



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

Appeal Number: PA/06481/2017

THE IMMIGRATION ACTS

**Heard at Civil Justice Centre, Manchester
On 25 September 2018**

**Decision & Reasons
Promulgated
On 24 January 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**T T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Parker Rhodes Hickmotts
For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, TT, was born in 1995 and is a female citizen of the Democratic Republic of Congo (DRC). She initially applied for asylum in September 2014. That claim was refused and an appeal subsequently dismissed on 9 July 2015 by Judge Smith. She appeal became rights exhausted on 16 September 2015. The appellant made further submissions on 13 March 2017 which were rejected by the Secretary of State but the appellant was granted limited leave to remain in the United Kingdom under D-LTRPT1.2 (parental relationship) The appellant proceeded to appeal against her asylum refusal to the First-tier Tribunal

(Judge Malik) which, in a decision promulgated on 21 November 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. In this litigation, the appellant has been without solicitors for a period of time but before the Upper Tribunal had the benefit of representation by Counsel, Mr Holmes. The Secretary of State was represented by Ms Aboni, a Senior Home Office Presenting Officer. Mr Holmes explained that, although there were two sets of appeal (permission having been granted in the Upper Tribunal upon renewal) the appellant sought to rely upon one ground from the first set of grounds of appeal to the First-tier Tribunal (the appellant now has limited leave to remain until 27 December 2019 and argues that, in light of that grant of leave, she had no motive for dissembling in respect of her asylum application) but otherwise relies upon the grounds of appeal renewed to the Upper Tribunal. The previous judge (Judge Smith) had found that the appellant's account of past events was unreliable. Judge Malik relied upon the authority of *Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702* * and rejected the credibility of the appellant's account. She did so notwithstanding the evidence included a medical report (Freedom from Torture) which had not been before the first Tribunal. The report gave support for the appellant's claim to have been raped whilst in detention. The report also gave support for the appellant's claim to have attempted suicide whilst in the United Kingdom. The grounds of appeal complain that the judge has not made a clear finding as to whether she accepted that this attempt had been made.
3. Mr Holmes submitted that it was not open to the judge to attach no weight to the medical report. The judge had failed properly to analyse the state of mind of the appellant consequent upon her sexual mistreatment and how this may have affected the evidence which she had given as part of her asylum claim. The judge had failed to apply the principles of *J v Secretary of State for the Home Department [2005] EWCA Civ 629* as regards suicide risk on return to DRC.
4. I find that Judge Malik has produced a detailed and thorough decision which is not flawed in law for the reasons asserted in either of the sets of grounds of appeal or at all. The judge was fully aware of the issues raised by the submission of the Freedom from Torture report. She subjected those issues to a detailed analysis but did so correctly in the context of the previous credibility findings of the Tribunal (*Devaseelan*). The judge has provided an accurate summary of the decision in *Devaseelan* [40]. She accepted [45] the diagnosis of PTSD (post-traumatic stress disorder) and depression. Quite properly, the judge treated the appellant as a vulnerable witness. However, the judge has not, as the grounds of appeal suggest, given no weight to the new medical evidence. At [50] the judge wrote:

“For the above reasons and as per *Devaseelan* I do not find that new evidence such as this is one of those “occasional cases” where the circumstances surrounding the first appeal were such that it would be

right for the second Tribunal to look at the matter as if the first determination had never been made as the issues at this appeal are materially the same, even accepting now the appellant has a diagnosis.”

- 5.** That conclusion followed on from the judge’s finding that the author of the medical report had been misled as to material facts of the appellant’s account. However, the judge has not simply assumed that to be the case because a previous Tribunal has rejected the appellant’s credibility. Rather, in paragraphs [45-49] the judge gives detailed reasons why, notwithstanding the observations of the medical report, the appellant should not be treated as a reliable witness. There are significant problems with the chronology provided by the appellant which the judge considers at [46]. There remains a significant discrepancy as to whether the appellant was a member or supporter of the organisation CDP [47]. The judge was particularly concerned that the appellant was now seeking to rely upon documentary evidence which had been produced many months after the events to which the documents relate. That was a finding reasonably open to the judge and I do not find that the appellant has successfully challenged it. At [49], the judge refers to *HE* [2004] UKIAT 00321 and looks at some detail at the difficulties facing doctors especially those writing psychiatric reports who are “even more dependent on what a patient says” than where there may be physical evidence of past ill-treatment. The judge’s approach is, in my opinion, free from legal error. Mr Holmes submitted that Judge Malik should have asked herself whether Judge Smith would have reached different findings had he had the Freedom from Torture report before him. I do not consider that is the correct approach. If it were, it seems likely that, in any case where new evidence is produced, findings of a previous Tribunal would have to be discarded since one could not be sure that the new evidence would not have affected the analysis of credibility. In the present appeal, the judge has considered the new evidence in detail, she has accepted the diagnosis of PTSD and depression which was within the professional competence of the author of the medical report and has given clear and cogent reasons for concluding that the account of past events given by the appellant to the author of the report was no more reliable than the account given to the previous Tribunal and to the Secretary of State. Those were findings properly open to Judge Malik on the evidence.
- 6.** As regards the suicide attempt, I find that the judge has dealt with this adequately at [55]. At [55], she appears to accept without questioning that the appellant did, as she claimed, attempt suicide or had suicidal ideation but properly considers what medical resources and family support network she would be able to access on return to DRC. Her conclusions at [55] deal adequately with suicide risk which the judge finds is not at such a level as to entitle the appellant to protection in the United Kingdom.
- 7.** As regards the lack of any motive to dissemble on the part of the appellant given her grant of limited leave to remain, I find that this ground has no merit. The appellant has now advanced accounts of past events in DRC

which two Tribunals have considered to be unreliable. Judge Malik has given sound reasons for applying *Devaseelan* and, notwithstanding the new medical evidence, refraining from departing from the findings of credibility made by the previous Tribunal. This appeal is dismissed.

Notice of Decision

8. This appeal is 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 him or any member of their 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

Date 10 December 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 5 January 2019

Upper Tribunal Judge Lane