Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03518/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 February 2018	**On 6 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

SAA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Afzal, A-R Law Chambers.
For the Respondent: Mr C Avery, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 25 March 2017 refusing her application for asylum and humanitarian protection.

Background

2. The appellant is a citizen of Cameroon born on 18 November 1983. She arrived in the UK on 24 February 2012 with entry clearance as a student

valid until October 2013. On 12 December 2013 she applied for a residence permit on EEA grounds. Her application was refused. She appealed but her appeal was dismissed. She made a further application on EEA grounds in July 2015 but again she was unsuccessful. On 15 August 2016 she made an application for international protection. The respondent accepted that the appellant was a citizen of Cameroon but she was not satisfied that she had a genuine subjective fear of returning or that she would be of any adverse interest to the authorities. For these reasons her application was refused.

The Hearing before the First-Tier Tribunal

3. At the hearing before the First-tier Tribunal the appellant adopted her witness statement which the judge has set out at [4] of his decision. She gave oral evidence summarised at [5]-[13]. In brief outline, she claimed she had been a student in Cameroon from 2004 to 2010. In April 2005 students at the university she was attending had taken part in peaceful protests which led to her being arrested on 28 April 2005 by police in her hostel off-campus. She said that whilst detained she was raped both vaginally and anally on two separate occasions by two masked police officers. She was released after a month. On 3 November 2006 she was arrested again by police on campus during a peaceful student protest. She was detained for about a week and then released.

4. In September 2010 she enrolled on a Master's programme. There was another protest at the university and the appellant was arrested in class on 28 September 2010. She was later taken to a police station and at night uniformed and armed police officers walked in and raped her, including anally. She was detained for about one month. She had to stop schooling and she went to a hospital where she was attended to medically. Later, she submitted an application to study in the UK and her application was successful. On 3 February 2012 she went back to the university to collect her transcripts and all necessary documents. She was arrested in the street and was detained for two nights. She was again raped at night by two masked police officers. After she was released she went to hospital for a check-up. She arrived in the UK on 24 February 2012. The following month she started feeling sick and had a positive pregnancy test at six weeks carried out by her GP on 22 March 2012 and her pregnancy was terminated on 3 April 2012.

5. The appellant claimed that she could not return to Cameroon as she would be in danger from the police authorities. She still believed that they wished to harm her. In support of her application she produced medical evidence including a letter from a hospital in London dated 25 January 2017 which confirmed a previous attendance on 22 March 2012 "following an alleged vaginal rape by a masked assailant while in Cameroon one month previously". At the hearing the appellant also produced and relied on background evidence about the situation in Cameroon and on written statements from her mother and brother.

6. The judge accepted that the appellant had told the truth about her nationality and identity and that there did not appear to be any discrepancy over her immigration history as the issue of the appeals against the EEA matter had been resolved [32]. He considered the background evidence at [33]–[34] but commented that it was not of great help. One document referred to clashes in November 2016 over the abolition of financial penalties for students who were late paying tuition fees. There was an article from an unidentified source referring to clashes between the authorities, the public and students in 2016 which accused the authorities of rape, torture and arrests and, in passing, referring to previous student riots in 2005 and 2006 , a document referring to clashes since October 2016 which showed the government's willingness to use force against citizens but the judge commented that he had not been provided with any evidence as to whether the government was the same as in 2005 and another document referring to the same troubles which, although showing the heavy handedness of the authorities, did not confirm the appellant's claim in relation to clashes back in 2005. He took into account the statements of the appellant's mother and brother and explained in [38] and [39] why he could not regard them as independent confirmation of her claim.

7. The judge set out his findings on the appellant's claim that she had been raped in [35]- [37]. She had claimed that she was detained on four occasions and on three of these occasions she was beaten and raped, both vaginal and anal rape. She maintained that the reason the first attack took place in April 2005 and then again in November 2006 was because of her involvement as vice president of the student union. The judge commented that despite these horrendous incidents she claimed to have stayed on at the university to finish her degree and continued with her student union activities but she had not satisfactorily explained why she should remain there following these incidents, especially as it occurred firstly so early on in her university course and there was no reason why she could not have moved to another university if necessary.

8. The judge described as even more unlikely her claim that, having qualified in 2008 and presumably then taken up a teaching post, she returned in 2010 to the university but within a month of starting her course, another protest had taken place and security officers from the university detained her and then handed her over to the police as an instigator of the protest. He did not believe that she would ever have got on a master’s course in the first place if she were so viewed as a troublemaker.

9. The judge commented that she had claimed that the last attack on her happened when she went to university to pick up documents. He did not find this credible as she had left the university and had stated she did not complete the master’s course. He also noted that she made her on-line application to come to the UK on 25 January 2012, a few days before going to the university and had produced a valid CAS and documents to show her qualifications. She claimed that she went back to the university to get her documents, but the judge could see no reason why she should do so when she already had sufficient to provide for her visa application. She

had clearly been planning to leave the country for the UK long before her claimed latest detention and this cast doubt on the credibility of her claim to have been attacked by the authorities in the way she claimed. The judge said at the end of [37]:

> "It may well be true that she was attacked in some way by a masked assailant and is the victim of rape both vaginal and anal but I do not believe that she has shown to the required standard that she is the victim of an attack perpetrated by the authorities and that therefore she would be at risk on return."

The Grounds of Appeal and Submissions

10. In the grounds of appeal, it is argued at [2] of the grounds that the main reason for refusal seemed to be that the appellant did not provide any documentary evidence to show that she was not able to get letters from her legal advisers and that postal services in Cameroon were not functioning due to strikes. It is argued that it was not for the appellant to provide such evidence. The burden was on her to show that she might be telling the truth and the judge had applied the wrong burden of proof. It is then argued at [3] that the judge had applied a wrong test in rejecting the appellant's evidence in [35], when he commented that the appellant had complained to the doctor at the hospital not of anal rape but of vaginal rape by masked assailants. The grounds comment that the policemen were the masked assailants.

11. It is then argued at [4] that the judge had stated in [37] that it might well be true that the appellant had been attacked in some way by masked assailants and was the victim of rape both vaginal and anal. It is argued that the judge applied the wrong test as the appellant was only required to show that she was raped and at [5] that she had produced documentary evidence to show that a few weeks after her arrival in the UK she had a pregnancy terminated. The judge had accepted this evidence but had refused the appeal.

12. Permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that at [35] the judge had misapprehended the evidence: he had perceived inconsistencies as to whether the appellant had been subjected to vaginal or anal rape and whether the rape was perpetrated by police officers or a masked assailant. It was arguable that the appellant's statement, reproduced verbatim at [4] of the decision indicated that she was raped both vaginally and anally and that the perpetrators were masked police officers. It was arguable that this misapprehension contributed to the finding at [37] that whilst the appellant might have been raped, she had not proved that this was perpetrated by the authorities and in consequence she would not be at risk on return.

13. In his submissions Mr Afzal adopted his grounds and submitted that the judge's decision raised doubts as to whether he had applied the proper standard of proof. His comment in [37] that the appellant may well have been the victim of vaginal and anal rape met the low standard of proof. The judge appeared to draw an adverse inference from the fact that she

had been unable to obtain further information and he should also not have drawn an adverse inference from what was recorded in the letter from the hospital.

14. Mr Avery submitted that the grounds amounted to no more than a disagreement with the judge's findings of fact. The judge, so he argued, had adopted a balanced approach to the evidence and his adverse credibility findings had been properly open to him. He was entitled to attach weight to the fact that on the appellant's own account she had remained at the university after the claimed events of 2005 and to comment on the fact that there appeared to be no reason for her return in February 2012 to obtain further documents. He further argued that there was no indication that the judge had misapprehended the evidence. He had taken all the relevant evidence into account and had reached a decision properly open to him.

Assessment of the Issues

15. The issue which the First-tier Tribunal judge identified as arguable when granting permission to appeal was whether the judge had misapprehended the evidence in [35] by identifying inconsistencies on the issues of whether the appellant had been raped vaginally and anally and whether the perpetrators were masked police officers. It would be helpful to set out [35] in full:

> "It is clear from the medical documents provided by the appellant that she has some physical symptoms including persistent anal fissures. An anal fissure, according to the dictionary, is a tear or open sore that develops in the lining of the anal canal. The medical evidence does not attribute her fissures to any particular cause. Although the medical records appear to suggest that she has complained of anal rape the evidence does not confirm this. It is possible that there are other causes and so far as I am concerned the records simply suggest that she has made previous complaints of anal rape causing the problem. The records, however, also show an inconsistency in her complaint which does damage her credibility. That is the fact that when she complained to a doctor at [...] Hospital it was not of anal rape but of vaginal rape and it was by a "masked assailant" and not by Police Officers as she now claims. The medical evidence adds some weight to her claim but is not conclusive."

16. When [35] is read in the context of the decision as a whole, I am not satisfied that there is any misapprehension of the evidence. The judge said that it was clear from the medical documents that the appellant had some physical symptoms including persistent anal fissures. He was right to comment that the medical evidence did not attribute her fissures to any particular cause and, although the medical records appeared to suggest that she had complained of anal rape, the evidence did not confirm this. The reference to "the evidence" in this context is clearly to the medical evidence. The judge was under no misapprehension that the appellant claimed that she had been raped both vaginally and anally by police officers: this is not only set out in the summary of the evidence at [4] but also referred to [36] and [37]. The judge was not under any

misapprehension about the appellant's evidence which could have had any bearing on or contributed to his comment in [37] that the appellant may have been raped albeit in different circumstances.

17. The judge did comment that the medical records showed an inconsistency which did damage her credibility in that when she complained to the doctor at the hospital it was not of anal rape but of vaginal rape by a masked assailant. The inconsistency was between what was recorded in this letter and the account being given in the appellant's evidence in her statement adopted at the hearing. This was a factor that the judge was entitled to take into account and it was for him to decide in the context of the evidence as a whole what weight to attach to this discrepancy. There is no reason to believe that he gave this undue weight. It was one of a number of factors he took into account including the fact that he took the view that the medical evidence added some weight to her claim but there were other factors the judge was entitled to take into account identified in [36]-[37] as adverse to her credibility.

18. It is further argued that the judge's comment at [37] that it may well be true that the appellant had been attacked in some way by a masked assailant and was the victim of rape indicated that he did not apply the proper standard of proof when assessing her evidence. I am not satisfied that there is any substance in this ground. The judge properly directed himself on the correct standard at [18] and referred again to this standard in [41] and [42]. Whilst the judge accepted that the appellant may have been raped, he made it clear that he did not accept that she had showed to the required standard that she was the victim of an attack perpetrated by the authorities. That was a finding of fact properly open to him for the reasons he gave particularly in [36] and [37] of his decision.

19. It was also argued in the grounds that the main reason for refusal appeared to be that the appellant did not provide further documentary evidence about her inability to get letters from her legal advisers and that the postal services were not working due to strikes. However, when assessing the appellant's evidence, the judge was entitled to comment on the absence of evidence which could reasonably have been produced. His comments in [28] and [29] were properly open to him. There is no substance in the argument that the main reason for the appeal failing was the lack of documentation although that was a relevant matter the judge was entitled to take into account.

20. In summary, I am not satisfied that the judge proceeded under any misapprehension of the evidence or that he failed to apply the correct standard of proof. He reached findings of fact properly open to him for the reasons he gave following a careful assessment of the evidence. The grounds do not satisfy me that he erred in law.

Decision

21. The First-tier Tribunal did not err in law and the decision to dismiss the appeal stands.

22. The anonymity order made by the First-tier Tribunal remains in force until further order.

Signed: H J E Latter Dated: 28 February 2018

Deputy Upper Tribunal Judge Latter