Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01798/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 19 October 2018	**On 24 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

L. G.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of the DRC, entered the United Kingdom illegally in 2017 and claimed asylum. Her protection claim was refused on 5 January 2018, and her appeal against the decision was heard and dismissed by

First Tier Tribunal Judge O'Hanlon in a decision promulgated on 27 March 2018.

2. Permission to appeal that decision was sought on two grounds. The first raised a challenge to the adverse credibility findings, asserting that the Judge should have attached greater weight to the content of a letter which was said to corroborate her account of her experiences in the DRC. The second raised a challenge to the treatment of the Appellant's health, asserting that the Judge failed to follow the approach set out in AM (Zimbabwe) [2018] EWCA Civ 64.
3. Permission was refused on the second ground, but granted on the first by First tier Tribunal Judge Chohan on 25 April 2018, although it was noted that it was not clear that the error contended for would have had any material bearing on the disposal of the appeal.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
5. Thus the matter came before me.

The hearing

6. When the appeal was called on for hearing Ms Brakaj did not make any submissions in relation to the second ground, beyond stating that the Appellant continued to rely upon the second ground. I infer that she sought thereby to renew the application for permission to appeal upon the second ground to the Upper Tribunal, although no such application has been formally made.
7. In my judgement permission was correctly refused by the FtT in relation to the second ground. The Appellant had accepted that she was diagnosed with her condition in the DRC in 2006, and that she had thereafter received treatment for her condition in the DRC until she left in 2017. Her evidence about the adequacy and nature of the treatment received in the DRC was rejected [37], and there is no challenge offered to that rejection. It was therefore well open to the Judge to conclude that adequate and effective treatment was available to her in the DRC [38].
8. The Appellant's condition was presently well managed, and posed no current threat to her life, whilst she remained in the UK. Although she relied upon medical evidence to suggest that an interruption to her treatment upon return to the DRC would result in a deterioration in her condition, with a consequent threat to her life, on the evidence before him it was open to the Judge to conclude that there was no real risk of this

occurring [38-9]. Thus the Appellant did not meet the Article 3 threshold, and there is no substance to the bald complaint that the Judge failed to follow the AM (Zimbabwe) approach. Nor had the Appellant established in the eight months during which she had been present in the UK prior to the hearing, any "family life". Nor had she established any "private life" of sufficient strength and quality to engage Article 8. The grounds offer no challenge to either of these findings. Accordingly, as an adult, there was no Article 8 gateway that would allow her to introduce evidence concerning her health into any assessment of the proportionality of the decision under appeal because that stage was not reached; GS (India) [2015] EWCA Civ 40.

9. The focus of Ms Brakaj's submissions was therefore upon the first ground, which is drafted in the following terms;

It would seem irregular that the Judge has partially accepted the letter from XX in that he is willing to accept she is a member of XX however has not accepted that she was an activist nor was detained and tortured…. This evidence should be afforded greater weight and the Judge has not provided comprehensive or logical findings as to why he only accepts part of the letter.

10. Ms Brakaj argued that this was not a complaint of perversity, and accepted that it could not be said the Judge had overlooked relevant evidence. Thus she framed the complaint as a failure to give adequate reasons for the Judge's decision not to attach sufficient weight to the letter to accept it as an entirely accurate account of the Appellant's experiences in the DRC, and thus entirely corroborative of her own evidence.

11. I am not satisfied that the approach Ms Brakaj contended for would have been an appropriate one. The weight that could be given to the letter in question, dated 16 February 2018, was quite properly considered by the Judge in the context of the failure of the author to give oral evidence at the appeal, and, because following the Appellant's cross-examination the Respondent had felt able to argue that no weight could be given to the letter at all [28-30]. Thus the Judge adopted, quite properly, a more holistic approach than that which Ms Brakaj sought to advocate. The Judge did not suggest that "no weight" could be given to the letter's contents. On the contrary he was "prepared to give some weight to the letter". That did not mean however that he was obliged to accept the contents of that letter as true.

12. In my judgement it is quite clear that, although he did not set this out expressly, the Judge followed the guidance offered by Ouseley J in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, upon the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. That guidance can be summarised as follows. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. The same can be said of written evidence supplied by a witness who has not attended a hearing and tendered themselves for cross-examination. What is required is an appraisal of the document in the light of the evidence about its nature, provenance, timing and any relevant background evidence, and in the light of all the other evidence in the case, especially that given by the Appellant who relies upon it as corroborative of their account.
13. Thus in the course of his decision the Judge noted the apparent inconsistency (unexplained in any re-examination) between the Appellant's account of where she had met the author of the letter, and where he had stated they had met within the letter. No criticism is advanced of his doing so.
14. The Judge also noted, and clearly placed significant weight upon, the inconsistency between the Appellant's inability to demonstrate anything other than vague and superficial knowledge of XX on the one hand, and the claims made within the letter, and by herself, for the length of her involvement with XX as an activist, on the other hand. It is not suggested before me that no such inconsistency existed, or, that an adequate explanation was ever offered to the Judge for it, and then overlooked by him. Moreover Ms Brakaj ultimately accepted that this was a matter upon which the Judge was entitled, and indeed obliged, to focus.
15. In the circumstances, as the decision makes abundantly clear, the Judge felt unable to accept the claims made by the Appellant for her activities in the DRC, as corroborated in the letter in question, because he concluded that those claims were simply inconsistent with the knowledge that she had been able to demonstrate upon arrival in the UK. That adverse finding was open to him on the evidence, was properly explained, and in my judgement the grounds do not properly engage with it. That was the reason, explained in clear terms, why the Judge rejected the Appellant's

claim to be a political activist. Thus the reasons offered by the Judge for his decision were in my judgement entirely adequate; MD (Turkey) [2017] EWCA Civ 1958.

16. In the circumstances Ms Brakaj's complaint that the Judge did not go through the letter paragraph by paragraph explaining why he did not accept each element of its content as true was entirely misplaced. Nor was the Judge obliged to make an express finding to the effect that individual elements of the content of the letter were untrue after looking at the letter in isolation. The rejection of the majority of the content of the letter is clear, and it is a conclusion that results from the adverse findings the Judge has made, having looked at the evidence in the round.

17. Accordingly, and notwithstanding the terms in which permission to appeal was granted to the Appellant the grounds fail to disclose any material error of law in the approach taken by the Judge to the appeal.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 5 February 2018 contained no error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 19 October 2018