



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

Appeal Number: AA/10659/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons  
Promulgated**

**On Tuesday 12 July 2016**

**On Thursday 14 July 2016**

**Before  
UPPER TRIBUNAL JUDGE SMITH**

**Between  
MRS R M N  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Pennington-Benton, Counsel instructed by Duncan Lewis & Co, solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. As this is a protection based claim and in light of my decision, I consider it appropriate that the anonymity direction is continued.

**DECISION AND REASONS**

**Background**

1. The Appellant appeals against a decision of First-Tier Tribunal Judge R L Walker promulgated on 14 March 2016 ("the Decision") dismissing the

Appellant's appeal against the Secretary of State's decision dated 15 July 2015 rejecting her protection claim.

2. The Appellant is from Uganda. The background facts in relation to the Appellant's claim are set out in the Decision at [25] to [38]. The Appellant was found not to be credible for reasons set out at [49] to [53] of the Decision. This followed a section of the Decision at [42] to [48] where the Judge deals with the genuineness of a Ugandan court document on which the Appellant relies and which is at the heart of the present challenge to the Decision.
3. The main thrust of the challenge to the Decision is that the Judge failed to have regard to an expert report produced on the Appellant's behalf from Professor Aguilar which is said to support the plausibility of her account as well as to support the authenticity of the court document on which she relies. It is also argued that the Judge failed to have regard to the subjective and objective evidence presented on the Appellant's behalf.
4. Permission was granted mainly on those two grounds by Upper Tribunal Judge Reeds on 7 June 2016. This matter comes before me to decide whether the Decision contains an error of law and if so to re-make the Decision or remit the appeal to the First-Tier Tribunal for re-hearing.

### **Submissions**

5. Mr Pennington-Benton expanded on the two grounds which I set out at [2] above. He pointed out that the expert report from [19] onwards considers the background evidence which mirrors the Appellant's evidence and is therefore corroborative of her account. This report therefore needed to be taken into account.
6. In relation to the court document, the expert says at [33] that the document is plausible and is very probably authentic although does caveat that with the need for forensic examination. Mr Pennington-Benton submitted that consideration of the report could therefore make a difference to the credibility findings and therefore the outcome of the appeal. Mr Pennington-Benton also submitted that, although the Judge did deal with the additional evidence supporting the authenticity of the court document, being a letter from a lawyer in Uganda who had produced the document, he had failed to give proper reasons for rejecting that letter as not genuine.
7. Mr Pennington-Benton did not refer me to specific background evidence in support of the Appellant's case but submitted that, since a volume of such material was presented on the Appellant's behalf, it was incumbent on the Judge to at least mention the evidence relied upon. I did note that there is not a very large bundle of such evidence in the papers before me. There is one bundle running to fifty pages and some

additional material in the second bundle. It does not however appear quite as voluminous as Mr Pennington-Benton submitted. I accept however that there is absolutely no mention of that material in the Decision.

- 8.** Mr Pennington-Benton also made submissions on the Appellant's third ground which deals with what is said to be an increased risk arising from the Respondent's enquiries made via the Foreign and Commonwealth Office of the Ugandan authorities as to the authenticity of the court document on which the Appellant relies. He pointed out that the Respondent has not produced the letter sent to the Ugandan High Commission in Kenya. There is therefore no way of knowing whether the Appellant's name was redacted from the document. If it was not, it is said, this gives rise to a risk that the Ugandan authorities will target her on return. Mr Pennington-Benton therefore submitted that the Appellant has a sur place claim arising from that risk. The Judge has failed to deal with this aspect of the claim. In response to Mr Kotas' submission that this did not form part of the Appellant's case as argued and as disclosed by the skeleton argument before Judge Walker, he pointed out that it was however contained in the Appellant's witness statement and the expert's report and as such it was incumbent on the Judge to deal with it.
- 9.** In relation to this third ground, Mr Kotas also submitted that the increased risk asserted is speculative. The Appellant has not pointed to any evidence to support a claim that the Ugandan authorities would be interested in her as a failed asylum seeker. It of course follows that this is what she would be perceived to be if she were relying on a document from the Ugandan authorities which they say is false.
- 10.** In relation to the first ground, Mr Kotas accepted that the Judge has failed to deal with Professor Aguilar's report. He made a number of submissions about that report though which he said led to the conclusion that this did not amount to a material error of law.
- 11.** He pointed out that the Judge was right to start with the evidence relied upon by the Respondent to show that the document was not genuine. This came from the Ugandan authorities themselves and would therefore be persuasive. He accepted that the letter from those authorities did not set out reasons why the document was said to be a forgery. However, he also pointed out that Professor Aguilar's expertise is not as a forgery expert. His evidence amounts to an assertion that the document bears a stamp of the sort commonly seen on court documents, in his experience. However, that experience dates back some twenty-six years to when he worked for the Catholic Church in Kenya. Leaving aside his lack of expertise, Mr Kotas also submitted that it would be usual for a forged document to bear a resemblance at least to the genuine article. There would be little point in forging a document which would not be likely to be accepted as being genuine.

He also pointed out that the Judge had considered the Appellant's credibility on a "multi-faceted" basis so that the failure to consider the expert report was not material to the adverse credibility findings.

- 12.** In relation to the second ground, Mr Kotas accepted that the background evidence shows that there is corruption in Uganda. However, this case turns on credibility. The relevance of the background evidence is to the facts of the Appellant's case as found. In circumstances where the Appellant has been found not to be credible, it is not relevant. He also pointed out that nothing specific was highlighted by Mr Pennington-Benton as being material to the Appellant's case.

### **Decision and reasons**

- 13.** I consider first the Judge's approach to the court document produced by the Appellant. I agree with Mr Kotas that the starting point for the Judge's consideration was the letter of 11 June 2015 from the Ugandan High Commission. I accept Mr Pennington-Benton's point that this letter lacks reasons (and if there are reasons behind that report then the Respondent should disclose those or at least what she is able to disclose without causing damage to forgery investigations). Given the source of that information, the Judge was clearly entitled to accept that the Respondent had satisfied any burden of showing that the document was forged.
- 14.** However, as the Judge rightly notes at [47] of the Decision, that evidence is capable of rebuttal by the Appellant. Whilst I accept Mr Kotas' point about the relevant expertise of Professor Aguilar in this context, it was not open to the Judge simply to state as he did that "[the Appellant] has produced no evidence of such rebuttal". There is an error of law in that approach as indeed Mr Kotas accepted.
- 15.** As to materiality, this element of the Appellant's evidence needs to be linked to the other evidence on which she relied in support of the authenticity of the document, namely the letter from M A Bwengye and Company. On the face of this document, the court document was produced by a lawyer practising out of Kampala. Whilst it is not uncommon in this Tribunal's experience for documents of this nature to be falsified, limited reasons are given for the rejection of that letter in this case at [48] of the Decision. It may be therefore that if that letter is considered alongside Professor Aguilar's report, the result may be different. I put it no higher than that and Mr Pennington-Benton did not submit that it would be conclusive.
- 16.** Further, and in any event, the report of Professor Aguilar does not deal simply with the court document. He also analyses the background evidence and the Appellant's claim and offers his view as to the plausibility of her account and the consistency of that with the background evidence. I accept that if the Judge had carried out that

same exercise in relation to the background material (or at least that referred to in the skeleton argument) it might have been difficult for the Appellant to complain. However, the Judge did not do so. A combination of the failure to refer to Professor Aguilar's report and a failure to independently consider the plausibility of the Appellant's account against that background evidence amounts to an error of law.

**17.** I do not need to deal with the third ground. As Mr Kotas submitted, this was not the focus of the Appellant's case as argued before the Judge. The Appellant was legally represented and the fact that evidence was produced to support this claimed risk does not mean that the Appellant wished to pursue it, absent submissions to that effect. However, since I have found there to be an error of law and since the parties were agreed before me that, if I so found, the consequence should be a remittal to the First-tier Tribunal, I do not need to say more. If the Appellant seeks disclosure of additional documents relating to this element of her case from the Respondent, that can be pursued following remittal.

**18.** Mr Pennington-Benton and Mr Kotas both submitted that, if I were to find a material error of law, then the proper course would be to remit to the First-tier Tribunal. Having regard to the Practice Direction and since the errors of law which I have found may undermine the credibility findings at first instance, I am satisfied that this is the appropriate course. No findings are preserved.

### **DECISION**

**I am satisfied that the Decision contains material errors of law. The Decision of First-tier Tribunal Judge R L Walker is set aside. The appeal is remitted to the First-tier Tribunal for re-hearing by a different Judge.**

Signed



Date 13 July 2016

Upper Tribunal Judge Smith