



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

Appeal Number: PA/06045/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On 9 August 2017**

**Decision & Reasons Promulgated
On 11 August 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**JL
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Sill, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to her asylum claim.

Summary of asylum claim

2. The appellant is a citizen of the Democratic Republic of Congo ('DRC') and claims that she is at risk of persecution for reasons relating to her late brother's connections with Jean-Pierre Bemba, the leader of an opposition party ('MLC') seen by the DRC government as a threat to President Kabila.
3. The appellant has provided a detailed account of what she claims happened in the DRC in inter alia, her asylum interview and witness statements. In a report dated 1 November 2016, Dr Muzong Kozi, an Associate Fellow of Chatham House, gave comprehensive reasons to support his view that the appellant's evidence is consistent with the background evidence and that she will face a real risk of persecution because of her connections with her brother, a person perceived to have close connections to Bemba and the MLC, and who was detained and killed for reasons relation to this.

Procedural history

4. The appellant appealed against the respondent's decision dated 3 June 2016 refusing her asylum claim. The respondent did not accept the appellant's account was credible and was not prepared to accept any aspect of it, save for her nationality and identity. Her appeal took place at an oral hearing before the First-tier Tribunal on 13 November 2016. After a period of some 3 months and one day, the First-tier Tribunal signed its decision, which was then promulgated the day after on 15 February 2017. The First-tier Tribunal dismissed the appeal on all grounds.
5. In a decision dated 24 March 2017 Designated First-tier Tribunal Judge Macdonald granted permission to appeal observing that whilst delay per se cannot be regarded as a material error of law, there may be merit in the other grounds in particular the failure to make a clear factual finding in relation to important information.
6. The respondent has submitted a rule 24 notice dated 3 April 2017 in which it was submitted that the First-tier Tribunal's findings were open to it. Attention was drawn to the appellant's ability to re-enter the DRC and attend her mother's funeral without facing any adverse attention from the authorities.

Hearing

7. Mr Sill relied upon and amplified his grounds of appeal and Mr McVeety relied upon the rule 24 notice. I refer to their submissions in more detail below.
8. At the end of the hearing I reserved my decision, which I now

provide with reasons.

Error of law discussion

9. At the beginning of the hearing Mr Sills accepted the period of over three months delay in signing the decision did not in itself give rise to a material error of law but that it must be considered as a relevant factor alongside the other grounds of appeal, which he submitted supported the proposition that the necessary degree of anxious scrutiny to all the evidence was missing. I accept that on appeal, the Upper Tribunal may be readier to infer evidence has been overlooked where there has been delay – see R (Ghorbani) v SSHD [2004] EWHC 510 (Admin) at [11], but that all the circumstances of the case must be carefully considered.

(1) Country expert report

10. The First-tier Tribunal has clearly considered Dr Kodi's report at [64] to [68]. These paragraphs set out the First-tier Tribunal's views as to discrete aspects of Dr Kodi's evidence, yet there is no overall analysis or assessment of his qualifications or expertise or an indication of the weight it is prepared to attach to the report or Dr Kodi's opinions. At the beginning of his report under the heading 'Qualifications and expertise' Dr Kodi sets out an impressive educational and employment record including employment in a senior role for Amnesty International and Transparency International. He also sets out the dates of research missions he has carried out in the DRC since 2007, the most recent one having taken place in June-July 2014.
11. When setting out its findings of fact under the heading 'consideration' from [74] to [91] the First-tier Tribunal makes no reference to Dr Kodi's evidence whatsoever. It is implicit from this and some of the findings made (for example at [85] and [86] the First-tier Tribunal appears to reject Dr Kodi's view that the appellant is at risk by reason of being a family member of a MLC-supporting soldier) that the First-tier Tribunal has decided to attach little or no weight to Dr Kodi's evidence. There is no clear reasoning for this, save for the criticisms of the report at [64] to [69]. This reasoning contains material errors of law.
12. First, the First-tier Tribunal has failed to take into account the full ambit of Dr Kodi's claimed sources and evidence to support the views set out in the report. At [64] the First-tier Tribunal observes that Dr Kodi is reliant upon reports dated 2008 in respect of the arrest of people considered to be close to opposition parties and reference to actions against MLC members / supporters focuses on Equateur province, the north and north-west region of the country rather than Kinshasa.

- (i) The First-tier Tribunal's findings fail to take into account the fact that the 2008 reports at footnotes 1-6 of the report are cited to support the arrests and expulsions that took place in 2007 when tensions between Kabila and Bemba supporters came to a head. This is necessary background information for this appeal because the appellant claimed that her brother was caught up in these tensions as a Bemba supporter and fled Kinshasa for Congo-Brazzaville in early 2008, a fact the First-tier Tribunal appears to accept at [84].
 - (ii) The First-tier Tribunal's findings are inconsistent with the acknowledgment at [65] that after Congo-Brazzaville forcibly returned many DRC citizens to the DRC in April 2014, the DRC authorities searched for and arrested MLC supporters like the appellant's brother. Reports from 2015 are cited in support of this at footnotes 7-9 of the report.
 - (iii) The First-tier Tribunal failed to take into account Dr Kodi's own research carried out during the course of research missions particularised in the report - see [12] and footnote 14 of the report.
13. Second, the First-tier Tribunal has failed to address Dr Kodi's explanation for why the detention of rank and file members of the opposition parties, such as the MLC, and those associated with them is not documented by local and international human rights organisations - they are held incommunicado and it is very difficult to obtain corroboration albeit Mrs Eve Bazaiba has highlighted the situation - see [13] of the report.
14. Third, the First-tier Tribunal has not accurately directed itself to the country background evidence and country guidance consistent with Dr Kodi's evidence. The finding at [68] that Dr Kodi's evidence does not "*sit well with the country of origin information report or some of the background reports upon which he has relied*" is not particularised but the First-tier Tribunal has effectively found Dr Kodi's evidence to be inconsistent with other background evidence regarding the authorities' treatment of low level opposition members and those associated with them. Earlier in the decision at [18] the First-tier Tribunal said this:

"At the current country guidance position appears to be that leaders, spokespersons or those officeholders or those having a significant political profile may be at risk but that there is no evidence that simple members of a political party will by reason of that alone be at risk."
15. This is not an accurate reflection of the current country guidance or background reports. The CPIN DRC: Opposition to Governments dated 8 November 2017 (which appears to be the source for the information set out at [70] to [73] rather than the COIR DRC dated

September 2015) states this at 3.1.3:

“Opposition party leaders and / or high profile activists in the DRC who have come to the attention of the authorities and who are considered a threat to the government may be subject to treatment amounting to persecution or serious harm. Low-level activists and party members are unlikely to be at risk of such treatment. However the risk a person may face will depend on the prevailing political climate, their profile and activities, and whether there are likely to be perceived as a threat to, and attract the attention of, the authorities in such a way that amounts to a real risk of persecution or serious harm.”

16. BM and Others (Returnees - criminal and non-criminal) DRC CG [2015] UKUT 00293 (IAC) addresses the likely position on return to Kinshasa airport for foreign national offenders, failed asylum seekers and APARECO (UK) members. It finds that APARECO (UK) members at risk include persons who are, or are perceived to be, leaders, office bearers or spokespersons. The headnote also states this:

“As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.”

17. There is a clear theme in the country background evidence that rank and file members are not at risk as a general rule but that each case will be fact sensitive and will depend on the prevailing political climate, their profile and activities, and whether there are likely to be perceived as a threat to, and attract the attention of, the authorities. This calls into question the First-tier Tribunal’s finding that there is no evidence that simple members of a political party may be at risk at [18] and its summary of the country guidance at [85] and [86].
18. In addition, the suggestion at [85] that family members of activists are not at risk on the basis that the background reports only specifically identify that demonstrators and members of opposition parties may be at risk is unsupported by the evidence. The First-tier Tribunal has apparently accepted the nature and extent of human rights abuses set out at [8] of Dr Kodi’s report. This makes reference to the victims including children. It is difficult to see how they would be any other than family members of government opponents.
19. Mr McVeety acknowledged that the First-tier Tribunal’s approach to the expert report contained errors but submitted that these are not material because at the end of the day the appellant was able to re-enter Kinshasa after the death of her brother and mother, and attend her state-sponsored mother’s funeral without incident. This leads me to assess the First-tier Tribunal’s approach to the appellant’s evidence.

(2) *Findings on the appellant's account*

20. Mr McVeety acknowledged that the First-tier Tribunal has not made any clear credibility finding regarding the detailed evidence provided by the appellant. The findings at [74 to [83] comprise a series of doubts regarding the appellant's evidence. No clear findings are reached although the First-tier Tribunal accepted aspects of the appellant's evidence. At [84] and [87] the First-tier Tribunal accepted that the appellant "*may have had a brother that was materially involved in the MLC*" but finds that there is no evidence that she has been involved in any political activity. It is difficult to discern with any precision what the First-tier Tribunal has expressly accepted or rejected in the appellant's account. The adoption of the "*even if*" approach at [90] regarding what happened to the mother and nephew does not follow a rejection of the evidence relating to them.
21. When the decision is read as a whole it appears that the First-tier Tribunal was prepared to assume that the appellant's account regarding the death of her brother, mother and nephew at the hands of the DRC authorities for reasons relating to her brother's MLC connections is reasonably likely to be true but that the appellant herself is of no adverse interest because: she readily returned to the DRC [79]; her claim to be under surveillance is all dependent upon information received from Major Jorma [81] which may not be a "*true representation of fact*" because he wanted her to become involved with him [88]; the appellant was not arrested at the highly public funeral of her mother at [82] and [83]; she was not involved in any political activity [84] and [86] and was not involved with her brother's political activities in any way [89]. There was detailed evidence available to the First-tier Tribunal from the appellant addressing each of these concerns. This evidence has not been addressed and no reasons have been provided for rejecting it.
- (i) The appellant had problems after she returned to the DRC for her mother's funeral (Q105).
 - (ii) The ANR (which the Respondent's guidance states were increasingly used as a secret police) were after her because she let her brother stay at her house / had meetings there and they wanted her to give them names of attendees, he had given her documents for the MLC, the ANR believed she had gone to London to meet opposition parties there (see Q19, Q108 and Q115 and screening interview).
 - (iii) The appellant received a warning from Christian that the ANR wanted to question her and she heard that people were looking for her at home and work. She was also suspicious that her phone was being monitored. After she left a friend's

home the friend's husband was arrested (see the appellant's witness statement dated 5 April 2016). The appellant's evidence that she believed that the ANR were looking for her was not solely based upon information from Major Jorma.

- (iv) Christian was killed and family members injured in a car accident during the funeral procession. Family members of the appellant's brother were therefore targeted at the funeral (see appellant's witness statement).
22. It is difficult to understand why the First-tier Tribunal regarded the appellant not to be at risk "*whatever the circumstances*" as indicated at [89]. If the First-tier Tribunal was prepared to treat the evidence at its highest, the appellant provided detailed evidence that she was at risk because the authorities perceived that she had knowledge of and / or was linked to her brother's and nephew's political activities, and could therefore be distinguished from her brother's wife and her other brothers.

Conclusion

23. When the errors identified above are considered together I am satisfied that the First-tier Tribunal's findings regarding Dr Kodi's report and the appellant's evidence are inadequately reasoned, and the First-tier Tribunal has materially erred in law.

Disposal

24. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal. This is because completely fresh findings of fact in relation to detailed evidence are necessary.

Decision

25. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
26. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
10 August 2017