IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001180
First-tier Tribunal No:
PA/53541/2023
LP/02412/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

PM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Brown, Counsel
For the Respondent: Mr A Tan, Senior Presenting Officer

Heard at Field House on 16 September 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, a citizen of the DRC, appeals against the decision of First-tier Tribunal Judge N Malik promulgated on 20 November 2023 ("the decision"). The appellant claimed she feared return to the DRC.

2. By the decision, the Judge dismissed the appellant's appeal against the respondent's decision dated 25 May 2023, refusing her claim for asylum and international protection made on 12 May 2020. The appellant first arrived in the UK on 25 March 2020 on a visit visa.

The Hearing

3. The hearing was conducted with myself sitting at Field House, whilst the representatives attended via Cloud Video Platform.

The Grounds

4. In summary, the five grounds are raised challenging the decision are that the Judge had erred by failing firstly, to adjourn the case to allow the a translation of a document in the French language ("the French Document") to be submitted as part of the appellant's evidence. Secondly, that the Judge failed to take into account material matters including on the untranslated French document, and on the key issue of risk on return where the Judge failed to consider that the appellant had previously been arrested and detained which meant she was already known to the authorities. Thirdly, that the Judge failed to consider specific supporting country background evidence including from the Africa Center for Strategic Studies (USA), The Democratic Republic of the Congo's Quest for Democracy Faces a New Test, 29 September 2023, which was contained at Page 117 of Appellant's bundle, alongside other country background material, all of which was before the Judge in the appellant's bundle before. Fourthly, the Judge made adverse findings against the appellant based on the contents of her Home Office Screening Interview. Fifthly, the Judge had failed to properly apply the country guidance case of **PO (DRC – Post 2108 elections) DRC CG [2023] UKUT 00117 (IAC)** to the appellant's case.

5. Permission to appeal was granted by First-tier Tribunal Judge Pickering on 19 March 2024, in the following terms;

> "1. The grounds are in time.
> 2. It is arguable that the Judge erred in their approach to the 2018 document [§4] in not directing themselves to the principles in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) (Ground one). It was acknowledged that the document went to a key issue in the appeal [§4] and neither party was given time to translate and verify the document. The Judge then did not go on to make any findings about this key document (Ground two). In relation to ground four it is arguable that the determination at least gives the impression of taking irrelevant matters into account. In relation to ground five whilst the Judge does reference the country guidance of PO it is arguable that they have not fully applied the guidance contained within this. I have found ground three to be indivisible from this point.
> 3. Permission is granted."

6. The was no Rule 24 response from the respondent.

7. That is the basis on which this appeal came before the Upper Tribunal.

Documents

8. I had before me a composite bundle containing all necessary documents including those cited above. This also included the bundles relied upon by the parties in the First-tier Tribunal.

Submissions

9. Both representatives made submissions which I have taken into account and these are set out in the Record of Proceedings.

Discussion and Analysis

Ground 1 – Failure to adjourn

10. I find that this ground is made out.

11. In **Nwaigwe (adjournment: fairness)** [2014] UKUT 418 (IAC), it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the First-tier Tribunal acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?

12. The Judge deals with the adjournment request at [4] and [5] of the decision where they state that;

> "4. The appellant's representative sought an adjournment on the basis the appellant had brought to the hearing, accessed from the internet, a document dated 08/01/18 that was in French; there was no translation. It was said to be an agreement between the previous President Kabila and the current President Tshisekedi. It was submitted there was no mention of this agreement in their expert report. The respondent's representative submitted, although it went to a key issue, the quality of the document was not acceptable; it was not thought the appellant had had an opportunity to provide it to her representatives to be translated. If the matter was adjourned the respondent would need time to verify it and review the document.
>
> 5. Having considered the application, I did not find an adjournment to be appropriate as the appellant's representative would be able to question the appellant about the document".

13. The Judge noted that the respondent's representative commented that the French document went to a key issue in the appellant's case, even though the quality of the document was said not to be acceptable. Further, if the matter was adjourned the respondent would need time to verify and review this document. However, the Judge gave no consideration to the question of fairness. The Judge's decision not to adjourn was on the grounds that the appellant's representative could question her on the French document.

However, having decided to admit the document, the Judge failed to make any proper findings on it.

14. In considering the question of fairness, I note the Judge's refusal to adjourn put the appellant in a position where a document upon which she sought to rely, that was acknowledged by the respondent's representative went to a 'key' issue in her case, was untranslated. The Judge also noted that the quality of the document was said to be unacceptable by the respondent's representative. Therefore, consideration ought to have been given to the submission that the respondent would therefore require time to verify this document in the instance that an adjournment was granted. It appears, therefore, that the fairest outcome after agreeing to admit the French document as evidence, was to then grant the adjournment sought in order to allow the respondent to carry out any verification checks, and for the appellant to also provide a certified translation of it. This would ensure fairness to both parties.

15. The Judge did not take guidance from **Nwaigwe**, and did not consider the question of fairness. The manner in which the application to adjourn was dealt with, I find, is a material error of law. These difficulties were further and fatally compounded by the Judge failing to then make proper findings on the French document following their decision to admit it as part of the appellant's evidence.

16. I have in this regard noted the Judge's comments at [26] on this document where they say "*and this is where the document she brought to the hearing comes in - even accepting there was an 'agreement' in place on handing over power, still given the findings in PO and that Kabila is no longer in power, I find she would not be at risk from him on return*". Mr Tan argued that this showed the document had been taken at its highest, but was then rejected by the Judge in favour of that which is stated in **PO** by way of country guidance.

17. I can see why, at first blush, this appears so, and therefore Mr Tan's concomitant argument aligned with the Judge's comments here. However, the reasoning by the Judge is inadequate. The finding here is made absent a certified translation, or any verification of the document by the respondent who was concerned about the quality of the document. Therefore, having taken the decision to admit the late submission of the document at the hearing as part of the appellant's evidence, fairness would then demand in such circumstances, in the light of the point raised by both sides, that the appellant was granted the adjournment to obtain a certified translation, and for the respondent to use the opportunity to carry out any verification checks she wished, given the concerns raised about the quality of the document by her representative at the hearing despite their acknowledgement that it nonetheless went to a key issue in the appellant's case. This made it all the more important to accede to the adjournment application.

Grounds 2 - 5

18. It is not necessary to deal with these given my unequivocal decision on Ground 1 on the fairness point.

19. I have accordingly considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the

Senior President's Practice Statement and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

20. The decision of the First-tier Tribunal sent to the parties on 24 April 2024, involved the making of a material error of law. It is set aside in its entirety.

21. The appeal is remitted back to the First-tier Tribunal sitting at Manchester to be heard by any Judge other than First-tier Tribunal Judge N Malik.

Anonymity

22. The Anonymity Order made by the First-tier Tribunal is maintained.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 September 2024