Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02739/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 July 2017	**On 31 July 2017**

Before
UPPER TRIBUNAL JUDGE FINCH

Between
[G M]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. M. Blundell of counsel, instructed by Makka Solicitors

For the Respondent: Ms K. Pal, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant, who was born on [ ] 1971, is a national of Burundi. It is her case that she participated in two demonstrations in Burundi on 26 and 27 April 2015, protesting against the

fact that President Nkurunziza had stood for election for a third time. She also gave demonstrators food at her restaurant in Bujumbura.

2. The Appellant made a *sur place* application for asylum on 22 June 2015, when she was in the United Kingdom visiting her sisters. Her application was refused on 5 November 2015. Her appeal was heard by First-tier Tribunal Judge Butler, who dismissed her appeal in a decision, promulgated on 21 December 2016. The Appellant appealed against this decision and First-tier Tribunal Judge Kimnell granted permission to appeal on 21 March 2017, on the basis that First-tier Tribunal Judge Butler had not considered the Appellant's fear of persecution in the context of known country conditions.

ERROR OF LAW HEARING

3. I heard oral submissions from counsel and the Home Office Presenting Officer and I have referred to the content of their submissions, where relevant, below. The Home Office Presenting Officer only made very brief submissions and accepted that the First-tier Tribunal Judge had failed to take into account the Appellant's Tutsi ethnicity.

DECISION

4. The Appellant had to establish that she was at risk of persecution on the basis of her political opinion if she were to be removed to Burundi.

5. In *Y v Secretary of State for the Home Department* [2006] EWCA Civ 1223 Lord Justice Keene found that:

"25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from

which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in *Kasolo v SSHD* 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:

'An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done."

26. None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the *Awala* case by Lord Brodie at paragraph 24 when he said this:

"… the tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole".

He then added a little later:

"… while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible".

27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree".

6. Counsel for the Appellant gave detailed submissions in relation to First-tier Tribunal Judge Butler's approach to the credibility of the Appellant's account. I find that when reaching adverse credibility findings the First-tier Tribunal did not sufficiently interrogate the evidence before him. For example, in relation to the timing of her *sur place* claim, he failed to take into account that the invoices from [MT&T] confirmed that her return airline ticket, which she had bought on 25 April 2015, showed that she was due to fly from London to New York, Amsterdam and Naroibi before returning to Burundi and records made by the Respondent showed that this ticket was shown to the Immigration Officer conducting her screening interview. Therefore, it was not the case that she had not mentioned travelling to the United States of America. In addition, her passport contained a visa for America which had been obtained on 19 March 2015, which indicated that she did not have at that time any intention of applying for asylum in the United Kingdom.

7. In relation to her wish to be interviewed in Kirundi at her substantive interview, the record clearly states that she informed the interviewer that if she was not able to get a Kirundi interpreter she was prepared to be interviewed in French. The GCID – Case Record Sheet also noted that she wanted to be interviewed in "Burundi". The record of her visa application also shows that the Entry Clearance Officer accepted that she was the Managing Director of [GS] and earned £1,800 a month and the stamps in her passport showed that she had travelled widely.

8. In addition, the First-tier Tribunal Judge did not reach any, or any sustainable, reasons for not giving weigh to the arrest warrant relied upon by the Appellant. The affidavit by [EB] and the Fedex document clearly provided some provenance for the document.

9. The First-tier Tribunal Judge also found that the letter from Ms [N] was entirely self-serving. In *R (on the application of SS) v Secretary of State for the Home Department* ("self-*serving" statements)* [2017] UKUT 00164 (IAC) the Upper Tribunal found that:

"(1) The expression "self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing. What is needed is a reason, however brief, for that designation. For example, a letter written by a third party to an applicant for international protection may be "self-serving" because it bears the hallmarks of being written to order, in circumstances where the applicant's case is that the letter was a spontaneous warning".

10. The First-tier Tribunal Judge gave no reasons for finding the letter to be "self-serving".

11. Furthermore, in paragraph 17 of the decision the First-tier Tribunal Judge referred to the Appellant having had produced a bundle of documents, which included objective evidence. However, there was no further mention of any of the objective country evidence. Instead, at paragraph 47 of his decision, the First-tier Tribunal Judge stated that "the issue in this appeal is the credibility of the Appellant and that of her documentary evidence. I did not find her to be a credible witness". This indicates that the credibility of the Appellant's claim was decided without any reference to the objective country evidence.

12. In particular, in paragraph 51 of the decision the First-tier Tribunal Judge did not take into account the objective country evidence when considering whether she had participating in demonstrations in Burundi. The Human Rights Watch report *Burundi: Spate of Arbitrary Arrests, Torture* confirmed that demonstrations against President Nkurunziza's bid for a third term took place in April 2015. The reports by Human Rights Watch and Amnesty International confirmed that the security services in Burundi and the Imbonerakure were still detaining and ill-treating those suspected of being involved in these demonstrations in August 2015 and even October 2015.

13. The Appellant had also submitted two further documents at the hearing, which were not referred to by the First-tier Tribunal Judge. The first contained *Concluding observations of the*

*Committee [against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] on the special report of Burundi…,*and was dated 9 September 2016. The second was the *Report of the United Nations Independent Investigation on Burundi..*, dated 29 September 2016. Both confirmed the events relied upon by the Appellant and the fact that reprisals escalated in May 2015.

14. Counsel for the Appellant also relied on these and other reports in relation to the alternative basis to her claim for international protection, which was that she was at risk of persecution as a person of Tutsi origin, who had travelled to Rwanda from Musaga, which was seen by the Burundi government as an "opposition neighbourhood". Although the First-tier Tribunal Judge mentioned her alternative claim in paragraph 59 of his decision, he again failed to interrogate the totality of the evidence and also failed to take into account the fact that the objective country evidence confirmed that persons of her profile were being targeted.

15. Instead, he turned the obligation to take into account objective evidence on its head and found in paragraph 57 that the Appellant had "carefully constructed" her account "to fit in with the situation in Burundi".

16. Therefore, I find that there were material errors of law in First-tier Tribunal Judge Butler's decision.

DECISION

(1) The Appellant's appeal is allowed.

(2) The decision by First-tier Tribunal Judge Butler is set aside.

(3) The appeal is remitted to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Butler.

Nadine Finch

Signed Date 27 July 2017
Upper Tribunal Judge Finch