IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005320

First-tier Tribunal No: PA/01054/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

19th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

HORTENSE BIADIDI BETADI
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Maqsood, Counsel instructed by Julia & Rana Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 8 March 2024

DECISION AND REASONS

Remaking of Human Rights Decision

1. The Appellant is a citizen of the Democratic Republic of Congo ("DRC") whose date of birth is recorded as 24th September 1970. On 26th February 2020, after having made previous unsuccessful applications for international protection as a refugee, she submitted further submissions. On 7th September 2020 a decision was made to refuse the application and the Appellant appealed.

2. This Decision and Reasons is to be read together with my Decision of 22 January 2024 in which I found an error of law in the Decision and Reasons of First Tier Tribunal Wilding promulgated on 16 October 2023 dismissing the Appellant's appeal on human rights ground, being the only ground (ground 2) upon which permission to appeal to the Upper Tribunal was granted. The aspect of the appeal which went to the Appellant's claim to be entitled to international protection as a

refugee was preserved, including her claimed sur place activities and inability to return to the DRC as a failed asylum seeker

3. I set out the ground upon which permission was granted below because it makes clear what the agreed issues that I was addressing in the remaking of the decision of the Decision of Judge Wilding were:

"*GROUND TWO*

Error of law by failure to have regard to her personal circumstances if she had to reintegrate to her home country, as well as being ignorant towards her family and private life in the UK.

12. The Appellant has quite precisely mentioned in her witness statement that if she had to reintegrate to her home country, she would face multiple dangers and difficulties. As she has spent a significant amount of time in the UK. Along with that she has created a strong family and private life with her mother who is in various ways dependant on the Appellant. Additionally, considering that she and her husband were imprisoned on arrival in her home country the last time they visited, it's quite evident that if she had to go back her life would be in jeopardy.

13. Also, this is a violation of her human rights under Article 8, as she has been in the UK for a considerable amount of time and has lost all family and friendly ties back home. As it was recorded in the judgement of the case of Mr. Ranjit Singh (Anonymity Direction Not Made) v The Secretary of State for the Home Department:

"Those findings are dispositive of the appellant's human rights appeal under the Immigration Rules, I turn now to an assessment of the appellant's appeal by reference to the requirements of Article 8 directly. I accept that the length of the appellant's residence in this country, on Judge Howard's findings, will be sufficient to engage Article 8 of the ECHR on a private life basis. The appellant's removal will, in principle, have consequences of sufficient severity to engage the protection of Article 8."

14. It is submitted that the Appellant and her mother both were present in the court and could have been asked questions, but the opportunity was not availed. Therefore, making a decision based on questions where the Appellant was not given a chance to address those question is miscarriage of justice.

15. For these arguable material errors of law, the Appellant seeks permission to appeal.

Oral hearing is requested."

4. Before any oral evidence was heard, clarification of the issues was again determined and these were agreed to be, family and private life as well as any very significant obstacles to return.

5. The Appellant was the first to give evidence. She adopted her witness statement of 13 February 2024, which ran to 23 numbered paragraphs. However, because I was concerned only with the Appellant's human rights appeal, it was agreed by Mr Maqsood that those parts of her witness statement which referred

to her claimed political activities, whether in the DRC or in the United Kingdom were to be ignored including her claim to have joined a Congo Support Group.

6. The Appellant was followed by her mother, Berthe Matumona who also gave evidence having adopted her witness statement of 13 February 2024. Both gave evidence through a Lingala speaking interpreter.

Findings

7. Having listened with care to the submission made by each of the representatives and having regard to the very carefully drafted Skeleton Argument of Mr Maqsood dated 7 March 2021. I made my findings.

8. I found neither the Appellant, nor her mother to be reliable witnesses and in some aspects of the case advanced, the evidence lacking. I note that the Appellant has previously been found unreliable. Whilst there is guidance in the case of Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) [2002] UKIAT 702 concerning the starting point in subsequent appeals, I have cautioned myself against giving too much weight to previous adverse credibility findings of the Appellant.

9. According to the Appellant's witness statement she "came to stay" with her parents, in the United Kingdom in 2015; her father passed away the following year. Her mother, who is 70 years of age has "dystonia" which affects her mobility. She (mother) has not fully recovered from the loss of her husband. As to support for her mother the Appellant does cooking, accompanying her to the medical appointments, general house chores and laundry.

10. Going rather more to private life considerations the Appellant says that she has sought to make a better life for herself in the United Kingdom by volunteering part-time at a charity shop and has enrolled onto an English language course (ESOL).

11. A further aspect of the Appellant's case was that as a single woman, with no family left in the DRC she would, on return, lack support and be at risk to the extent that such would of itself be a very significant obstacle to her reintegration were she required to return.

12. Whilst I was told by both the Appellant and Mrs Matumona that she, Mrs Matumona, suffered with dystonia, there was no sufficient medical evidence to support that contention and even if I were to accept that she has that condition there was no sufficient evidence about how, if at all, she was adversely affected by it. In her evidence Mrs Matumona said that the only state benefits she received were pension credits. There was no sufficient reference to any mobility allowance or any other benefits or why she was not in receipt of them. When asked by Mr Maqsood whether she had taken any medication "today", she spoke only of blood pressure medication. Mr Maqsood did not pursue that line of questioning which notably arose after Mrs Matumona had given evidence contradicting her witness statement with respect to dates.

13. Though the Appellant was for saying that her mother was "fully dependant" upon her, as stated by her mother at paragraph 7 of her witness statement, it was of note that in her witness statement of 6 July 2023 the Appellant had said that she had been looking after her mother whilst waiting for her (her mother's)

asylum decision, the letter of the Appellant's mother of 7 June 2023 does not evidence the level dependency now contended for nor the more recent statements.

14. That the Appellant and her mother were both exaggerating the extent of support being provided and were unreliable was reinforced by the evidence provided going to the year from when such support was being provided. It was the Appellant's case that she came to live with her parents in 2015. Mrs Matumona's evidence was inconsistent with it being said that it was from 2008 but then 2015 that the Appellant lived with her and provided full support. Though asked by Mr Maqsood if she had difficulty with her memory to which she said "yes", there was no sufficient medical evidence to support the inference that there might be any underlying medical explanation for the provision of unreliable evidence, though I made some allowance for her age, recognising that some people of 70 may be younger in mind than others.

15. When Mr Parvar drew Mrs Matumona's attention to her not having stated in her "letter" of 7 June 2023 that she was "fully dependant" as opposed to simply "helping", Mrs Matumona said that that letter was not her first statement. I was not pointed to any earlier statement.

16. In cross examination the Appellant said that there was an error in her witness statement of 6 July 2023 in that it was not her mother who was waiting for an asylum decision but the Appellant herself. The statement does however give the impression of a *pro tem* arrangement rather than the full dependency as now contended for with the appeal's focus now upon article 8 ECHR.

17. Despite having said in her witness statement that she had no family in the DRC, it emerged in cross examination that that was not true. In addition to extended family such as cousins, the Appellant also had a step sibling living in Lubumbashi. Of note the Appellant had not made reference in her witness statement to these people nor why they might not be able to provide support. When pressed on this in cross examination the Appellant sought to hide behind her solicitor not having asked her. I do not accept that in stating to her solicitor that she had "no family left in DRC" that the Appellant did not appreciate that that was misleading.

18. It was a further part of the Appellant's case that she would not be able to survive in the DRC. Putting aside the family members in the DRC whom the Appellant failed to reference in her witness statement, Mr Parvar established in cross-examination that the Appellant had in fact made no enquiries as to what work might be available to her were she to return with her previous skill of sewing, being the means by which she had worked when herself in the DRC.

19. I should make clear that it was the cumulative effect of the observations which I have made that led to the eventual finding that the Appellant, upon whom the burden of proof lay, applying the civil standard of proof, to establish the primary facts was, as was her mother, unreliable. I have also given myself what is often referred to as the "Lucas Direction" reminding myself that there are many reasons why people may be untruthful or exaggerate. In this case I find that the reason is that the Appellant and her mother have attempted to paint a picture of a dependency which does not exist.

20. For the avoidance of doubt, I accept that the Appellant lives with her mother. However, she has not satisfied me that Mrs Matumona, who arrived in the United

Kingdom before the Appellant and who is a British citizen is dependent upon her, other than perhaps doing odd chores and the like. In other words, I accept that in living with her mother the Appellant, as one would expect, pulls her weights and does "her bit". I do not find that the Appellant does not have a family network to which she could return in the DRC. I do not accept that she is to be regarded as a lone female returning to the DRC. I do not accept that she would be unable to provide for herself in the DRC. The evidence was not only unreliable from the Appellant but as Mr Parvar pointed out, objectively lacking with no sufficient research having been evidenced by the Appellant on the point.

21. The framework for an article 8 ECHR case is to be found, as Mr Maqsood rightly pointed to in his Skeleton Argument in the guidance provided in the case of R (on the application of Razgar) v Secretary of State for the Home Department [2004] UKHL 27;

(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
(3) If so, is such interference in accordance with the law?
(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

22. For some years the leading case when considering the family life of adult relatives has been the case of Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31. The principle of law which emerged from that case was:

"*Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults … would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.*"

23. There has considerable learning since the case of Kugathas including more recently in the case of Uddin [2020] EWCA Civ 338. I accept that determining whether family life exists is not a term of art but a question of fact.

24. On the basis of my findings the Appellant has not established family life with her mother and vice versa mother with the Appellant but recognising that the threshold is low and proceeding on the basis that I might be wrong so that it is a proportionality assessment that determines this appeal I continue with consideration of section 117B of the Nationality, Immigration and Asylum Act 2002.

25. The public interest is to be found in effective immigration control. The Appellant gave evidence through an interpreter, but she has some English. Her competence was not established and so I find this weighs neutrally. She has not established

that she is financially independent. I was invited to accept that the Appellant is maintained by her mother who is in receipt on of pension credits. I find that unlikely. I do not know from what other source or by what other means the Appellant survives but I am satisfied that the Appellant was not financially independent if only because if I am wrong, she was dependent upon her mother.

26. I was asked to consider private life in the context of family life considerations which I have done noting that the appellant has been in the United Kingdom since 2008 but equally little weight is to be attached to it in any event but I note also that the private life has built up whilst pursing a meretricious asylum claim.

27. This Appellant has not established the relationship with her mother contended for, nor that she cannot return to the DRC. She has not satisfied me that there are any very significant obstacles to return, nor that there are any sufficient "exceptional circumstances" to find in her favour.

28. The Skelton Argument of Mr Maqsood is premised on findings of fact that I have not found myself able to make in this case. In my judgment the public interest significantly outweighs a finding in the Appellant's favour.

DECISION

The decision of Judge Wilding promulgated on 16 October 2023 is remade such that the Appellant's appeal to the first tier Tribunal is dismissed on all grounds.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 March 2024