



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00826/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 7 January 2014

Determination sent
On 20 January 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JEANNE (or JOY) MBABAZI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms J Todd, of Latta & Co., Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction.

- 1) The appellant's identity details are unclear. She has identified herself as Jeanne Mbabazi, a citizen of Rwanda, date of birth 1 January 1971 or 23 May 1971, granted refugee status in Uganda on or around 14 December 2006. (The claimed date of refugee status seems to be misstated in the respondent's refusal letter of 11 January 2013 at paragraph 16 as 14 December 2009.) The refusal letter at paragraph 37 quotes information that Jeanne Mbabazi, born on 4 March 1973, arrived in Uganda from Rwanda on 18 August 2006, registered with UNHCR on 5 September 2006 and was granted refugee status on 7 August 2007. Around September 2011 she obtained a visa to enter the UK on a Ugandan passport in the name Joy Mbabazi, date of birth 4 May 1971.

- 2) The respondent at paragraph 38 of the refusal letter accepts that the appellant's country of origin is Rwanda but considers she has "legal status and permanent right of residence in Uganda either as a refugee or as a Ugandan citizen." For record purposes she has been treated as Joy Mbabazi, born 23 May 1971, a citizen of Uganda, the proposed country of removal. (As long as she would be permitted to return there, it does not matter whether she is a refugee or a citizen.)
- 3) The appellant says that she entered the UK on 24 January 2012 on the above Ugandan passport (obtained, she says, irregularly through an agent). She sought asylum on 21 February 2012.

The claim.

- 4) (The appellant's husband refused to testify against parties involved in the genocide, was taken by the authorities in June 2006 and is presumed dead. She does not base her claim on that circumstance.) Her brother was a captain in the Rwandan Patriotic Front and in the Rwandan Army. In 2004, the authorities arrested him for political reasons, the details of which are unknown to the appellant. He was released and fled the country, but the authorities want to re-arrest him. Police officers with an interest in the appellant's brother detained and beat her on one or two occasions. A soldier friendly to her brother arranged to transport her and her 3 children by car to Uganda in August 2006. In November 2006, Rwandans came to her house at night, speaking about her brother, and raped her. In a similar incident in October 2007 the appellant and her second daughter were raped. In 2009 or 2010, Kiriwandan speaking men attempted to pull the appellant into a car. The appellant raised matters with the Ugandan authorities and with UNHCR. At a police station she met a man called George who offered to arrange her departure from Uganda. Her pastor and people from her church paid US \$500 to George for her travel to the UK to seek asylum. She left her children with the pastor. On arrival she was taken to a woman who kept her locked up for 3 weeks and used her as a child minder. She escaped when asked to go shopping. She met a man with whom she stayed overnight. He took her to the Home Office to claim asylum the next day. She needs protection from (a) Rwandan state agents active in Uganda, seeking information about her brother and (b) her trafficker. She could not relocate from Kampala as she would be a lone vulnerable female parent, with no support.

Competent authority's decision on trafficking.

- 5) The competent authority (UKBA Scotland and Northern Ireland) by letter dated 15 May 2012 found that there were no reasonable grounds to believe that the appellant was a victim of human trafficking for purposes of the Refugee Convention. Mainly, this was because her account was not found to be credible, but the authority also declined to accept that the claim would succeed even taken "at highest" (page 13).

The refusal reasons.

- 6) The refusal letter analyses the credibility of the appellant's account at paragraphs 32-72. Beyond the concession that she is a Rwandan with refugee recognition in Uganda, she is not found credible in core aspects, particularly as to threats from the Rwandan authorities in July 2011, trafficking to the UK, and leaving Uganda in the way she says.

First-tier Tribunal.

- 7) Designated Judge Murray dismissed the appellant's appeal by determination promulgated on 24 May 2013.

Appeal to the Upper Tribunal.

- 8) These are the grounds:

- 1 **Failure to provide reasons for findings** – at paragraph 50 the Immigration Judge states that she gives little weight to the detailed neuro-psychological report lodged on behalf of the appellant; she fails to provide reasons for this finding.
- 2 Similarly, it appears the Immigration Judge has **dismissed the medical evidence on the basis of a finding that the appellant is lying**, rather than taking that evidence into account as part of a holistic credibility account – see paragraph 56. This approach has been rejected as wrong, **see HH (medical evidence; effect of Mbanga) Ethiopia [2005] UKAIT 00164**. It is accepted that the Immigration Judge is not automatically bound but the detailed medical evidence ought to have been given considerably more weight than that which was afforded to it in this appeal.
- 3 **Failure to take into account country evidence** - at paragraph 54 the Immigration Judge finds that there is no evidence that “someone in the appellant’s position, a refugee in Uganda, would be in danger of attacks such as these” – this ignores the country evidence lodged in appellant’s bundle 3, pages 9 (see third last paragraph) and pp 36-37 – both of which clearly refer to Rwandan refugees in Uganda being targeted/intimated by Rwandan state agents.
- 4 **Failure to properly consider the definition of trafficking and apply to facts of the case** - at paragraph 54 the Immigration Judge finds that the appellant’s account is dissimilar to that of the appellant in the unreported determination which was lodged (ref AA/10046/2013) and therefore she cannot be a trafficking victim. With respect, whether a gentleman or a “Madame” was involved is irrelevant. The appellant claims to have been deceived by an individual into coming to the UK on the pretences of work, only to be detained in a house, without pay, for several weeks. Trafficking encompasses domestic servitude as well as sexual exploitation. The appellant’s description of events was more than capable of meeting the definition of trafficking. The Respondent had found these claims not to be credible but the Immigration Judge had a duty to consider the explanations given by the appellant in her witness statement and the points mentioned in the skeleton argument. There is a further error here in that the Immigration Judge has **failed to provide adequate reasons** as to why she finds that the appellant was not trafficked.
- 5 **Failure to take into account relevant evidence** – at paragraph 55 the Immigration Judge dismisses the appellant’s account of being raped several times in Uganda, partly on the basis of a lack of evidence of her reports to the police (despite the fact there is no requirement for corroboration). She fails to make mention of the medical report which was capable of verifying at least one of the incidents. This is an error in law.

- 6) **Failure to take into account country evidence** - the Immigration Judge has failed to take into account relevant evidence in assessing sufficiency of state protection for someone such as the appellant eg a victim of trafficking/lone female - see paragraphs 56 and 59 - this finding fails to engage with the detailed evidence which showed that access to justice is harder for women in Uganda, corruption is rife, there is no government funding for support for adult victims of trafficking and the government does not enforce its own laws (see bundle 3 pp 22, 23, 25, 28, 30, 31).

The errors which relate to credibility are material because if the appellant had been found credible - either as a victim of trafficking or sexual violence - then the background evidence suggested she would be vulnerable to further persecution if returned and would not be able to access sufficient state protection. The Immigration Judge was bound to consider all the evidence presented with the most anxious scrutiny; taken together the above points suggest this was not done and it is submitted that the appeal should be re-heard.

- 9) At the outset of the hearing on 7 January Ms Todd tendered a report by Dr John McTaggart, Consultant Psychiatrist, dated 24 December 2013, but said that she would seek its admission into evidence only if matters reached a rehearing stage. She relied upon the above grounds.

Respondent's reply to the grounds.

- 10) Grounds 1 and 2. Mr Matthews said that the amount of weight to attach to the neuro-psychological report was very much a matter for the judge. She gave it appropriate weight, as she said at paragraph 50, and was entitled to find it of "limited value". That conclusion had to be put in context of the determination as a whole, which gave proper reasons for finding the appellant generally not to be a credible witness. The judge acknowledged the appellant's undoubted mental difficulties and took the medical evidence into account in reaching her findings on the core claim. The ground amounted only to the complaint that the judge had not given as much weight to the report as the appellant sought, and a disagreement with the overall findings.
- 11) Ground 3. Evidence that Rwandan refugees in Uganda were targeted or intimidated by Rwandan state agents did not amount to evidence of a general risk to Rwandan refugees in Uganda. The judge had to assess whether there was such a risk to the appellant on the facts found. She was entitled to conclude that there was no such risk to the family members of someone of suspicion to the Rwandan authorities years ago, and no risk to this appellant.
- 12) Ground 4. Mr Matthews queried whether there had been a proper basis for the appellant to found upon an unreported determination. The circumstances in the unreported determination were very different - an appellant forced into prostitution and confined for those purposes over a period of years. This ground did not fairly represent what the present determination says. The judge rejected the appellant's account as incredible, and so the case did not turn upon the definition of trafficking.
- 13) Ground 5. The judge's narration that there was no evidence (other than from the appellant) of incidents being reported to the police was accurate, and no undue significance had been attached. There were other reasons in paragraph 55 for finding

that this aspect did not advance the claim – background evidence of the Rwandan authorities pursuing targets in Uganda, but the appellant not being such a target, or in an equivalent position to someone like a journalist; nothing to suggest that even if the appellant’s brother was of interest to the authorities in Rwanda, his sister would be; no explanation of how such agents could find the appellant; sufficiency of protection in Uganda; and nothing to show that any attacks in Uganda had anything to do with her brother. The criticism based on absence of mention of a medical report raised only the same issues as grounds 1 and 2.

- 14) At this stage Ms Todd pointed out that there was another medical report before the First-tier Tribunal, and this was the intended point of reference of ground 5. It is in the appellant’s second bundle of evidence in the FtT, item 3, pp - a photocopy of a handwritten record, not entirely legible, but clearly referring to a medical examination on 20 October 2007 following upon an allegation of rape by 3 unknown men. Ms Todd accepted that the determination refers to it at paragraphs 10 and 53, and then discounts it at paragraph 55.
- 15) Mr Matthews submitted that given these references the judge had not failed to take it into account, and gave it the appropriate place in the overall analysis.
- 16) Finally, Mr Matthews argued that ground 6 was only relevant if the other grounds were made out, and the appellant therefore might have been found essentially credible. He did not agree that the appellant must then have succeeded, but he did accept that this was to a large extent a credibility case, so that if the other grounds were made out a fresh hearing would be required.

Response for appellant.

- 17) Ms Todd agreed with the Presenting Officer’s approach to ground 6.
- 18) As to reference in the First-tier Tribunal to an unreported determination, this was justified not because it involved a report from the same expert, but as a case on trafficking from Uganda and on sufficiency of protection there, on which there is no reported determination or country guidance.
- 19) The key point in the grounds is the lack of substantial reasoning for giving little weight to the neuro-psychological report. The judge had not done enough to explain why it was of only limited value. She overlooked conclusions based on thorough cognitive testing, where the expert found no sign of the test having been manipulated. The judge had not been entitled to conclude that the appellant was lying, given the medical evidence before her.
- 20) The country evidence mentioned at paragraph 53 went not only to the objective risk but also to the credibility assessment – evidence that Rwandan refugees in Uganda are intimidated by Rwandan state agents enhanced the credibility of the appellant’s account of what happened to her.

- 21) On ground 4, the lack of reasoning went to the conclusion whether the appellant was trafficked at all. One reason for dismissing her account was that she had a verifiable Barclays bank account with the equivalent of £4,000 at credit, which the judge found inconsistent with other evidence, but financial support for a visa application was consistent with third party involvement in trafficking the appellant, and not a good reason to reject her account.
- 22) The determination should be set aside and a fresh hearing directed.

Conclusions and reasons.

- 23) The judge did not fail to take into account the findings in Dr Copstick's report. She summarised them fairly and accurately. There can be no doubt that the judge approached the appellant in the light of evidence that she is of poor intellectual ability and mental health, and likely to be an unimpressive witness even when trying to tell the truth. That did not dictate a conclusion that she was a reliable witness at the core of her account. To find otherwise did not devalue the medical report, or imply any criticism of it. The judge was entitled to note that contrary to the doctor's expectation the appellant did not clam up in the course of the hearing but was able to answer all the questions.
- 24) As Mr Matthew submitted, the judge said at the end of paragraph 50 that she gives weight to the report but finds it to be of limited value, and to say so before going on to the rest of the credibility consideration does not disclose an error. In effect the report is properly considered in the context of all the other evidence.
- 25) Ground 3 does not disclose failure to take account of country evidence. The country evidence is noted but the judge found, as she was entitled to do, that this did not disclose a risk to someone in the appellant's position. Ground 3 refers to 2 specific passages. The first is at bundle 3, page 9, third last paragraph. This does refer to "Rwandans living in Uganda" being at particular risk and reporting threats from Rwandan intelligence agents, but the item as a whole deals with the murder of a critical journalist who had received a series of threats. The second citation, at pp 36-37 of the same bundle, is an example of a person who refused to give a false statement in a trial before the ICTR. (There was no specific reference at the hearing to this passage, and no explanation of the reference, but I think it must mean the International Criminal Tribunal for Rwanda, established by the UN Security Council.) The gist of the materials is as the judge found - there may be risk to persons of some political interest, but not general risk to all Rwandans in Uganda.
- 26) Objection to reference to the unreported determination was not taken in the First-tier Tribunal. The appellant's solicitor gave reasons in a letter of 25 March 2013 for seeking to rely upon it. It is an exemplary FtT determination; but this appellant's account of trafficking was rejected for several good reasons in the trafficking report and in the refusal letter, and for the further reasons given by the judge. The appellant justified

reference to an unreported determination but it did not advance her case significantly, given those adverse credibility findings, so there is no inadequacy of reasoning.

- 27) As to ground 5, the relevant medical report is mentioned in some detail. There was an abundance of material before the judge, and she did not have to expound on this particular aspect to any greater extent than she did.
- 28) It was correctly agreed between representatives that ground 6 did not arise unless the adverse credibility findings fell to be set aside.
- 29) I conclude generally thus. The boundaries in the evidence between fact, genuine confusion, exaggeration and invention could never be precisely defined. The appellant even on the accepted facts has a rather grim history, but not one which qualifies her for protection in the UK over and above the protection afforded to her in Uganda. She has been well served by her representative, who has pressed the case as far in the FtT and in the UT as it could reasonably be taken, but it has not been shown that the judge erred in law by not finding her credible to any greater extent than she did. I conclude in particular that the judge did not fail to give reasons; did not approach Dr Copstick's report having already found against the appellant, but gave the report its proper place; did not fail to take proper account of country evidence; did not err on the definition of trafficking, because that did not arise on the facts found; and did not fail to take account of the evidence of a medical examination in Uganda.
- 30) The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal shall stand.
- 31) No anonymity order has been requested or made.



10 January 2013
Judge of the Upper Tribunal