Embassy taking notes. Mr Mungenzi said he was present and saw members of the Rwandan Embassy staff taking notes and asked the security people to stop them from taking them. The appellant claims that she did not notice the Embassy security staff were there although she said at the first hearing that about only 30 people were present at this event. The appellant provided an article on this gathering which names a number of speakers but does not name her as one of the speakers. Given the inconsistencies in the evidence about this event, it is not accepted that she attended this event.
- vi. Dr Verhoeven said that he could not confirm that there was an observer of the Rwanda Embassy present at the gathering but thinks it is likely that someone was there. He said that if a former government official testifies about the justice system in Rwanda, which would draw the attention of the Rwandan Embassy. He did not say however that he was aware that the appellant or Mr Mungenzi were present at the event. This is two years after the event and the appellant has not suggested that she has had any difficulties since she claims to have refused to help with the youth camp in June 2011. The appellant has not

demonstrated that she spoke at this meeting or that there were security men from the Rwanda Embassy at the event.

- vii. Dr Harrell Bond does not hold herself out as an expert. She says that she met the appellant in Oxford to assess whether she would be useful witness for another Rwandan refugee. She believed the appellant and crosschecked information from Rwanda. Dr Harrell Bond did not have sight of the evidence that was before the First-tier Tribunal Judge. The evidence raises a number of issues of credibility of which Dr Harrell Bond is not aware. Her opinion is therefore is not based on all the available evidence.
- viii. The appellant has not demonstrated that substantial grounds have been shown for believing that if she were to return to Rwanda she would face a real risk of suffering serious harm contrary to Articles 2 and 3 of the ECHR.

Grounds of appeal

11. The grounds of appeal state the following which I summarise. The Judge did not evaluate the appellant's case on the accepted characteristics of the appellant or against the country guidance evidence before the Tribunal. The Judge merely assessed the appellant's appeal against the inconsistency in the appellant's evidence. The appellant's case was predicated on established facts before the Tribunal and this was acknowledged at paragraph 32 of the determination. The appellant is associated with a recognised leading critic of the Rwanda regime in this country, Mr Mugenzi. Dr Harrell bond and Ms Lyodu are associated with those who claim refugee status in this country from Rwanda. The country guidance evidence also shows risk to those who are associated with anti-government persons and policies. Therefore the appellant's accepted profile shows a person at risk of persecution regardless of the credibility findings in relation to her claimed activities in this country. Reliance was based on **YB (Eritrea)v SS HD [2008] EWCA Civ 360**. The Judge did not make any comment in his determination on this aspect of the claim put forward by the appellant.
12. The Judge has failed to consider and reason with background expert evidence. The Judge was provided with a written report by Dr Harry Verhoven who interviewed the appellant and whose report explains why the appellant was at risk on return to Rwanda. This was because of her past membership of the RPF, her father's position, and the diaspora intelligence network of the regime in relation to her claimed activism against the Rwandan regime.
13. The Judge also did not take into account Prof Reyntjens report from the Netherlands who pointed at risk through association of the

appellant as she would be seen as a traitor by the RPF and also by the government. There is no mention of this finding on this report other than a brief mention. This is a serious omission in the evidence given that the facts in question relied on by the expert were not disputed by the respondent. There is also no mention of the further expert comment from Prof Reyntjens of the Netherlands and there is no mention of his views or conclusions in the determination.

14. There is difficulty with the dismissal of Mr Mugenzi evidence on credibility grounds. There is no assessment of his views on risk on return on the established facts of the case. Again in dismissal of the views of Dr Harrell Bond there is no assessment of her views as to risk to the appellant on agreed evidence. Given that the appellant claims that her removal to Rwanda will amount to persecution under the refugee Convention, the most anxious scrutiny is necessary in her case. The background evidence shows that there are certain categories of Rwandans at risk either in Rwanda, or indeed abroad. There is no matching of the country evidence against the accepted profile of the appellant even after her lack of credibility is taken into account.

The hearing

15. At the hearing we heard submissions from both parties as to whether there is an error of law in the determination.
16. On behalf of the appellant, Ms Dhaliwal adopted the grounds of appeal and submitted as follows in summary. The Judge should have carried out a more sophisticated analysis about the risk to the appellant on return to Rwanda even if adverse credibility findings were made against her. The accepted facts are the appellant's political opinion and her opposition to the Rwandan government's regime. The Judge failed to consider that the appellant has been associating with the Rwandan community in this country who are critics of the current regime. This was brought to the attention of the previous Judge in the grounds of appeal and the skeleton argument. An integral part of the analysis should have been how the Rwandan regime would treat the appellant's activities in the United Kingdom.
17. Mr Smart on behalf of the respondent adopted the Rule 24 response and submitted the following in summary. The expert report stated that the appellant would not face persecution on return. The Judge found the appellant not credible and gave very detailed reasons for his findings. The Judge also did not find the evidence of Mr Mugami credible and therefore the expert's testimony was of limited value. At page 6 of the expert affidavit it is stated that the opinion is based on the appellant's evidence. Therefore both experts are reliant on the appellant's evidence which has been found not to be reliable or credible by the Judge.

18. Miss Dhaliwal in reply said that the Judge had conducted no analysis of the appellant's activities in the United Kingdom. It is not in dispute that the appellant was a member of the RPF, was an intelligence agent and the daughter of someone who has been convicted of 25 years imprisonment for his part in the Rwanda genocide. The appellant is associated with anti-government people in the United Kingdom. If the appellant discloses her genuine political alliances she will be at risk in Rwanda.

Findings as to whether there is an error of law

19. The Judge at paragraph 10 of the determination stated that the appellant's previous claim for asylum and humanitarian protection dated 17 December 2013 which accompanied the deportation order was dismissed on appeal. The Judge correctly took the previous determination as the starting point as set out in the case of **Devaseelan [2002] UK IAT 000702**.
20. The previous Judge who dismissed the appellant's appeal for asylum and humanitarian protection in this country found the following. The appellant was employed by the Rwanda government prior to her move to the United Kingdom. The appellant's father is currently serving a sentence of imprisonment following his conviction for his role in the genocide in Rwanda. The appellant did not rely on harassment that other family members suffered and there were no adverse consequences to them in Rwanda due to her father's imprisonment. Mr Bayingana whom the appellant said was not a friend and were asked to gather information about Rwandan exiles, was in fact known to her and her mother who hoped he could help in the release of the appellant's father. This was not a purely professional association and cannot be interpreted as putting pressure on the appellant to spy for the Rwandan government. The appellant's account of being asked to obtain information by the Rwandan authorities about Dr Gafaranga was not credible. It was not credible that the Rwandan authorities would have asked the appellant to gather information about Mr Mugenzi, 18 months after she failed to provide any information about Dr Gafaranga. It was not credible that the appellant would not have reported what she knew to the police. It was not credible that she only suffered an adverse reaction after declining to organise a youth camp for the Rwandan Embassy. The appellant's attendance at a workshop in November 2011 did not add to the appellant's claim as Mr Bayingana, a senior officer in the ruling party, already knew the appellant's views about her father's case.
21. The Judge was therefore entitled to take into account these factual findings of the previous Judge according to the principles set out in the case of **Deevasleen**.

22. In the challenged determination, the Judge considered the evidence again and found that the appellant and her witness's evidence at the hearing was not credible and that they were not telling the truth. The Judge gave sufficient reasons and details of the evidence that she did not find it credible in her determination. The Judge did not believe the appellant when she claimed that she was asked by the Rwandan government to spy on certain Rwanda exiles in the United Kingdom. She found that the appellant who had been tasked to provide information about Dr Gafaranga a university lecturer in Edinburgh and who failed to provide any information about him, would then, two years later, be tasked to provide information about another Rwanda exile. The Judge was entitled to find on the evidence that it was not credible that the appellant would be tasked with a second spy request after she had failed to fulfil the first. This was the same finding made by the previous Judge.
23. Miss Dhaliwala argued that the appellant should have been granted humanitarian protection on the accepted facts in her case. Essentially the argument is that given the appellants profile which has been accepted by the respondent in that she was a member of the RPF and her father who was convicted and sentenced to 25 years imprisonment, coupled with her association with critiques of the Rwandan government in the United Kingdom was sufficient to grant her humanitarian protection in this country, notwithstanding adverse credibility findings against. I take this as a submissions that the appellant's activities and association with anti-Rwanda government activists in the United Kingdom puts the appellant at risk on her return to Rwanda. This is essentially raising a *sur-place* claim.
24. The challenged determination did consider the appellant's claimed activities in the United Kingdom and found them not to be credible. The previous Judge in dismissing the appellant's claim for asylum and humanitarian protection also did not find credible her claimed anti-regime associations and activities in the United Kingdom.
25. The Judge found that Mr Mugenzi was not credible and did not believe his evidence in all material respects. The Judge took into account the evidence and found at paragraph 18 of the determination that given the discrepancies in the evidence that it "satisfy us that the appellant and Mr Mugenzi are not telling the truth". This was a finding open to the judge on the evidence before him.
26. The Judge in her determination said that there were inconsistencies in the appellant's evidence about her involvement in the youth camp which was due to take place in July and in which she was asked to participate by the Rwandan Embassy and refuse to do so her refusal to do so will bring her to the adverse attention to the authorities on her return to Rwanda.

27. The Judge referred to the appellant's evidence in her second witness statement at paragraph 44 where she stated that she declined to involve herself in the final organisation of the youth camp. He found that at page 41 of her interview, the appellant stated she did not go to the youth camp but discovered that it had not taken place and in oral evidence before the Judge said that she does not know why it was cancelled. At paragraph 39 of her witness statement the appellant stated she was approached in October 2009 to help with the camp and was involved in training and meetings until 2010 but after May 2011 avoided those involved with it. She claims that it was only after she heard the plot to assassinate Mr Mugenzi, did she decide to detach herself from the Rwandan government. The Judge noted Mr Mugenzi in his oral evidence gave contradictory evidence and said that the youth camp did not take place because the appellant had been involved in the preparation of the youth camp and passed all the information to him. He said that he and others who opposed the Youth camp because it aims to indoctrinate young people used the information given to him by the appellant to have it cancelled.
28. The Judge was entitled to find that the inconsistencies in the appellant's evidence about her involvement with the youth camp organisation with Rwandan Embassy was not credible and also did not accord with the evidence of Mr Mungenzi. He was also entitled to find on the evidence the appellants activities with Mr Mugenzi in the United Kingdom had not been established and was entitled to do so on the evidence.
29. The other activity in the United Kingdom which the appellant claims will bring her to the adverse attention of the Rwandan authorities was that she attended a meeting with Mr Mugenzi and gave a speech about her father. She claims that at this meeting people from the Rwanda Embassy were taking pictures and notes. The Judge found that it is surprising that Mr Mungenzi would not have passed information to the appellant about the presence of Rwandan Embassy staff at this meeting. The Judge did not find the appellant credible that she did not know that Rwandan Embassy officials were present at the meeting given her earlier evidence that there were only about 30 people present. The Judge was entitled on the evidence not to believe the appellant that she had participated in a meeting to talk about her father. The Judge's finding was not perverse but open to him on the evidence before him.
30. Furthermore, the Judge found that the appellant's father was convicted, sentenced and jailed for his part in the genocide in Rwanda. The Judge found that the appellant had already approached the senior member of the Rwandan ruling party about her father's case and had suffered no adverse consequences as a result. The Judge noted that the appellant's family in Rwanda have not suffered adverse consequences due to her father's imprisonment.

31. The Judge was entitled to find that given that the appellant did not come to the adverse attention of the Rwandan authorities because of her father's imprisonment and the authorities would not seek to prosecute her on her return to Rwanda. The judge on the evidence found that activities claimed by the appellant in the United Kingdom did not happen and she would not be at risk on her return to Rwanda.
32. The Judge at paragraph 28 of the determination stated that Dr Harrell Bond does not hold herself out as an expert. She stated that the appellant metaphorically in Oxford to assess whether she would be a useful witness for another Rwandan refugee. Dr Harrell Bond the Judge noted in his witness statement that he believes that the contents of the appellant statement to be true. The Judge said he attaches little weight to this witness statement because Dr Harrell Bond said that he had not seen the appellant's file or papers. The Judge noted even if Dr Harrell Bond believe the appellant to be credible, this was our conclusion drawn only evidence before him given by the appellant and was not aware of issues of credibility of the appellant and eyewitnesses. The Judge did not fall into material error and was entitled to place very little weight on Dr Harrell Bond's unsubstantiated opinion.
33. The Judge at paragraph 30 considered a witness statement from Ms Lyodo who was with Dr Harrell Bond when the appellant visited her. The judge noted that Ms Lyodo is a former refugee lawyer from Rwanda who in a witness statement talks about what she had been told by her clients about the situation in Rwanda but she did not deal with the appellant's own evidence in a witness statement safe to say that it reminded her of cases of other Rwandans whom she names. The Judge took into account her evidence and found that it did not assist the appellant's case.
34. While it is accepted that the judge did not specifically refer to the evidence of Prof Reyntjens of the Netherlands, the Judge stated at paragraph 32 that "we do not deal in detail with the remainder of the evidence of the various bundles lodged on behalf of the appellant". Prof Reyntjens merely pointed the appellant would be at risk through association and would be seen as a traitor by the RPF and also by the government. The Judge found that the appellant was not associated in any real sense with anti-government activists in the United Kingdom. The Judge's failure to specifically refer to the evidence Prof Reyntjens does not amount to a material error of law given that his evidence is based on what the appellant told him. The Upper Tribunal would not come to a different conclusion.
35. Similarly, the Judge did not specifically refer to the report of Dr Verhoeven in her determination. I find that it is not a material error because Dr Verhoeven could not confirm that there was an observer of the Rwanda Embassy present at the gathering where the appellant talked about her family, but thinks it is likely that someone was there.

36. The Judge did not fall into any material error of law in her evaluation of the expert reports because it is implicit in the determination that the Judge considered all the evidence in the appeal.
37. I am ultimately satisfied that there is no material error in the determination of First-tier Tribunal Judge, in that she gave adequate reasons for finding the appellant's account not to be credible and consistent, and her claimed activities in the United Kingdom were not credible and she will not be at risk on her return to Rwanda. Consequential to my finding that there is no material error of law, I uphold the determination of the First-tier Tribunal.

Decision

Appeal dismissed

Signed by

Mrs S Chana

Date 9th day of November 2014

A Deputy Judge of the Upper Tribunal Judge