



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01811/2017

THE IMMIGRATION ACTS

Heard at Field House
On 6th August 2018

Decision & Reasons Promulgated
On 20th August 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

L A M N

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D H Hodgson, Counsel instructed by Elder Rahimi Solicitors
(London)
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The applicant is a citizen of the Republic of Congo who sought to claim asylum or protection in the United Kingdom. That was refused in the decision of 3rd February 2017.
2. The appellant sought to appeal against that refusal, which appeal came before First-tier Tribunal Judge Malcom for hearing on 9th March 2018. In the decision of 19th April 2018 the appeal was dismissed.
3. Subsequently leave to appeal to the Upper Tribunal was granted and thus the matter comes before me to determine the issues that arise.

4. The appellant worked as a nurse in the central hospital in Brazzaville since October 2010.
5. In January 2014 she joined an opposition party called UPC and was introduced to the party leader, Paulin Makaya, at a large meeting in Brazzaville in August 2014. Present also was a Mr M.
6. The hospital was in a state of disrepair and the appellant had been taking photographs of this condition to highlight matters of concern as to the quality of treatment. An incident occurred on 1st May 2015 when a patient had to be carried by his son because the lift was not working. Both fell and the appellant took a photograph on her phone which was confiscated by the security staff.
7. It was her case that she was arrested, taken to Mpila Prison where she was physically assaulted and sexually assaulted. On the sixth day Mr M secured her release and/or escape and eventually, having acquired a visa the appellant arrived as a member of the Salvation Army in the United Kingdom on 1st July 2015 via Morocco. She claimed asylum on 3rd March 2016.
8. The appellant obtained her UPC membership card and other relevant documents as to her hospital work and photographs from her home with the assistance of the family friend.
9. As to the conditions in hospital she had given the photographs to Mr M who uploaded the videos and photographs on line. The appellant had a number of health issues and she fears to return given the profile created by her arrest.
10. It is a lengthy decision with much detail of evidence , particularly that of the appellant. A general criticism that is made of that determination by Mr Hodgson is that, although it asks the questions it makes very few findings of fact relevant to the issues. Indeed, he submits some of the findings of fact are on a mistaken basis.
11. The first and obvious issue in this appeal is whether the fact that the appellant was a member of the UPC creates an adverse profile for her upon return.
12. Seemingly she has had little to do with the party or its activities since coming to the United Kingdom. It is accepted that Mr Makaya, the leader of the party, has been arrested and there was country background material to that effect. There is little however to establish any involvement with Bernard M in that party. At the relevant time when the appellant had been involved with the party, Mr Makaya had returned from exile and was conducting political activities.
13. The submissions made in relation to this aspect on behalf of the appellant by Mr Hodgson at the hearing, are set out fully from paragraphs 98 to 119 of the decision.
14. It was agreed that the appellant was not a high level member and not an activist in the United Kingdom. Mr Hodgson confirmed to me in the course of the appeal hearing

that it was not his contention that the appellant would be at risk upon return simply by reason of her membership of the party in 2014/15.

15. The burden of the submission made to me and, according to Mr Hodgson made to the First-tier Tribunal Judge, was that because the appellant had been arrested and been in detention prior to her release/escape she would remain of interest to the authorities and be liable to be arrested when she returned. He indicated that there was a report confirming the attitude of authorities to those previously detained, but he was unable to locate it to place before me.
16. The Judge noted at paragraph 129 of the determination that an issue was whether the appellant's profile had been heightened due to her activities of photographing the hospital. It was accepted that the authorities would not like there to be criticism of such an establishment. A few photographs of that hospital, seemingly ones taken by the appellant at some stage and handed to Mr M, have been placed upon the website, although once again it is not suggested that that by itself creates any risk on return. There was no indication on that site as to who had placed the photographs on the website and nothing to link the appellant with them.
17. Although the appellant clearly had health issues when she came to the United Kingdom there was no medical evidence apart from that which she gave as to support the ill-treatment which she claims to have received in detention.
18. The judge considered that the evidence which the appellant gave about the party was vague. Issue was taken against such a finding, particularly in the light of the detailed interview. As I have indicated it is not necessarily central to the case whether or not the appellant was or was not a member of the party, given the lack of profile that that of itself creates.
19. The real issue in the matter is whether the appellant was credible as to account of her arrest and ill-treatment. In that context the Judge regards the delay in claiming asylum as being a matter which in this case undermines credibility, particularly in the absence of medical evidence and in the absence of any indication as to the existence of Mr M who is supposed to have engineered the release/escape. The Judge did not accept the explanation given by the appellant for the delay in claiming asylum.
20. In the interview the appellant sets out in some detail, particularly from questions 36 onwards about the condition of the hospital, the lifts being out of order, no drinking water for the sick or infrastructure. She would take photographs of this condition and give them to Mr M who put them not on a party website, but on a Congolese website. Such of course is helpful background context in supporting the credibility of the account of arrest. However this was activity that was carried on over some period before and not one in itself which created any risk to her.
21. The appellant gave evidence in the interview of her arrest and detention and ill-treatment having been whipped on the thighs and legs as well as sexually assaulted.

22. Her escape is described in answer to question 87. A policeman came to a cell and took her outside, gave her a military uniform and told her to march like the soldiers at dark. She left and there was a taxi and she travelled to an address and stayed in Kinshasa until she left in June. Her cover for leaving was as a member of the Salvation Army.
23. No suggestion has been made that the authorities are looking for the appellant or indeed looked for her after her release/escape. Indeed her evidence was that her friend went to her house and met with her parents and brothers and found all her documents relating to the party there. Even the party identity card was found at that address. Though her brothers seemingly had disappeared no reason for that seems to have been given in the evidence as recorded at the appeal hearing before the First-tier Tribunal. It was noted that she was able to leave from Brazzaville on her own passport and visa.
24. The reality of this matter is that the credibility of the appellant's account of arrest and ill treatment was not accepted by the Judge, by reason of the delay in her claiming asylum; her lack of any corroborative evidence as to injury, and particularly any lack of detail as to the person who is said to have engineered her escape and/or release.
25. I find that the reasons given by the judge for not accepting credibility were properly open. In all the circumstances and the challenge made is on to disagree with conclusions rather than they were wrong or irrational.
26. Overall therefore I find that the Judge was entitled to come to the findings which were made in the light of the evidence that was presented. The reality of the case did not revolve around the membership of the UPC , but rather whether or not she had ever been detained by the authorities.
27. Indeed, even if she had been detained it is far from clear from the material as presented that she would be of a continuing interest to the authorities upon return. However that proposition did not arise in the arguments before the Judge, nor indeed the arguments before me.

Notice of Decision

The appellant's appeal before the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal shall stand, namely that the claim for asylum, humanitarian protection or Human rights stands to be dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed

A handwritten signature in black ink, appearing to read "P. King", enclosed within a thin black rectangular border.

Date 10 August 2018

Upper Tribunal Judge King TD