Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01352/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 October 2017	**On 30 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

D Y R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Chapman, Counsel instructed by Lambeth Law Centre
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. Under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue the anonymity direction previously made in the First-tier Tribunal. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of his family.

2. This is an appeal from a decision of First-tier Tribunal Judge Seelhoff promulgated on 16 March 2017. The appellant is a citizen of Rwanda. He was born in 1982 and is a film maker. He claims that he will be perceived

as a government opponent because of the content of his work and that of his known associates. By letter dated 26 January 2017, the respondent refused his application for asylum and his appeal to the First-tier Tribunal was dismissed. The appellant was granted permission to appeal on each of five substantive grounds.

3. Miss Chapman, who acts for the appellant, takes no issue with the judge's approach or with his summary of the applicable law. This is to be found at [17] and following, but particularly [20]:

> "To succeed in an asylum claim an Appellant must establish that there is a reasonable degree of likelihood that his account is true and further that as a consequence he will face real risk of persecution and/or treatment reaching article 3 severity on return. The burden of proof is on the Appellant to establish this to what is referred to as the 'lower standard'".

4. Miss Chapman took me through the decision forensically indicating where, in her submission, the findings of the judge (i) were based on a misapprehension as to the factual evidence that was before him, or (ii) were insufficiently supported by adequate reasons. She drew my attention to the judge's finding at [41] that he found the appellant to be "broadly credible in respect of his account of what has happened".

5. Miss Chapman's analysis of the decision engaged each of the five grounds of appeal, but she directed her submissions holistically to its entirety, indicating that the grounds were cumulative, and had the effect of undermining the judge's findings. Mr Nath, for respondent, placed reliance on the Rule 24 statement and submitted that the compendious grounds of appeal amount to nothing more than disagreement with the conclusions to which the judge came, and which were clearly open to him on the evidence as he found it to be.

6. For convenience, I consider the grounds separately but have kept in mind their inter-relationship one with another and their combined effect.

Ground 1: The letter from Amnesty International

7. The first ground alleges that the judge failed to give proper consideration to a letter from Amnesty International dated 1 March 2017. Miss Chapman quite properly concedes that that letter was undoubtedly before the judge and is referred to both in his summary of the evidence and in his findings. At [52] the judge says:

> "I have considered the letter in support provided by Amnesty International. In my assessment the letter does not particularly assist the Appellant in his claim because it simply highlights the fact that those who are perceived to be genuinely opposed to the government have been targeted and harassed regardless of their status. The report makes reference to journalists disappearing and to activists being charged for state security offences in 2014 and receiving 10 year prison sentences and other such incidents. The Appellant has

been in Rwanda since such practices became commonplace and since the authorities became aware of the full extent of his work. The Appellant has not received as much as an express threat from anyone acting in an official capacity. The Appellant has not been able to point towards anything by way of an official threat to him and crucially as I have noted above was not harmed when two people he believes were government officials were alone with him in his rented house late at night in Rwanda in September 2015."

8. In her submissions, Miss Chapman quoted extensively from the very lengthy letter from Amnesty making the point that this was far from a generic submission by a non-governmental organisation but was expressly crafted by reference to this individual appellant and his particular circumstances. At paragraph 2 the letter reads:

> "We would also take this opportunity to express our organisation's concern at the prospect of the Appellant being compelled to return to Rwanda. We regard the basis of his claim to be plausible and are concerned that he may face a real risk of arbitrary arrest, unfair trial and potentially mistreatment if he were to be forcibly returned."

9. I do not for present purposes propose to rehearse lengthier sections of that letter (mindful of safeguarding the appellant's anonymity). Suffice it to say Miss Chapman took me to paragraph 62 and reference to the tactical use of various forms of intimidation adopted by agents of the Rwandan authorities. This is expanded upon in paragraph 65 where specific mention is made of the conduct of Rwandan officials, both in the United Kingdom and internationally, reports of engagement and monitoring intimidation and dissent and perceived anti-government activities in various countries around the world including Europe.

10. The letter states that these activities can range in severity from the form of intimidation which the appellant describes and, in the extreme form, abduction or even murder. In the conclusions at paragraphs 75 and 76, it is repeated that the claims made by the appellant are plausible. The letter states:

> "76. Our organisation would be concerned at the prospect of the Appellant being forcibly removed to Rwanda. In our view, a person with the Appellant's characteristics may face a real risk of arbitrary arrest, unfair trial and potentially mistreatment [sic] arising from the use of Rwanda's sweeping anti-divisionism, anti-revisionism, anti-defamation and other media censorship laws. Large numbers of independent journalists, film makers, writers and other human rights defenders have been compelled to leave Rwanda as a result of intimidation and other pressure applied on them by the Rwandan authorities. The Appellant's work, which raises questions about the RPF's conduct and the officially sanctioned genocide narrative, would be likely to put him within this bracket."

11. Miss Chapman rightly concedes that it is for the judge to form his independent assessment, but submits that what is said by Amnesty International is of such a nature and is directed exclusively to the particular circumstances of this appellant that the judge ought to have dealt expressly with its detailed contents, particularly if coming to a different conclusion. She criticises the brevity of the judge's treatment at [52].

12. In my judgment, looking at [52] both in isolation and also in the context of the decision overall, the judge properly took Amnesty's letter into account, whilst applying his own independent judicial mind to the totality of the evidence. He came to a conclusion that was properly open to him in the circumstances. It was for the judge to assess the genuineness of the appellant's fear of future harm. He was entitled to take into account the absence of reported threats in the past and whether that might be indicative of the likely fear of persecution in the future. The judge did not regard absence of previous harm or threat as determinative of future risk, but made an evaluation based upon the evidence before him. That was a matter entirely for his discretion and his conclusion cannot be faulted. Amnesty's letter was but one part of the available evidence and the judge's findings and reasons are adequately expressed.

Ground 2: Failure to consider the evidence cumulatively

13. The second ground of appeal argues that the judge erred in failing to consider the cumulative effect of the adverse incidents that led to the appellant seeking asylum. Miss Chapman developed this ground in her submissions by pointing to a series of events leading to an encounter at SOAS (an academic institution in London) which was, she said, the particular precipitating event and immediate trigger for the appellant's application for asylum.

14. I can take this ground more briefly as it is clear from the judge's very full and carefully reasoned decision that proper account was given to these sequential events. The matters were not contentious as the judge considered the appellant's account to be broadly credible. It did not require more detailed recitation. The judge dealt with the specific encounter at [48] and concluded, for the reasons he gave, that even taking the allegations at their highest, it "cannot sensibly be inferred from the appellant's account … that he would be at risk on return".

Ground 3: Flawed approach to corroborative evidence of witness YMN

15. The third ground of appeal alleges an error in the treatment of the potential corroborative evidence of YMN. It is accepted that for technical reasons it was impossible to form a Skype link with YMN who was in Canada. The judge took the view that communicating via a "Facetime" or similar mobile phone app would not be appropriate.
16. I do not consider that this case management decision can be the subject of legitimate challenge. This is particularly so as the judge had before him a letter from YMN and (notwithstanding that its contents may not have been in proper evidential form, noted at [36]) the judge nonetheless took

the letter fully into account. He described it at [51] as being "a genuine and reliable document" and did not consider that the appellant had been prejudiced by not being able to call him as a witness. I do not consider there to be any substance in this ground.

Ground 4: Material error of fact

17. The fourth ground of appeal alleges a material error of fact. This ground, as it was developed by Miss Chapman, was put as a significant misapprehension as to the chronology of events. At [44] the judge records (on the appellant's own account) that everything done to bring himself to the adverse attention of the authorities occurred prior to his last visit to Rwanda. Miss Chapman took me to [45] and elsewhere. She submits that a number of events, in particular the screening of a particular film in Rwanda did not in fact take place until after the appellant's last visit.

18. In my judgment, the judge's observations at [45] deal more than adequately with the chronology. The judge took a view which was open to him on the level of publicity which the appellant's work had already received prior to his last visit to Rwanda. The judge notes that the film received its premiere at the Sundance Festival in early 2015. This screening at a world famous international event, the judge found, would have brought both it and the appellant to the attention of any monitoring of artists by the Rwandan Government. The judge noted that subsequent showings of the film (presumably within Rwanda) might have brought more attention but the judge found (as he was entitled) that it was the Sundance screening which would have provoked interest of the authorities.

19. I do not consider this to be a misstatement of the evidence as Miss Chapman suggests. Nor do I consider the judge can be criticised for dealing as he did with events concerning the grant of asylum to YMN in Canada at [46] and [47]. I can detect no material error of law in this regard. Miss Chapman's suggestion that the judge misconstrued the chronology does not bear scrutiny. The full and explicit reasoning of the judge is sufficiently clear.

Ground 5: Erroneous application of standard of proof

20. The fifth ground concerns the erroneous application of the standard of proof. The first point Miss Chapman raises is ill-founded because it is predicated on the wording adopted by the judge when directing, entirely properly at [55] that there be anonymity:

> "I have considered the question of an anonymity direction and given the Appellant's profile this is one of those cases where I do consider that if it became public knowledge that the Appellant had claimed asylum in the UK there may be some scope for him to face problems on return and accordingly I have made an anonymity order in these circumstances." (emphasis added)

21. Miss Chapman's submission was that the use of the words "some scope for him to face problems on return" in some way undermines the judge's conclusions elsewhere that there is no real and genuine fear of persecution. That submission cannot possibly succeed. The judge was here directing his mind to an entirely separate issue, namely the consequences of an asylum application having been made.

22. Miss Chapman additionally submitted that the standard of proof generally was not properly considered. She suggested that there are various places in the decision where the judge makes express findings that there have not been threats or intimidation in the past and extrapolates from these that there will not be any in the future. This is not a fair criticism. There is nothing in the decision to suggest that the judge closed his mind to the prospect of future fear simply on the basis that there had been no real incidents of harm or intimidation in the past. On the contrary, the judge adopted the proper approach [20] and assessed whether on the basis of all the available evidence, the appellant had established to the lower standard that he will face real risk of persecution and/or treatment reaching Article 3 severity on return. He concluded [54] that the appellant had not discharged the evidential burden. That finding is unimpeachable and was dispositive of the appeal.

23. Taking each of those five grounds individually, and reviewing them collectively in the forensic way in which Miss Chapman developed her argument, I do not consider that, whether separately or cumulatively they amount to material error of law. Undoubtedly the appellant and his advisers disagree with the conclusion to which the judge came, but such conclusion was open to him and the judge's reasoning is clear and explicit. In the circumstances this appeal must be dismissed.

Notice of Decision

The appeal is dismissed and the decision of the First-tier Tribunal is affirmed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill* Date 27 October 2017

Deputy Upper Tribunal Judge Hill QC