



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/01442/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 February 2016**

**Decision & Reasons Promulgated
On 26 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**L K
(ANONYMITY ORDER MADE)**

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Amunwa, counsel instructed by Duncan Lewis solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION & REASONS

1. The Appellant is a national of the DRC born on 6 September 1984. She arrived in the United Kingdom on 28 May 2008 and claimed asylum on the basis that she was a member of the MLC. This application was refused on 14 November 2008 and her appeal against this decision was dismissed by First-tier Tribunal Judge Zucker on 6 February 2009. Further submissions in support of a fresh asylum and human rights claims were made on 12 July 2011 and refused on 6 July 2012 but following judicial review the Respondent agreed to reconsider the claim on 29 September 2012. On 18 February 2014, the Respondent treated the submissions as a fresh claim but refused to grant the

Appellant asylum, humanitarian protection or discretionary leave to remain. The Appellant appealed against this decision and her appeal came before First-tier Tribunal Judge Andonian for hearing on 20 November 2015.

2. In a decision promulgated on 8 December 2015, the First-tier Tribunal Judge dismissed the appeal on the basis that he did not find the Appellant credible and that he did not consider that she had a well-founded fear of persecution or treatment in breach of Article 3 of ECHR on return to the DRC.

3. An application for permission to appeal was made on 22 December 2015. The grounds of appeal in support of the application dated 16 December 2015 assert that the First-tier Tribunal Judge erred materially in law in: (i) misdirecting himself in law by failing to apply, adequately or at all, the Joint Presidential Guidance Note No 2 of 2010; Child, vulnerable adult and sensitive appellant guidance; (ii) failed to have regard to relevant evidence *viz* the Appellant's medical records; a country information report from Freedom from Torture 2014 and the Respondent's 22 October 2014 policy bulletin; (iii) failed to adequately engage with the experts' report and addendum report of Dr Blumberg; (iv) made an irrational finding on a material matter *viz* he made an adverse credibility finding on whether the Appellant had been raped without contemplating the expert evidence.

4. Permission to appeal was granted by First-tier Tribunal Judge Reid on 11 January 2016 on the basis that the grounds disclose an arguable error of law. A rule 24 response was submitted on behalf of the Respondent on 18 January 2016 in which she submitted that the grounds failed to disclose a material error of law.

5. At the hearing before me, Mr Jarvis relied upon a letter he had drafted on 16 February 2016, which was on the court file, in which he indicated that the Secretary of State for the Home Department accepts that there are material errors in the Judge's approach to the medical evidence both at [27] and with respect to the broader medical evidence provided. He invited the Upper Tribunal to de-list the case in light of the Secretary of State's concession, however, unfortunately this did not take place.

6. In light of the Secretary of State's concession that the First-tier Tribunal Judge erred materially in law and given that there was no objection by Mr Amunwa I find that the First-tier Tribunal Judge erred materially in law and I remit the appeal to be heard *de novo* in the First-tier Tribunal.

Deputy Upper Tribunal Judge Chapman

18 February 2016