



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08398/2018

**THE IMMIGRATION ACTS**

Heard at Manchester Civil Justice Centre  
On 30<sup>th</sup> August 2019

Decision & Reasons Promulgated  
On 11<sup>th</sup> September 2019

Before

UPPER TRIBUNAL JUDGE COKER

Between

JOSELYNE YAMBA BOTULI

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms C John-Rose instructed by Broudie Jackson Canter  
(Manchester)

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Ms Botuli, a citizen of the DRC, sought international protection, such claim being refused by the respondent for reasons set out in a decision dated 20<sup>th</sup> June 2018. Her statutory appeal against that decision was refused by First-tier Tribunal Judge Foudy for reasons set out in a decision promulgated on 9<sup>th</sup> January 2019.
2. Ms Botuli sought and was granted permission to appeal that decision by DUTJ Taylor on 24<sup>th</sup> June 2019. The appellant relies in her grounds of appeal on a claimed failure by the First-tier Tribunal judge to have adequate regard to the

medical evidence in reaching her assessment of the credibility of the appellant's account particularly when considering lack of recall and/or lack of ability to provide explanations for particular issues

3. In particular the appellant submits:
  - (a) The First-tier Tribunal judge failed to give the appellant "any benefit arising from her condition, despite acknowledging that [she] was to be treated as a vulnerable witness";
  - (b) The First-tier Tribunal judge failed to give any consideration to the impact of PTSD and potential vulnerability on her "inability to explain and her lack of recall";
  - (c) The First-tier Tribunal judge failed to give adequate weight to the medical report which she said, incorrectly was based on an acceptance of the appellant's account whereas it was, on full and careful reading based on independent factors in addition to the appellant's account of her history;
  - (d) That notwithstanding the changed political landscape, the First-tier Tribunal judge failed to take account of the appellant's vulnerability and diagnosis in finding she was not at real risk on return.
4. The grounds relied upon do not dispute the findings by the First-tier Tribunal judge that:
  - The appellant had failed to provide an explanation why she was unable to name the party her husband supported in April but was able to in June;
  - The appellant claimed that the name she gave of the leader of the party her husband supported was mis transcribed by the respondent; yet she gave the same name to Dr Ghosh; and corrections made to her earlier evidence by her solicitors did not include that 'mis transcription';
  - That a group called the League of Youth does not exist;
  - That her accounts of her escape from prison were inconsistent;
  - That she initially claimed no-one in her family was a member of the army yet subsequently said her father was an army commander and that was why she was helped to escape.
5. Dr Ghosh does not state that her mental health problems are such as would cause or be likely to result in or even could possibly result in loss of memory or inability to recall matters or result in an inability to explain matters. Some of the claimed inconsistencies were apparent when Dr Ghosh prepared the report, yet he does not address those in terms of his diagnosis; his instructing solicitors had, in their letter of 18<sup>th</sup> June, referred to the appellant's medication and forgetfulness but he was not asked to express an opinion on this.
6. The judge records accurately that Dr Ghosh did not consider other possible causes of trauma. The judge considers whether the appellant's mental health problems could have been as a result of separation from her family and a traumatic journey and accepts that these are matters that could cause her mental health to be significantly affected. Thus, although the judge placed little

weight on the report by Dr Ghosh she gave full weight to the diagnosis of mental health problems.

7. Ms John-Rose submitted that there was sufficient evidence before the judge which had been discounted by the judge in dismissing the medical report, which would have affected the appellant's evidence. She drew attention to the appellant referring to her headaches, that she became upset and crying during the substantive interview with the respondent and that the appellant's solicitors had, in their letter dated 18<sup>th</sup> June 2018, referred to the appellant taking medication that made her forgetful and unable to concentrate. The medical report is dated 26<sup>th</sup> August 2018. The psychiatrist specifically addresses questions which he has been asked by the appellant's solicitors. He was not asked, and did not give an opinion, on whether the appellant's ability to recall information or provide an explanation for matters upon which she was questioned was impaired. Nor does the psychiatrist refer to the appellant being on any medication, never mind medication that impaired her ability to communicate in any way.
8. The psychiatrist sets out in detail the account given to him by the appellant. He records the same name of the opposition leader as was given to the respondent, with the same spelling, which was not corrected by the appellant's solicitors in their letter of 18<sup>th</sup> June 2018. In the report the appellant says she cannot remember the name of the party her husband was with, as was the case in her substantive interview, and yet in the letter from the solicitors she is recorded as knowing the name of the party but she tells the psychiatrist she cannot remember. No explanation was provided by the appellant for these discrepancies and they are a point referred to by the First-tier Tribunal judge as one of a number of significant issues.
9. The judge did not place weight upon the report, referring to the report having been produced on the basis that the psychiatrist accepted the account given by the appellant rather than considering whether there were other causes for her PTSD and/or depression. Ms John-Rose referred to the reference in the report to the appellant's separation from her children and family. It is correct that there is reference to the appellant's separation from her family. It was however open to the judge to conclude, having read the report fully and carefully, that she was not prepared to place weight upon the report because it did not question the account given by the appellant or investigate whether there could have been other causes.
10. Ms John-Rose submitted that there were no discrepancies in the appellant's evidence regarding her father's involvement in the army. This was not pleaded in the grounds seeking permission to appeal. There was no application for permission to amend the pleaded grounds.
11. Ms John-Rose submitted that the lack of weight placed on the medical evidence resulted in the judge failing to place adequate weight on the appellant's evidence as to her arrest and escape given the lack of discrepancies. Not only was this not pleaded but it does not follow that even had the judge specifically accepted that the appellant was suffering from PTSD, that could not necessarily result in a finding that the appellant's account of her arrest and escape was

credible. The judge found, irrespective of the medical report that the appellant's account was not credible because she did not know the name of the leader of the opposition; she did not know the name of the party her husband worked for despite having undertaken work with him for many months; the League of Youth organisation as an umbrella organisation did not exist and given her claimed very low level of activity it was not credible that she would have been arrested and detained as claimed. Ms John-Rose submitted that that the sound of the name of the opposition leader was the same, it was the spelling that was different – yet that spelling was repeated by the psychiatrist and the spelling was not corrected by the solicitors. The findings reached by the judge were open to her on the evidence before her, irrespective of the psychiatrist's report which, even if the diagnosis of PTSD and depression had been accepted specifically by the judge, are sustainable.

12. The judge nevertheless went on to consider the appellant's position if she were a low-level participator in opposition politics. Her conclusions regarding the elections, that political events have 'moved on' cannot be faulted.
13. The judge considered whether the appellant's medical condition reached the high threshold required to find she would be at risk of an Article 3 breach. The grounds submit that the judge failed to have consideration of the appellant's vulnerability – that is simply not the case. The judge found that the appellant had family to return to and accepted she was suffering from mental health problems. Such findings are inadequate to meet the Article 3 threshold. Before me Ms John-Rose sought to persuade me that the findings by the judge on Article 3 were inadequate and that the report by the psychiatrist was sufficient to reach the high threshold required to sustain such a claim, even though this had not been pleaded in seeking permission to appeal. That is simply not correct. The appellant has family to return to; the judge's findings that she is not a real risk of being persecuted are sustainable and there are medical facilities available for her treatment if required.
14. The appellant had not sought to appeal the Article 8 decision; the judge made no findings on Article 8 and this was not raised as a ground of appeal to the Upper Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal dismissing the appeal stands.

Date 4<sup>th</sup> September 2019



Upper Tribunal Judge Coker