Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11378/2016**

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 1st August, 2017	**On 4th August 2017**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

N B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, Assistant Solicitor with Fountain Solicitors
For the Respondent: Mr Mills, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a national of Rwanda, who claims to have been born on 1st January 1987. He made an asylum claim on the basis that he held a well-founded fear of being persecuted for reasons of his political opinion. He claims that he was a member of the Democratic Green Party of Uganda which was clandestinely associated with the Democratic Green Party of Rwanda.

2. The appellant applied for a visit visa on 15th January 2016, which was granted from 21st January 2016, to 21st Jul, 2016. He left Rwanda by air on

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22nd February 2016, and arrived at Heathrow on the same day. Some 37 days after arrival, on 31st March 2016, he claimed asylum. The appellant had earlier undertaken a Masters in Business Administration Degree at Cardiff Metropolitan University but had returned to Rwanda in October 2015.

3. The appellant's claim for asylum was refused by the Secretary of State in a decision dated 28th September 2016. In an annex to that decision, detailed reasons for the Secretary of State's refusal of the appellant's claim were set out. Between paragraphs 27 and 45 of that annex the Secretary of State details numerous challenges to the appellant's credibility.

4. The appellant appealed the Secretary of State's refusal and his appeal was heard by First-tier Tribunal Judge B Lloyd on 29th March 2017, at Newport. The judge allowed the appellant's claim, concluding that the appellant was a credible witness. The Secretary of State challenged the judge's determination on the basis that the judge's credibility findings were insufficiently reasoned. The Secretary of State rejected the appellant's claim after having concluded that he was not credible, but the judge was given no reasons at all for rejecting the Secretary of State's challenge.

5. At the hearing before me today, Mr Mills suggested that the judge's reasoning for his findings was wholly lacking. At paragraph 14(5) the judge starts his findings and at paragraph 48 concludes that the appellant is a credible witness. Nowhere does the judge deal with the Secretary of State's challenges to the appellant's credibility, or explain why the judge reached a different conclusion on credibility.

6. For the appellant, Mr Howard submitted that the determination was a clear and properly reasoned one and should be upheld since any error of law (if there was one) was not material. The judge's findings at paragraphs 45 to 52 were completely adequate and the judge had shown the principles on which he acted and had provided cogent reasons for reaching his conclusions. At paragraph 48 the judge gives his reasons and expands on them at paragraph 49 of the determination. It is clear from paragraph 16 of the determination that the judge was aware of the Secretary of State's reasons for refusing the claim. I reserved my decision.

7. A determination should be a complete document. It should not be necessary for either party to look at the judge's Record of Proceedings or at any other document to understand the judge's reasons for his findings. Either party to an appeal should be able to read it and fully understand why it was that they won or lost the appeal. It should contain a brief summary of the evidence and conclusions and findings should be properly reasoned.

8. In this appeal, the Secretary of State's reasons for refusing the appellant's application for asylum were set out at some length in the letter of 28th September 2016, and the annex to it. As I have already indicated,

paragraphs 27 to 45 set out the reasons why the Secretary of State did not believe the appellant's account. They were serious and comprehensive challenges to the appellant's credibility.

9. The only mention the judge makes of the Secretary of State's view of the appellant's claim is set out at paragraph 16 of the determination. This says:-

> "The appellant's appeal rests very heavily upon the issue of his credibility and specifically the credibility of the account which he advances to argue his engagement of Article 1(A)(2) of the Geneva Convention. The Secretary of State found that the appellant's account was inconsistent and not credible. Supporting documents were not reliable in the Secretary of State's view and she did not consider that there was a reasonable degree of likelihood that the appellant had come to the adverse attention of the Rwandan authorities."

10. With very great respect to the judge ,that is a wholly inadequate treatment of the Secretary of State's refusal letter. It is not necessary to quote the Secretary of State's refusal letter, but it is necessary to demonstrate that the judge has considered the Secretary of State's reasons for finding an appellant not credible and explained why the judge has reached a different conclusion.

11. The judge's findings are set out beneath a heading "Findings and Conclusions" in paragraphs 45 to 51. I set them out below:-

> "45. I find that the appellant is a national of Rwanda and that he entered the UK lawfully as a visitor on 22nd February 2016. The respondent challenged that entry as one badly blighted by deception. Some 37 days after arriving in the UK the appellant made his application for asylum. He made no reference in the visa application to any problems he had in Rwanda. Neither did he make any mention of this children in Rwanda. All that is true. At the same time, of course, it is the case that principle declared reason for his application for entry was to attend his graduation ceremony at the Cardiff Metropolitan University. That much, certainly, was true.
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> 46. Of course, it is likely that the appellant came to the UK with the underlying intention of applying for asylum and gaining immigration status in this country where he had previously spent a year legitimately as a postgraduate student.
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> 47. His entry to the UK and its overall veracity is blighted. However, what I have to address at this appeal specifically is whether the appellant has presented a credible account on which he bases his claim to engage Article 1(A)(2) of the Geneva Convention on the grounds of his express or imputed political opinion in Rwanda.
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> 48. In that context, I have come to the conclusion that the appellant is a credible witness. He has held anti-government and anti-establishment political views in Rwanda, and given his history as a member of the DGPU in Uganda, which I accept, I believe that he is a marked man in Rwanda.
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> 49. There is also the further factor of his father's political history. His father has had to flee to Uganda, where the appellant of course has also spent a good deal of time. I have believed him when he said in evidence that the police have drawn a connection between information held about his father and his own engagement with the police and the political establishment.

> 50. To exacerbate matters further, he has become involved with the Rwandan National Congress since being in the UK. This is a political grouping of principally exiled Rwandan political activists. One example of the risk that creates for an associate of that organisation returning to Rwanda, is the news that Faustin Rukundo's wife was detained by the police on a visit to attend her father's funeral.
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> 51. There are other examples of political ex-patriots who have faced dire consequences who are positioned with the Rwandan government. A notable example is the murder of Patrick Karegeya in Johannesburg on 1st January 2014. There is a miscellany of other examples cited by Human Rights Watch throughout the last section of the appellant's bundle; in particular at pages 222 and 257."

12. It seems to me that what the judge has said is wholly inadequate. It does not deal with any of the challenges made by the Secretary of State and does not adequately deal with the appellant's *sur place* activities. The judge has not explained whether the appeal is allowed because of the appellant's activities before he came to the United Kingdom, or because of his involvement with the Rwandan National Congress since being in the United Kingdom, or because of both. If the appeal was allowed because of his *sur place* activities, it does not demonstrate any real risk that anyone is likely to know that the appellant has been involved with the Rwandan National Congress since being in the United Kingdom.

13. I have concluded that the determination cannot stand and I set it aside.

14. Given the delays which would inevitably follow were I to adjourn the hearing and reserve the appeal to the Upper Tribunal, I have concluded that I must remit the appeal to the First-tier Tribunal for hearing by a judge other than Judge B Lloyd.

15. A Kinyarwandan interpreter will be required and two and a half hours should be allowed for the hearing of the appeal.

Anonymity order maintained.

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.

Richard Chalkley

Upper Tribunal Judge Chalkley