



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/08670/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 14 May 2019**

**Decision & Reasons Promulgated
On 20 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MIRIAME [M]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mis Mason from Broudie Jackson & Cantor

For the Respondent: Mr Tan Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Herwald, promulgated on 8 February 2019 which allowed the Appellant's appeal against a refusal of refugee protection.
3. Grounds of appeal were lodged arguing that it was not open to the Judge to reject the reasons given for her flight from the DRC but accept that such mistreatment occurred as a result of detention by the authorities; failed to identify the reasons why she was persecuted; it was not open to find the medical evidence in isolation and determinative of the appeal; gave no reason for why the Appellant would continue to be at risk on return as she did not come in any of the risk categories in BM
4. On 18 March 2019 Designated Judge Manuell gave permission to appeal.
5. At the hearing I heard submissions from Mr Tan on behalf of the Respondent that:
 - (a) At paragraph 15 (j) the Judge rejects the reasons given for her flight from the DRC and then makes a finding that she was 'somehow detained' and is unclear about why ultimately concluding that detention was by the authorities without explaining why. He fails to explain why the Appellants case engages the convention.
 - (b) The Judge was required to look at the evidence as a whole. The Judge compartmentalizes the evidence rejecting her history and makes the medical evidence determinative.
 - (c) The Judge fails to identify why she would be at risk on return as she clearly does not come within any risk factor in the country guidance case.
6. On behalf of the Appellant Ms Mason submitted that:
 - (a) The Judge accepts at paragraph 15(j) that the Appellant was involved with an opposition political party. Having suffered extensive injuries in the context of the background evidence it was reasonable to conclude that it was the state who detained her.
 - (b) The Appellant cannot provide a consistent account because of her PTSD.
 - (c) Having escaped from detention it was likely that she would be the subject of further detention and harm.
 - (d) In respect of the medical evidence that was the only evidence. Her own evidence is inconsistent and the medical evidence states this is because she has PTSD.
7. In reply Mr Tan on behalf of the Respondent submitted that there was no positive finding that the Appellant was arrested but rather a rejection of the account that she was.

The Law

8. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law.
11. I am satisfied that when read as a whole the Judge has made confused and irreconcilable findings and reached conclusion that are inadequately reasoned.
12. This Appellants case very briefly is that she first fled from the DRC because of an abusive marriage and fled to France. She then after a period returned to the DRC where she joined a human rights group called Filimbi and attended monthly meetings. She was detained and tortured physically and sexually by the authorities for 9 weeks. She was helped to escape and came to the UK where she claimed asylum. She engaged in low level sur place activity.
13. At paragraph 15 (b)(d) the Judge sets out the claim and her account of her detention and mistreatment by the DRC authorities on her return to the country after fleeing to France. The Judge considers the challenges to that account and appears to accept this history finding at paragraph 15(f) and (i) that the discrepancies and inconsistencies in her account are explained by the PTSD that is described in the medical reports. Had he then gone on to simply say that the medical evidence supported her account as she had scarring consistent with her claim his decision would in my view have been sustainable.
14. However in paragraph 15(j) he finds:

"I accept that the Appellant became involved with Filimbi, although I am not persuaded, even to the lower standard of proof, that the Appellant faced such difficulties which caused her to flee DRC."

I find this is irreconcilable with his previous apparent acceptance of her account which included the fact that her involvement with Filimbi led to her detention and mistreatment by the authorities and caused her to flee from the DRC. The Judge then continues

“she was somehow detained in DRC, because the evidence of the Medical Foundation is, to that extent, cogent persuasive and eventually overwhelming.”

15. At this point the Judge does not adequately explain why, given that he had in the previous sentence rejected her account of fleeing the DRC because of problems arising out of her involvement with Filimbi, he concludes that any mistreatment she suffered was at the hands of the authorities as opposed to say criminals. He also fails to make any clear finding for her mistreatment that engages the convention.
16. I therefore found that errors of law have been established and that the Judge’s determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.
17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) *the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or*
 - (b) *the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.*
18. In this case I have determined that the case should be remitted because the Judge has failed to make adequate findings on disputed evidence, I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before me.

Signed

Date 17.5.2019

Deputy Upper Tribunal Judge Birrell