Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11227/2014

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 10 June 2015	**On 25 August 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

TD
(Anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Winter, Advocate, instructed by Gray & Co
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1) This is an appeal with permission against the decision by Judge of the First-tier Tribunal Kempton dismissing this appeal on asylum and human rights grounds.

2) The appellant was born in July 1991 and is a national of DRC. She arrived in the UK in August 2014 and claimed asylum shortly after arrival. In DRC she was a university student studying commercial science. The event which she claims caused her to leave DRC occurred when one day she was talking with a group of students at the front of the college. They were discussing education and nursery fees and the lack of employment

opportunities. They were overheard. The police arrived and detained them. The appellant was questioned in detention about her father, who disappeared when the appellant was aged 10, after the death of President Kabila. She was ill-treated. Her escape was arranged by a police officer who had known her father and arrangements were made for her to leave the country. The appellant's mother and half sister reside in the UK. The appellant's mother left DRC when the appellant was aged 10 and the appellant was brought up by her maternal grandmother. She claimed as soon as she left the DRC the police had been to her grandmother asking about her and her two siblings who remain in the DRC.

3) One of the principal issues in this appeal concerns the findings made by the Judge of the First-tier Tribunal and whether they can be sustained. In summary it seems the judge approached the appeal in two different ways. Her first approach was to say that even if the appellant's account of her detention was accepted, her fear of the authorities was based on a single incident which occurred when the appellant was "just in the wrong place at the wrong time". The judge nevertheless observed that this would be sufficient to give the appellant a profile which would make her of interest to the authorities on return.

4) The judge then went on to examine the credibility of the appellant's evidence and to make an adverse credibility finding, rejecting the appellant's account of the difficulties which she alleged caused her to leave DRC.

5) The first ground of the application for permission to appeal contended that as the judge had found the appellant's evidence at the hearing largely consistent with her answers at her asylum interview, and as the judge had accepted that the incident described by the appellant would be sufficient to give her a profile of interest to the authorities, then under the test of real risk or reasonable degree of likelihood, the appeal should have been allowed.

6) The second ground is that the judge did not properly consider the human rights issues in the appeal and, in particular, failed to make a proper decision under Article 8.

7) In granting permission to appeal the judge considered that both grounds were arguable. It was pointed out in the grant of permission that there were two paragraphs numbered 42. The first one was where the judge stated that if the appellant's account was accepted she would now have a profile of interest to the authorities. This first paragraph 42 appeared to contain some positive credibility findings, although there was some doubt about this in view of the qualified language used. The second paragraph 42 appeared to contain some negative credibility findings, again with some doubt arising from the language used.

Submissions

8) At the hearing before me, Mr Winter, for the appellant, said that the point was a narrow one. In paragraphs 21 to 42 of the decision the judge seemed to accept what the appellant said. There was then a second paragraph numbered 42. In the first paragraph 42 the judge accepted that the appellant has a profile making her of interest to the authorities on return. In the later paragraphs the judge reached different findings and dismissed the appeal. The judge appeared to have failed to reconcile these conflicting findings.

9) It was pointed out to Mr Winter that according to a rule 24 notice submitted on behalf of the respondent, in the first paragraph 42 the judge's use of the words "at best" showed the judge was setting out the position if she was to take the appellant's case at its highest. In the subsequent paragraphs the judge went on to make reasoned adverse credibility findings.

10) Mr Winter responded that in the first paragraph 42, when read fairly, the judge was not taking the case at its highest. The judge found at paragraph 21 that the appellant's position was consistent. The judge had regard to the record of the asylum interview and, at paragraph 23, found that the appellant's account had not altered. In the subsequent paragraphs, 30-34, the judge made further comments on the evidence and at paragraph 30 the judge again found this to be consistent. At paragraph 39 the judge referred to the country guideline cases and at paragraphs 40-41 the country information, particularly in relation to the risk on return. It was unclear how the findings then made at the first paragraph 42 could be reconciled with the remaining paragraphs. Again at paragraph 44, in finding that the appellant's account was not credible, the judge nevertheless repeated that the appellant had been consistent throughout her claim.

11) Mr Winter submitted that if there were two ways of reading the decision, then regard should be had to the standard of proof and the benefit of the doubt should be given to the appellant. It was the more favourable reading of the decision which should be taken. If the findings made were unclear then this supported the appellant's position that there was an error of law arising from the conflicting findings. The appeal should be remitted for rehearing for clear findings to be made.

12) For the respondent Mrs O'Brien submitted that the two paragraphs numbered 42 were clearly the result of a typing error. The first paragraph 42 was superfluous to the decision. In the decision the judge gave a clear critique of the evidence. Although there were no major inconsistencies in the evidence there was no independent verification. The judge accepted that there were problems in general in the DRC but it was not accepted that this appellant was arrested and detained in the circumstances she claimed. The judge did not require corroboration but was entitled to question why supporting evidence was not available. Up to paragraph 42 the judge was laying out the evidence. In the first paragraph 42 the judge's findings were qualified by words such as "however" and "at best".

There were also multiple references to the word "if". The judge then found that the appellant had had no problems in DRC. It was unbelievable that she had been helped by the church and by a benevolent police officer.

13) With regard to Article 8 it was not clear how a sustainable Article 8 case would arise. The appellant had been in the UK for only a short time – just over 6 months at the date of decision.

14) In response Mr Winter said that he was not pursing the Article 8 point.

Discussion

15) I accept Mrs O'Brien's point that the two paragraphs numbered 42 amount to no more than a typing error and as such this is of no material significance. It is unfortunate that the two paragraphs 42 appear to be the hinge on which the whole decision turns but this is no more than a coincidence arising from the faulty numbering.

16) The respondent's position is that the first paragraph 42 is no more than an assessment by the judge of what the appellant's position would be if the case was taken at its highest. There is some merit in this argument, for the reasons expressed very ably by Mrs O'Brien in her submission. There is one observation in paragraph 42, however, which gives pause for thought. This is the acknowledgement by the judge that if the incident described by the appellant had occurred, then she would on return have a profile of interest to the authorities. Given the country information set out by the judge at paragraphs 40-41, the existence of this profile might be sufficient to put the appellant at risk on return.

17) With this in mind, it was crucial for the judge then to give adequate and valid reasons for rejecting the credibility of the appellant's evidence. The judge found no significant inconsistencies in the appellant's evidence. There were, however, other factors which weighed against the appellant. The strongest of these was the judge's finding that the appellant had lived "peaceably" in the DRC since 2001 and had not been harassed in this period for details of her father's or her mother's whereabouts. This is a matter the judge was entitled to take into account. The judge then states that she considers it "unlikely" that the appellant would have been assisted to leave DRC by the Catholic Church. She comments that the appellant was not a Catholic and there was no country information indicating that this was something which regularly would be done. The judge also states that it is "unlikely" that a police officer would recall being helped by the appellant's father and want to help her in return. In relation to the event described by the appellant as leading to her detention, the judge states: "The more I consider her account, the more I consider that it is more likely that this event did not occur."

18) This last finding is somewhat puzzling given that at paragraph 37 the judge appears to accept, as it appears to have been accepted in the refusal letter, that the authorities arrest people in DRC who speak out

against the government. The judge then further states in the same paragraph:

> "However, she is a university student who explained that in her classes discussions about current affairs issues were promoted within the confines of the university walls and those discussions often spilled out into the time after class in public areas where anyone could overhear. It was clear that she and her friends had genuine concerns for certain situations in the DRC and did not hold back in voicing those concerns in a public place. She assumes that plain clothes police were in the area and overheard. She said that such persons can also be within the university itself."

19) Further, at paragraph 41 the judge stated:

> "Security personnel sometimes arrested and detained perceived opponents and critics of the government, occasionally under the pretext of state security. According to page 9, the law prohibits insulting the head of state, malicious and public slander and language presumed to threaten national security. Freedom of assembly was sometimes restricted."

20) Considering the judge's summary of the relevant country information, it does seem surprising that she should then conclude that the events giving rise to the appellant's supposed detention were not likely to have taken place. Given the lack of significant inconsistencies in the appellant's evidence together with the content of the country information, it is not at all clear on what reasoning the judge based this finding.

21) The judge commented on the lack of evidence from the appellant's grandmother or siblings in DRC or from the appellant's mother in the UK, who ought to have been in a position to give evidence about any involvement in politics by the appellant's father. I accept Mrs O'Brien's submission that the judge was entitled to draw attention to these apparent omissions from the evidence. Nevertheless, I think that Mr Winter made a strong point in stating that up to the first paragraph 42 the judge appeared to accept the appellant's account but then in the paragraphs beginning with the second paragraph 42 up to paragraph 44 the judge rejected this account on the basis of reasons which appear to conflict with the judge's earlier reasoning.

22) In my view it is not only conflicting reasons which give rise to concern about the judge's findings but a lack of reasoning in respect of some of those findings, particularly in the second paragraph 42.

23) On this basis, I do not consider that the judge's findings can be sustained. The conflicting reasoning and the lack of reasoning amount to an error of law such that the decision should be set aside. In view of the extent of fact finding required, I consider that the proper course is that sought Mr Winter, namely that the appeal should be remitted to the First-tier Tribunal for the decision to be re-made at a hearing before a different judge, with no findings preserved.

Conclusions

24) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

25) I set aside the decision.

26) The appeal is remitted to the First-tier Tribunal for a further hearing before a different judge for the decision to be re-made with no findings by the original judge preserved.

Anonymity

27) The First-tier Tribunal did not make an order for anonymity. As the appeal is to be remitted and reheard, I consider that such an order should be made at least until the First-tier Tribunal re-makes the decision. Accordingly, I make an order in the following terms. Unless a Tribunal or court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed Date

Judge of the Upper Tribunal