



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07026/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 4 January 2018**

**Decision and Reasons
Promulgated
On 8 January 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**P K I
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer, Counsel instructed by Barnes Harrild and Dyer Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant challenges the determination of First-tier Tribunal Judge Fowell promulgated on 6 September 2017 dismissing her appeal for protection against the respondent's decision of 11 July 2017 on asylum grounds but allowing it on humanitarian protection grounds and under articles 2, 3 and 8. The appellant is a national of the DRC,

born on 1 June 1999. She previously had discretionary leave as an unaccompanied minor.

2. Judge Fowell rejected the asylum aspect of the appeal because he found that the appellant was not a member of a particular social group (PSG). He found that there would have to be some form of targeting of the group or a deliberate failure to protect them from attackers in order for women in the DRC to form such a group.
3. Permission to appeal was granted by First-tier Tribunal Judge Birrell on the basis that the judge arguably misdirected himself as to established principles of refugee law, misinterpreted aspects of Shah and Islam [1992] 2AC 629 and erred by failing to address the issue of whether women formed a particular social group in the DRC given that the respondent in her decision letter conceded that they did.
4. The respondent, in her Rule 24 response, did not oppose the application for permission and invited the Tribunal to consider the appeal at a continuance hearing. The matter then came before me.
5. **The Hearing**
6. The appellant attended the hearing.
7. Mr Avery confirmed the contents of the respondent's Rule 24 response.
8. Mr Palmer then made his submissions. He submitted that there was no need for a further hearing as the judge had made factual findings in his determination. He submitted that on the strength of the findings at paragraphs 39-44 and given the respondent's concession in the decision letter, policy document and country report that women in the DRC formed a PSG, the appellant was entitled to refugee status and the appeal should be allowed.
9. Mr Avery asked that I take the findings of the judge into account and reach a decision accordingly.
10. Mr Palmer had nothing further to add in response.
11. At the conclusion of the hearing I indicated that I would be allowing the appeal. I now give my reasons.
12. **Conclusions**
13. The respondent has conceded that Judge Fowell made an error of law when he found that women in the DRC did not constitute a social group. It is plain from the evidence before him that the respondent had always taken the view that they did; this is expressed in the

decision letter, in the respondent's country reports and policy documents. In the circumstances, the judge erred in his approach to the Refugee Convention, his decision is consequently flawed in that respect and is set aside. The decision to allow the appeal on humanitarian protection grounds and under articles 2, 3 and 8 stands.

- 14.** No issue has been taken with the judge's findings of fact. They are sound. The judge found that the appellant would be returning to the DRC as a lone female with no family support or contact. He found that there was a state of internal armed conflict in the appellant's home area, that there were very real risks of rape and violence at the hands of militia and that the appellant would be targeted with a view to prostitution or trafficking. He found that there was a real risk she would suffer serious harm, that the police were ill disciplined and corrupt and that there was insufficient protection against rape and violence. He considered whether internal relocation was an option but found it would not be viable.
- 15.** Given that the respondent has already taken the view that women in the DRC form a PSG, Mr Palmer is right to say that the judge's findings (as summarized above) entitle the appellant to protection under the Refugee Convention.
- 16. Decision**
- 17.** The First-tier Tribunal made errors of law such that the decision under the Refugee Convention is set aside. I re-make the decision and allow the appeal on asylum grounds. The First-tier Tribunal Judge's decision to allow the appeal on humanitarian protection grounds and under articles 2, 3 and 8 stands.
- 18. Anonymity**
- 19.** I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 4 January 2018