



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

Appeal Number: AA/07199/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 22 February 2016**

**Decision Promulgated
On 29 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**NATHALIE BATELA BOATE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tetley of counsel for GMIAU
For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Edwards promulgated on 23 February 2015 which dismissed the Appellant's appeal against a decision to refuse an application to remove her from the UK dated 3 September 2014 following an application for asylum made on 30 May 2014 the reasons for which were set out in a letter dated 3 September 2014.

Background

4. The Appellant was born on 8 August 1984 and is a national of the Democratic Republic of the Congo. The Appellant and her husband and son travelled to France for a visit on 5 February 2014. On 12 April 2014 the Appellant travelled by coach to the UK. The Appellants claimed asylum on 30 May 2014 on the grounds that she feared persecution in the DRC on account of her role and that of her brothers as activists in the UDPS (Union pour la Democratie et le Progres Social)
5. On 3 September 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) There were inconsistencies between her Screening Interview and her Asylum interview in relation to how she became aware that she had a problem in the DRC.
 - (b) There were inconsistencies in relation to witness summons the Appellant asserts was issued against her.
 - (c) The Appellants delay in claiming asylum undermines her credibility.
 - (d) The Appellant gave inconsistent evidence about how many times her brother Landry had been detained by the authorities.
 - (e) The Appellant's claim to be at risk after being detained once is undermined by the fact that although her brother Landry had been detained several times there was no evidence that he had stopped his political activities.
 - (f) The Appellant claimed treatment by the authorities was inconsistent with how her brother was treated.
 - (g) The Appellant demonstrated a lack of knowledge about senior members of the UDPS, the party structure and the events after the 2011 elections.
 - (h) The Appellants claim that she was accused of being a member of Kaluna is inconsistent with background material about the group.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Edwards ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
 - (a) The case turned on the credibility of the Appellant.
 - (b) The Judge did not find the account the Appellant gave for leaving the DRC and claiming asylum was credible and set those reasons out at paragraph 28(a)-(g)
7. Grounds of appeal were lodged arguing that:
 - (a) The Judge made no clear finding as to what the impact was of his finding that the Appellant was 'not the best of witnesses.'
 - (b) The Judge made a mistake of fact in stating that the Appellant had a 'prominent' role in the UDPS when she claimed only to have a 'specific' role.
 - (c) The country guidance did not require an activist to have a prominent role to be at risk.
 - (d) The Judge did not give the Appellant the opportunity to address his concerns about how she came into possession of the summons and arrest warrant.
 - (e) In paragraph 28(e) the Judge erred in substituting his own reasoning for that of the Appellants husband.
 - (f) The Judge failed to make any findings in relation to the expert report.
 - (g) The Judge did not engage with the Appellant's claim to be estranged from her husband and how that impacted on her account.
8. On 20 March 2015 First-tier Tribunal Judge Grant-Hutchison gave permission to appeal.
9. There was a Rule 24 response from the Respondent in which it was argued:
 - (a) The Judge found that the case hinged on the credibility of the Appellant and the Judge gave a plethora of reasons as to why he did not find that the Appellant was a credible witness as to why she left the DRC.
 - (b) The experts report could only have made a material difference of the Judge found that the Appellant was credible. Moreover the expert had not interviewed the Appellant nor was there evidence of visits to the DRC on which the expertise was based.

10. At the hearing I heard submissions from Mr Tettey on behalf of the Appellant that:

- (a) In relation to the assertion that the Judge had made no clear finding as to what conclusion he drew from his observation that the 'Appellant was 'not the best of witnesses' he conceded that if the Judge had not in fact made an adverse finding but had resolved the matter in the Appellants favour it was not an error of law.
- (b) A more substantial concern was that the Judge had misunderstood the basis of the Appellants claim. She had never claimed to be a prominent member of the UDPS just to have a specific role within it. This error was linked to his misunderstanding of the most recent caselaw which did not require prominent membership just that the Appellant had engaged with and had historical support for the UDPS and had thereby come to the attention of the authorities.
- (c) The Judge had failed to make clear findings about the documentation that supported her claim. One of his concerns appeared to be how the Appellant had come into possession of the summons and arrest warrant but if this was a concern the Appellant should have been given the opportunity to address this concern.
- (d) In relation to the findings at paragraph 28 (e) about the Appellants husband these were not open to him as he had not heard evidence from the Appellants husband and had substituted his own reasoning for that of her husband and failed to take into account that the Appellant and her husband were estranged.
- (e) The Judge had failed to engage with the expert's report or make any findings in relation to it. The expert addressed the likelihood of the type of intervention against ordinary UDPS members described by the Appellant. This was a significant part of her case.

11. On behalf of the Respondent Mr Harrison submitted that :

- (a) He relied on the Rule 24 response.

(b) In relation to the experts report he was not obliged to make findings given the damning nature of his credibility findings.

(c) In relation to whether the Appellant was a prominent member of the UDPS she claimed to have a role mobilising women so must have had a profile.

12. In reply Mr Tettey on behalf of the Appellant submitted:

(a) If the issue was one of the credibility the Judge was required to take into account the experts report as it addressed the likelihood of the type of treatment described by the Appellant and therefore was relevant.

Caselaw

13. In AB and DM (DRC) CG 2005 UKIAT 00118 (confirmed by the Tribunal in MK (DRC) CG 2006 UKAIT 0001) the Tribunal said that the position as at July 2005 was that there was a real risk at present for UDPS activists. In the eyes of the authorities in Kinshasa UDPS supporters are assimilated with supporters of the RDC/Goma movement because of the alliance reached in 2003 even if later officially ended. In MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023 the Tribunal said that, despite indications from recent political events in the DRC that the UDPS is perceived as less of a threat than previously, the guidance given in AB and confirmed in MK remains correct. In essence that advice was that there is a real risk at present for UDPS activists. In the eyes of the authorities in Kinshasha UDPS supporters are assimilated with supporters of the RDC/Goma movement because of the alliance reached in 2003 even if later officially ended. However, a low level UDPS member with no opposition profile who would be of no interest to the authorities was not considered at risk on return by the Tribunal in BK (Failed asylum seekers) DRC CG (2007) UKAIT 00098 upheld on appeal by the Court of Appeal in BK (DRC) v SSHD 2008 EWCA Civ 1322.

Finding on Material Error

14. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.

15. The Appellants case in her claim for asylum was that her and her two brothers have been targeted by the authorities because of their activities in support of the

UDPS in the DRC. She claimed to have been detained for two days in March 2013 and then summonsed on two further occasions by the authorities to renounce her political activities and warned of the consequences to her family if she did not. In 2014 her two brothers allegedly disappeared and she had been summoned to appear before the police. The Respondent refused her claim on the basis that it was not accepted that she had given a credible account of her involvement with the UDPS and therefore she would not be of interest to the authorities on her return.

16. The first challenge raised in the grounds is that the Judge made no clear finding in paragraph 27 as to what conclusion he drew from his observation that the Appellant was 'not the best of witnesses.' I am satisfied that the Judge was making an observation about the way the Appellant gave evidence in recording what happened in the hearing, that she was prone to giving long and rambling answers, and that he had to warn her about this and of the possible consequences. He went on to say however that 'the warning was heeded.' So I am satisfied that having made this observation that the Judge drew no adverse conclusions from it as his advice was followed. There was no error of law.

17. It is suggested that the Judge made an error of law in concluding that the Appellant had a 'prominent' role within the UDPS and therefore misunderstood the basis of her claim. I am satisfied that the Judge made clear in paragraph 18 and 28(a) that he understood her case to be that her role was to mobilise women in her area of the DRC. She was therefore not simply a party member but had a defined and distinctive role within the party. Her case was, as set out in the Judge's record of her oral evidence at paragraph 18, that her husband did not know of these activities and would have disapproved had he done so. He sets out a number of credibility issues one of which is at paragraph 28(b) that given her own evidence of her distinct and defined role within her local area which he categorises as 'prominent' it was not credible that her husband would not have known about it. I am satisfied that this was a conclusion that was open to him which must be read in the context of the evidence as a whole rather than focusing on the word 'prominent'. I also note that had I found an error of law I would have been asked to take into account a letter dated 12 February 2016 from

the UDPS in Oldham in which it is stated that the Appellant 'has taken a prominent role in our party in Kinshasa.'

18. The Judge rejected the summons and warrant the Appellants produced in support of her claim. His assessment of these documents is challenged. While I accept that the Judge expressed concerns about how the Appellant came into possession of these documents this was only one of a number of reasons why he attached little weight to them: he noted that the summons required her to report to a police officer who was unnamed at an address that was unspecified; that she was given only two days to answer the summons yet there was no evidence about how or on whom service of the summons was effected; he also took into account his overall credibility findings. I am satisfied that given that there were other reasons given for placing little weight on the documents the fact that in respect of one of his concerns, how she came into possession of them, the Appellant was not given an opportunity to comment it would have made no material difference to his overall conclusions.

19. It was also suggested that the Judge failed to engage with the expert's report. The Judge I am satisfied read the report because he summarised its contents at paragraph 22 summarising his opinion that as 'a failed asylum seeker to DRC, who has links to a prominent member of the political opposition, will put the appellant at risk'. Nowhere does the Judge suggest that if he accepted the Appellants account as true this would not put her at risk on return. He was referred to and noted the relevant caselaw at paragraph 17 that underpins the expert's conclusion. However given that the Judge made clear findings as to why he did not accept that the Appellant had given a credible account of what caused her to flee from the DRC I am satisfied that the Judge was entitled to place no weight on the experts report in so far as it relates to the Appellants risk.

20. The Judge summarised this case as resting on the credibility of the Appellant and set out at paragraphs 28 (a)-(g) why he did not find her to be a credible witness and therefore why he rejected her account of her involvement with the UDPS and why she feared that she was at risk on return to the DRC. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

21. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

22. The appeal is dismissed.

Signed

Date 25 2 2016

Deputy Upper Tribunal Judge Birrell