



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

Appeal Number: PA/13823/2016

THE IMMIGRATION ACTS

Heard at Liverpool

On 18th September 2017

**Decision & Reasons
Promulgated**

On 27th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**EM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Smith of Counsel, instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Herwald of the First-tier Tribunal (FtT) promulgated on 24th January 2017.

2. The Appellant is a female citizen of the Democratic Republic of the Congo (the DRC), born [] 1987.
3. She claimed asylum on the basis of her sur place activities in the UK. Her application was refused on 25th November 2016 and she appealed to the FtT.
4. The appeal was heard on 12th January 2017. The FtT heard from the Appellant and one witness and dismissed the appeal. The FtT noted that there had been a previous hearing in which the Appellant had not been found to be a truthful witness, and the FtT endorsed that finding.
5. The FtT noted that the Respondent had conceded that the Appellant was a member of APARECO, but found that the authorities in the DRC would not have any knowledge of the Appellant's low level activities in the UK. The FtT found that the Appellant did not have the knowledge about APARECO that would be expected of someone in her claimed position in the organisation.
6. Following dismissal of the appeal, the Appellant applied for permission to appeal to the Upper Tribunal. Reliance was placed upon three Grounds of Appeal. Firstly it was contended that the FtT had failed to accurately take a note of the evidence, and/or failed to have any or any proper regard to the evidence and submissions.
7. Secondly it was contended that the FtT had failed to make clear findings of fact as to what was accepted as to the Appellant's claimed role in APARECO and her activities in the UK.
8. Thirdly it was contended the FtT had failed to properly consider and apply country guidance case law, and had failed to give any or any adequate reasons.
9. Permission to appeal was granted by Judge Keane in the following terms;

"The grounds disclosed an arguable error of law but for which the outcome of the appeal might have been different. The judge's handwritten note of the evidence given by the Appellant and by a witness called in support of the appeal, Mr Diatapakola, accorded with the note of evidence taken by Counsel who appeared on behalf of the Appellant at the hearing which was appended to the application for permission. Sadly, in the precise respects to which the author of the grounds mentioned the judge did not accurately draw on his note of the evidence in his decision at paragraph 12(e), (g), (i) and (m) of the decision and it was accordingly arguable that the evidential foundation for the adverse findings of fact to which the judge came was not laid. Grounds disclosed arguable errors of law but for which the outcome of the appeal might have been different. The application for permission is granted."
10. I should mention that the reference to paragraph 12 relates to what I understand to be an earlier version of the FtT decision. It appears that the

decision may have been corrected, and the reference to paragraph 12, now refers to paragraph 13 of the FtT decision.

11. The Respondent issued a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 indicating that the application was opposed, noting that Counsel's note of evidence referred to in the application and grant of permission, had not been provided to the Respondent.
12. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

13. Mr McVeety indicated that he had read Counsel's note of evidence and he agreed with the indication given in the grant of permission to appeal. Mr McVeety stated that it was accepted that the FtT made some factual errors when setting out its findings, which amounted to a material error of law as set out in the grounds at paragraph 6A-G.
14. Both representatives submitted that the FtT decision should be set aside in its entirety and remitted to the FtT to be heard afresh.

My Conclusions and Reasons

15. As I indicated at the hearing, I found that the FtT materially erred in law and the decision of the FtT was set aside with no findings preserved.
16. I found an error of law as contended in the Grounds of Appeal, read together with the grant of permission.
17. I have taken into account paragraph 7.2 of the Senior President's Practice Statements. There is substantial fact finding to be undertaken, and it is appropriate for this to be undertaken by the FtT, rather than the Upper Tribunal.
18. The appeal is therefore remitted to the FtT, and the parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Herwald.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Anonymity

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

her or any member of her 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. This direction is made because the Appellant has made a claim for international protection, and is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 19th September 2017

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date 19th September 2017

Deputy Upper Tribunal Judge M A Hall