



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04776/2015

THE IMMIGRATION ACTS

Head at North Shields
On 16 January 2018

Decision & Reasons Promulgated
On 18 January 2018

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

CK (DRC)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Sarah Rogers, Legal representative with the Immigration Advice Centre Limited

For the respondent: Mr Myroslav Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal refusing him leave to remain on asylum, humanitarian protection or human rights grounds. The appellant is a citizen of the Democratic Republic of the Congo (DRC).

Background

2. The credibility of the appellant's core account is not disputed. She is the family member of an APARECO oppositionist in her country of origin. In 2012, during a raid on the family home, her father was killed. The appellant was detained, abused and raped.
3. The appellant subsequently left the DRC via Kenya, from where she was trafficked to Saudi Arabia as the domestic servant of a family there. The appellant was repeatedly raped during that employment. She came to the UK with the Saudi family and once here, she claimed asylum. The respondent accepts that the appellant is a victim of trafficking for domestic servitude. For reasons which are not clear to me, she does not accept that the appellant was also trafficked for sexual purposes, but nothing turns on that in these proceedings.
4. Before the First-tier Tribunal, the evidence was that the appellant had been involved in low-level APARECO activities on a *sur place* basis while in the UK.
5. The appeal was dismissed by both the First-tier Tribunal and Upper Tribunal. The appellant appealed to the Court of Appeal.

Permission to appeal

6. On 11 September 2017, Master Bancroft-Rimmer sitting in the Court of Appeal allowed the appeal by consent, directing that the appeal be remitted to a freshly constituted Upper Tribunal for reconsideration. In the Statement of Reasons, also by consent, the parties agreed as follows:
 - "5. Having considered the case, the Respondent agrees that the Upper Tribunal erred in their consideration of the appellant's circumstances and in seemingly dismissing her grounds [of appeal] in relation to her relationship to her father solely on the basis that family members were not listed as a risk group in *BM and others*.
 6. The parties are agreed that the appeal should be allowed to the extent that the matter should be remitted to the Upper Tribunal for a *de novo* hearing."
7. The effect of that agreement is not only that the appeal came back to the Upper Tribunal for an error of law hearing, but that the parties and the Court of Appeal had agreed that there was an error of law in the decision of the Upper Tribunal to dismiss the appeal.

8. After discussion with the parties, I approach this appeal on the basis that the decision of the First-tier Tribunal must be set aside, but the findings of fact and credibility in the First-tier Tribunal preserved. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

9. I have heard oral submissions from Ms Rogers and Mr Diwnycz, which are recorded in my notes. It is not necessary to set them out in full here. The accepted facts are that this appellant is the family member of a known APARECO member who was killed in 2012, in a raid on the family home, in which the appellant herself was detained, abused and raped.
10. The most recent country guidance remains that in *BM and Others* (returnees - criminal and non-criminal) (CG) [2015] UKUT 293 (IAC):
- “3. A national of the DRC who has a significant and visible profile within APARECO (UK) is, in the event of returning to his country of origin, at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in MM (UDPS Members – Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers or spokespersons. 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.”*
11. It is well-established that a family is a particular social group and this appellant is therefore a member of a particular social group which caused her to experience past persecution and pursuant to paragraph 339K:
- “339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”*
12. For the respondent, Mr Diwnycz was not able to identify any country evidence to indicate that there were good reasons for considering that the appellant's previous ill-treatment would not be repeated if she were returned now.
13. In addition, Ms Rogers asserts, and Mr Diwnycz accepted at the hearing, that the factual matrix has moved on and that the appellant's activities in APARECO in the UK today are such as to make her an active oppositionist in her own right, creating an additional risk on return for her. That risk sounds both under the Refugee Convention, and Articles 3 and 8 of the ECHR.

14. On the basis of the country guidance and the factual matrix above, I am satisfied that the appellant is entitled to protection and I allowed the appeal at the hearing.

DECISION

15. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal on asylum and human rights grounds.

Date: 16 January 2018

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson