



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

Appeal Number: AA/05615/2015

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 18<sup>th</sup> March 2016**

**Decision & Reasons Promulgated  
On 28<sup>th</sup> July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**[A A]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. S Rogers, Immigration Advice Centre

For the Respondent: Mr. P Mangion, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision and reasons promulgated by First-tier Tribunal Judge Holmes on 12<sup>th</sup> May 2015, in which he dismissed an appeal against the refusal by the Secretary of State for the Home Department on 13<sup>th</sup> March 2015 to grant the appellant asylum and to remove him from the UK.

**Background**

2. The appellant is a national of the Democratic Republic of the Congo. He entered the UK on 16<sup>th</sup> February 2014. He made a claim for asylum that was refused for the reasons set out in a decision of the respondent dated 13<sup>th</sup> March 2015. It was that decision that gave rise to the appeal before First-tier Tribunal Judge Holmes.
3. The appellant's case is summarised at paragraphs [13] and [14] of the decision of the First-tier Tribunal and I do not repeat that summary in this decision. At paragraphs [15] to [17] of his decision, the Judge sets out the evidence that he had before him. At paragraphs [20] to [51] the Judge sets out the appellant's account of events insofar as is relevant to the core of the appellant's claim. At paragraphs [52] to [66] of his decision, the Judge sets out his conclusions. The Judge, having had an opportunity to hear the appellant and his wife give evidence, and having observed that evidence tested in cross examination states:

*"54. I am not satisfied that either the Appellant or his wife are reliable witnesses."*

4. The Judge considered the various facets of the account advanced by the appellant and his wife and for the reasons set out at paragraphs [55] to [66] of the decision, he rejected their account of events. I do not repeat the findings made in this decision, but I have carefully read through them.

### **The grounds of appeal**

5. The appellant advances three grounds of appeal. First, it is said that the Judge erred in finding at paragraphs [21] and [22] of his decision that:

*"21. ... I note that it was not until 11 November 2014 that the Appellant sought the assistance of his doctor for symptoms of depression and anxiety said to result from his traumatic*

*experiences in the DRC, and grief and bereavement issues following the death of his father, and his own circumstances ...”*

*22. Contrary to Ms Rogers’ submissions the report of Mr Narimani does not purport to contain any formal diagnosis of PTSD, and it is in any event far from clear that the author would be qualified to make such a diagnosis ...”*

The appellant submits that the Judge failed to consider the GP report of Dr Susan Jones dated 5<sup>th</sup> August 2014 that was before the Judge. In that report it is said that the appellant has experienced psychological symptoms and that a diagnosis of PTSD was made. The appellant claims that the Judge failed to have regard to the mental health of the appellant, and had he had proper regard to the GP report that was before him, the Judge may have reached a different conclusion in relation to the appellant’s evidence.

6. Second, the Judge refers to the letter from Mr Ngombo of the UDPS but the Judge erred in concluding that he cannot place any significant weight upon the letter for the reasons set out in the decision.
7. Finally, issues had been raised as to the interpreter and his conduct at the hearing. It is said that the quality and professionalism of the interpreter was directly relevant to the manner in which the evidence was given by the appellant. The Judge found that the appellant was seeking to avoid answering questions, but the Judge confirms that the appellant was able to address the point when he himself sought to clarify constituent points. It is said that as the appellant was able to answer the questions and address the point, it is more likely that the appellant’s inability to give direct answers was due to the quality of interpretation rather than any intention on the part of the appellant of avoiding questions.

8. Permission to appeal was granted by First-tier Tribunal Judge Bird on 3<sup>rd</sup> June 2015. The matter comes before me to consider whether or not the determination by First-tier Tribunal Judge Holmes involved the making of a material error of law.

### **The hearing before me**

9. On behalf of the appellant, Ms Rogers adopts the grounds of appeal. She submits that the Judge had before him the report of Dr Susan Jones but fails to refer to it at all. She submits that if the Judge had had regard to that report, it is likely that the diagnosis set out would have had an impact upon the Judge's assessment of the credibility of the appellant. She submits that the psychological report confirms that the appellant demonstrates symptoms of PTSD. She conceded that neither the psychological report nor the GP report, states that the appellant's ability to recollect matters or give evidence may in some way be affected by the diagnosis, or that any adjustment should be made during the hearing to accommodate the appellant. Ms Rogers submits that the Judge simply rejected the contents of the letter from Mr Theophile Ngombo, a senior representative of the UDPS/UK without looking at, or analysing what is said in his letter. She submits that the Judge erred in law in rejecting that letter simply because the witness did not attend the hearing.
10. In reply, Mr Mangion accepts that there is no reference in the decision to the report of Dr Susan Jones that was in the bundle before the Tribunal. He submits that the failure to make express reference to that report is not material. The report of Dr Jones does not state who it was that made the diagnosis of PTSD or how that diagnosis had been made. In any event, he submits that a simple reference to a diagnosis of PTSD by the Judge would not have altered the outcome or the overall assessment made by the Judge as to the credibility of the appellant.

There is no evidence that the diagnosis of PTSD has an impact upon the appellant's ability to recall matters. Mr Mangion submits that in any event not all of the adverse credibility findings made by the Judge are based upon the appellant's inability to recall matters. There were fundamental discrepancies in the appellant's account of events that simply remained unexplained. Finally, he submits that the Judge plainly had regard to the letter from Mr Ngombo. The Judge identifies that there are problems with the letter, and as Mr Ngombo had not attended to give evidence, any concerns could not be resolved. He submits that the Judge was, in the circumstances, entitled to conclude that he could attach no weight to that letter.

### **Error of Law Decision**

11. At paragraphs [16] and [17] of the decision, the Judge refers to the evidence that was before him. I accept that the Judge does not there list the medical report of Dr Susan Jones dated 5<sup>th</sup> August 2014.
12. Dr Jones confirms that the appellant joined the Arrival Practice on 25<sup>th</sup> March 2014 and that the appellant says, that he experienced trauma in a demonstration in the Congo in 2012 during which his father vanished without trace. She notes that to date, the appellant has not given any detail of his experiences in the Congo. She goes on in the report to say that the appellant has experienced psychological symptoms describing poor sleep, hyper-vigilance, lack of motivation and visual and aural flashbacks. DSM 4 criteria are met and so a diagnosis of PTSD has been made. She sets out in the report the treatment provided and referrals made. As Ms Rogers accepts, the GP report does not suggest that the appellant's ability to recollect matters or give evidence may in some way be affected by the diagnosis, or that any adjustment should be made during the hearing to accommodate the appellant.
13. At paragraphs [21] and [22] of his decision the Judge does refer to the psychological report that was before him. Although the Judge was right

to say that the report of Mr Nirimani does not purport to contain any formal diagnosis of PTSD, the diagnosis of PTSD is confirmed in the report of Dr Jones, that has not been referred to by the Judge. I accept that the Judge erred in failing to refer to the report of Dr Jones, but in my judgement that omission is not material. At paragraph [22] of his decision, the Judge states:

*“22. ... There is no suggestion in the report by Mr Narimani that the Appellant would have any difficulty giving evidence, or that he suffered from comprehension problems. Nevertheless I have taken into account Mr Narimani’s evidence concerning the Appellant’s report to him of symptoms, and his assessments of him, when assessing the weight that can be given to the Appellant’s evidence.”*

14. The Judge’s observation that there is no suggestion that the appellant would have any difficulty giving evidence, or that he suffered from comprehension problems, applies as much to the report of Dr Jones as it does to the report of Mr Narimani. In assessing the weight that could be given to the appellant’s evidence, the Judge clearly had in mind the appellant’s account of symptoms, and the assessment made by Mr Narimani of him. I accept the submission made by Mr Mangion that a simple reference to the diagnosis of PTSD set out in the report of Dr Jones would not have altered the outcome or the overall assessment made by the Judge as to the credibility of the appellant and that in any event not all of the adverse credibility findings made by the Judge, are based upon the appellant’s inability to recall matters. It follows that I reject the first ground of appeal.

15. The Judge refers at paragraphs [46] and [47] of his decision to the letter from Mr Ngombo. He states:

*“46. I have had regard to the letter from Mr Ngombo, and its content concerning the enquiries he is said to have made into*

*the Appellant and his wife. Mr Ngombo did not attend the hearing and thus was not tendered for cross-examination. He offered no explanation for his non-attendance, and no request for an adjournment because of his inability to attend, or for listing arrangements to be made to accommodate him, has ever been made.*

*47. According to Mr Ngombo's letter, he has been told as a result of his enquiries that the Appellant and his wife were arrested around the end of December 2014. He makes no reference to being told that the Appellant was arrested whilst acting as a cross-border courier for the UDPS, although his enquiries appear to have extended to individuals within the party in the DRC who could be expected to know of that, and to have confirmed it."*

16. In reaching his conclusions, the Judge states:

*"57. I am not satisfied that the Appellant has given a truthful account of how he came to be in possession of the UDPS membership card upon which he relies. I am not satisfied that I can place any significant weight upon either the laminated membership card, or the letter from Mr Ngombo. I am not satisfied that either the Appellant or his wife were ever members of the UDPS when living in DRC, or that they have since joined the party. In the circumstances I am not satisfied that the Appellant was arrested in 2011 on either of the occasions he has identified, or in the circumstances he has identified. I am not satisfied that either the Appellant or his wife are presently perceived by the DRC authorities to be members of the UDPS, or that they will be so perceived in the event of their return to the DRC.*

...

*61. I derive no assistance from any of the Justice First reports that have been referred to by Mr Ngombo, but which have not been placed in evidence before me. Their author has not been called to give evidence on behalf of the Appellant and I am not satisfied that its content is reliable ..."*

17. In my judgement, when one reads the extracts from the decision that I have set out above together, it is plain that the Judge considered the evidence of Mr Ngombo properly alongside all of the other evidence that was before him. The Judge comprehensively rejected the appellant's account. A finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. I have carefully read the decision of the First-tier Tribunal and in my judgment, it was open to the Judge to make the findings that he did. They are supported by the evidence and cannot on any view be described as being irrational or unreasonable. As the Judge noted, the letter from Mr. Ngombo makes no reference to being told that the appellant was arrested whilst acting as a cross-border courier for the UDPS. That was a material part of the appellant's account and it was plainly open to the Judge to express his surprise that there was no reference to such material activities in the letter from Mr Ngombo despite the enquiries that he carried out. The anomalies could not be addressed because Mr Ngombo was not called to give evidence. In my judgement it was therefore open to the Judge to conclude that he was not satisfied that he can place any significant weight upon the letter from Mr Ngombo and the second ground of appeal also fails.
18. I turn then to the third ground of appeal and the criticism made as to the interpreter's conduct. At paragraph [23] of his decision the Judge refers to the concerns that were raised by Ms Rogers after the lunch break and in the absence of appellant and the interpreter. The Judge



shared with both representatives, his own impressions as they were at that time. The Judge states:

*“24. Whilst I made it clear that I had by no means reached any conclusion, I shared with both representatives my own impressions formed at that point. The Appellant had not raised any complaint about the interpreter, and the interpreter had not yet articulated any complaint about him; although it was plain from the interpreter’s body language and actions that I was observing that he had on occasions found the Appellant’s behaviour difficult. The Appellant clearly understood more English than perhaps Ms Rogers appreciated, because I could see that he was reacting to questions before they had been translated, and was reacting to the translations of his answers to add more detail whilst the interpreter was still speaking (although not to correct him), and he had reacted to the instructions that I had given him before they had been translated.*

...

*26. It was clear that some of Mr Dewison’s questions were not being answered, despite a number of repetitions and rephrasing. However when I had intervened, and had sought to clarify constituent points, the Appellant did usually address the point.*

...

*28. Accordingly my own impression at that point was that there was no issue over the level of understanding between the Appellant and the interpreter, and that the Appellant was indeed on occasion seeking to avoid questions upon some of the issues that Mr Dewison was seeking to address. I proposed that when the evidence resumed I should repeat my instructions to the Appellant and interpreter about how evidence should be given,*

*and that Ms Rogers should feel free to raise the issue again if she felt it appropriate to do so, and I would reconsider the matter if she wished me to do so.*

*29. Having repeated those instructions to the Appellant and the interpreter, Ms Rogers did not revisit the issue during the Appellant's evidence, or at its conclusion, to request, the appeal be reheard with a different interpreter.*

*30. I note that the Appellant's wife plainly had no difficulty in understanding the interpreter and in answering the questions put to her."*

19. I reject the claim now being made by the appellant that because the appellant was able to answer the questions and address the point when put to him by the Judge, it is more likely that the appellant's inability to give direct answers was due to the quality of interpretation rather than any intention on the part of the appellant of avoiding questions.
20. The Judge carefully addressed, in the absence of the appellant and the interpreter, the concern that had been raised by Ms Rogers that the appellant was not giving his evidence in the manner in which he behaved when interviewed by herself for the purpose of preparing his witness statement. It does not follow that because a witness is able to answer the question when the question is put by a Judge, the witness's inability to give direct answers to question put in cross-examination is likely to be due to the quality of interpretation rather than any intention on the part of the witness of avoiding questions. A witness would have as much difficulty addressing the question put by the Judge using the same interpreter, as he or she would have, if that question were asked in cross-examination. The quality of the interpretation would not differ. The purpose of cross examination is to probe and test an account and it is often the case that a witness will refuse to give direct answers to the question put. That may be for one of any number of reasons, including

a realisation that the answer would be at odds with other evidence or simply as a distraction technique because the question affords only one answer, that would not assist the witness. It is often the case that a Judge will intervene when a question has been put to a witness several times by an advocate, and at that point when pressed by the Judge, an answer is forthcoming.

21. Here, the Judge notes at paragraph [28] of his decision that his own impression was that there was no issue over the level of understanding between the appellant and the interpreter, and that the appellant was indeed on occasion, seeking to avoid questions upon some of the issues that Mr Dewison was seeking to address. As the Judge notes, when the hearing resumed, the Judge repeated his instructions to the appellant and interpreter about how evidence should be given, and Ms Rogers was free to raise the issue again if she felt it appropriate to do so. She did not do so either during the hearing or at any time before receiving the Judge's decision.
22. It follows that the appeal is dismissed

**Notice of Decision**

23. The appeal is dismissed.

Signed

Date **28<sup>th</sup> July 2016**

Deputy Upper Tribunal Judge Mandalia

**TO THE RESPONDENT**  
**FEE AWARD**

There can be no fee award.

Signed

Date **28<sup>th</sup> July 2016**

Deputy Upper Tribunal Judge Mandalia