IAC-PE-SW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04069/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 28th October 2014	**On 12th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

NADINE TUMUKUNDE KAYITARE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Selway of Christian Gottfried & Co Solicitors
For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Ms Nadine Tumukunde Kayitare date of birth 27th January 1996, is a citizen of the Democratic Republic of the Congo. Having considered all the circumstances I do not make an anonymity direction.

2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge L K Gibbs promulgated on 21st July 2014. The judge dismissed the appeal of the appellant against the decision of the respondent dated 6th June 2014 to remove the appellant from the United

Kingdom as an illegal entrant or person susceptible to administrative removal as an overstayer.

3. By decision of 15 September 2014 permission to appeal to the Upper Tribunal was granted. Thus the case now appears before me to determine in the first instance whether or not there was an error of law in the original determination.

4. The permission granted identifies a large number of issues challenging the findings of fact made by the judge. I draw attention to the cases of VW (Sri Lanka)v SSHD C5/2012/3037 , Biogen Inc v Medeva 1997 RPC 1, Green (Article 8 -- new rules)[2013] UKUT 284 and Krasniqi v SSHD 2006 EWCA Civ 391. All the cases emphasise that the weight to be given to evidence is a matter for the judge at first instance.

5. The challenges by the appellant's representative to the factual findings begin paragraph 7 of the ground. In paragraph 7 refers to paragraph 31 of the determination. The issue raised is the appellant's confusion over the name of the place in which she was living whether it was Goma or Gisenye. The grounds argue that by reference to Wikipedia it can be seen that Goma and Gisenye are very close, although either side of the DRC and Rwanda border. It is submitted that a minor could readily "*conflate the two places as one* "as they are a short distance from each other.

6. Within paragraph 31 the judge has specifically noted that the appellant was a minor at the time of interview and has taken that factor into account. Subsequently the judge notes that the appellant has been privately educated to a reasonable standard. The judge goes on to note that Goma is the capital of North Kivu Province in the DRC but that Gisenye whilst nearby is actually in Rwanda. The judge considered carefully that evidence and considered in light of the fact that the appellant had been privately educated and lived in an educated family with a father that worked in government, she did not find it credible that even a minor, who would have been 16 at the time she left the DRC, would not know in what town she was living or would be unable to name the road on which she lived or any roads in the town.

7. It is suggested further in paragraph 10 of the grounds that no account should be given to the interview as the interview failed to follow proper procedure with regard to interviewing a minor as there was no signature of a responsible adult. It is suggested that this fundamentally undermines the findings that the last address given by the appellant was then Gisenye Town Ngoma the Congo.

8. The judge has considered the age of the appellant and clearly taken account of the appellant's vulnerability. However even taking that into account the judge has made the findings of fact that she has and has given valid reasons for coming to the conclusions that she did. In the circumstances the judge was entitled to deal with the issues in the way that she has.

9. Paragraph 11 of the grounds challenges the judge's reference to the fact that the Appellant had not heard any local radio or seen any local TV and made findings as a result in paragraph 32 of the determination. In challenging the findings reference is made to question 120 of the Asylum Interview Record (AIR). It is suggested on the grounds that the appellant is saying that she knew about the wars in Goma because she "*would see it on the TV".* It is clear that the appellant's representatives are seeking to suggest that the appellant was clearly referring to local TV in the DRC.

10. One has to look at the answer to question 120 carefully. The full answer given by the appellant is: --

> *Has anything ever happened in Goma? Examples given -- war, incidents?*
>
> *Mostly it's all about my tribe, like many years ago, my mother told me there were many wars there, but it started getting bad by the time I came here, I would see it on the TV*

11. If one examines the subsequent answers [120-122] the appellant admits that she was seeing things on the news "*here"* in the United Kingdom and she was talking to the social worker because she was worried about her family as it was getting or had got worse. In the light of those answers it is clear that the issue raised by the judge was valid and the findings justified.

12. The suggestion that the judge has started from a false starting point is not made out. The suggestion by the solicitors that the judge has failed to read the evidence is not made out. Clearly the solicitors appear to be somewhat circumspect in which parts of the interview they were seeking to rely upon and failed to look at the answers in the context of the whole.

13. The representative has raised an issue with regard to the school but the point being made by the judge was that in her statement the appellant referred to all her siblings bar one being at the same school. That was not consistent with her evidence in the interview. The appellant said that she had three brothers and they attended another college [see D8 question 35 wherein it is clear that the brothers were attending a different school]. The judge has gone on to make the point that the Appellant did not despite been 16 years of age know the name of the head teacher of her school. The judge did not find such credible. Again those were findings of fact that the judge was entitled to make on the basis of the evidence presented

14. I note within the determination the judge has approached other issues and made findings to the benefit of the appellant. Certainly with regard to the Spakab report the judge had place no reliance upon the Sprakab report and the judge found that there were features of the report which were contradictory. Accordingly the judge made findings to the benefit of the appellant.

15. The judge has gone on to assess the evidence otherwise from the appellant and given valid reasons for making the findings of fact that she has made.

16. The representatives have raised the issue of whether or not an individual that has been privately educated is to be treated differently from others. Again the judge was not making the point that individuals were to be treated differently but rather a well-educated individual would benefit from a greater education and knowledge and one can expect that to be reflected in the answers given. The point is made validly by the judge that an individual that has been privately educated may be expected to know certain details including basic details about where she lived. The issue cannot be viewed in isolation. The judge has otherwise made other adverse findings against the appellant. The judge noted that the appellant was unable to name any of the major streets within the place that she lived. The conclusion by the judge, that a person with the background of the type of the appellant would be able to provide details of where they lived and the failure of the appellant to be able to do so undermined the appellant's account, is justified.

17. The grounds of appeal are in the main challenges to the findings of fact made by the judge. The judge has probably considered the evidence found that the findings of fact were open to the judge to make on the evidence presented

18. Before me the appellant's representative raised the issue of tracing. It was submitted that the respondent had failed to take any action in an effort to trace the appellant's family. The respondent's representative relies upon the case of EU & Others (Afghanistan) 2013 EWCA Civ 32. It is the respondent case that the appellant has not given a truthful account of her origins and as the appellant had failed to provide information necessary to enable proper tracing of her family members to be undertaken there was no breach of any duty to seek to trace in those circumstances. As the judge has come to the same conclusions with regard to the appellant's claimed background in light of the case law I find that there was no error in the approach the respondent or the judge to the issue of tracing. The appellant had not given a truthful account of where her family emanated from and in the light of that the prospects of tracing were unrealistic.

19. The judge was entitled to deal with the appeal in the manner that she did. She has made valid findings of fact on the basis of the evidence presented and there is no arguable error of law. Accordingly I uphold the decision to dismiss this appeal on all grounds.

Signed Date

Deputy Upper Tribunal Judge McClure **28th October 2014**