



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/02084/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 13 July 2017

Promulgated

On 24 July 2017

Before

UPPER TRIBUNAL JUDGE BLUM

Between

DM

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Reid, Counsel, instructed by Sentinel Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge of the First-tier Tribunal Malcolm (FtJ), promulgated on 19 January 2017, dismissing the Appellant's appeal against the Respondent's decision of 30 January 2015 refusing her asylum claim and the decision to remove her under section 10 of the Immigration and Asylum Act 1999.

Factual Background

2. The Appellant is a national of the Democratic Republic of Congo (DRC), date of birth 7 March 1995. She arrived in the UK on 16 July

2013 in the identity of EM, a national of Zambia. After making an appointment on 25 October 2013 with the asylum screening unit she claimed asylum on 28 November 2013.

3. The following is a brief summary of the Appellant's asylum claim. Her family are involved in the UDPS political party. In February 2012 soldiers came to her family home and started shooting causing the death of her sister, K, and her father. The Appellant escaped to a local church where she hid for a year. In February 2013 an agent arranged for her travel to Zambia and then obtained for the Appellant a Zambian passport in another identity which she used to travel to the UK. After arriving in the UK the agent located the Appellant's sister, LM, and the two of them now reside together. LM entered the UK in 1999 and claimed asylum but her asylum claim was refused. She was nevertheless granted leave to remain and obtained ILR in August 2008, and became a British citizen in August 2011.
4. The Respondent did not accept the Appellant was a citizen of the DRC. Given that she used a Zambian passport, and based on her answers in her asylum interview, the Respondent believed the Appellant was a Zambian national. Nor did the Respondent accept as credible the Appellant's account of events in the DRC. The Respondent was not satisfied that the Appellant had substantiated her claim to be a member of the UDPS.

The decision of the First-tier Tribunal

5. The Ftj heard evidence from both the Appellant and her sister. The Ftj additionally considered a large number of documents including statements from the Appellant and her sister, DNA evidence attesting to the relationship between the Appellant and her sister, a letter from the UDP's office in London dated 11 May 2015, a UDPS card issued to the Appellant, and a range of news reports and background evidence relating to conditions in the DRC.
6. Having recorded the evidence given by the Appellant and her sister, and the submissions made by the representatives, the Ftj set out her findings at [67] to [92]. Having regard to the DNA evidence the Ftj accepted that the Appellant was a national of the DRC and was the sister of LM. The Ftj noted that, even on the Appellant's own account, she was a low-level member of the UDPS. The Ftj pointed to the UDPS letter dated 11 May 2015 which indicated that, as a minor, the Appellant would not have been politically active in the DRC. The Ftj found that the Appellant had not shown a high degree of knowledge of the UDPS in her asylum interview. From [73] to [77] the Ftj considered the evidence relating to the Appellant's involvement in the UDPS since her arrival in the UK. Based on the evidence before her the Ftj did not accept that the Appellant had been a member of the UDPS UK prior to January 2015.

7. At [78] the FtJ found that the Appellant's credibility was damaged by reference to the delay in her asylum claim and by her use of a false identity to enter the UK. At [79] the FtJ found the evidence of the Appellant's sister to be incredible (a conclusion based in large part upon a significant inconsistency as to when their father died).

8. At [84] the FtJ stated,

If the Appellant's evidence is accepted at its highest she was involved in assisting her father in the Congo, she came [sic] the UK in 2013 and joined the UDPS in 2015 having attended meetings since on or around May 2015, her involvement being a low-level member.

9. At [85] to [87] the FtJ referred to the applicable country guidance cases of *BK (failed asylum seekers) DRC CG [2007] UKAIT 00098*, *MM (UDPS members - Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023*, and *BM and Others (returnees - criminal and non-criminal) DRC CG [2015] UKUT 00293 (IAC)*, and indicated that she had taken account of the country information provided by the Appellant's representatives. At [88] the FtJ rejected the Appellant's claim to have been involved in political activities in the Congo. At [89] the FtJ stated,

The letter from the UDPS UK details the high profile of her father, I do not consider that this of itself would place the Appellant at risk.

10. Having found that the Appellant had only involved herself in political activities in the UK in order to aid her asylum claim the FtJ concluded that there was no reasonable likelihood that the Appellant would be persecuted on return to the DRC on account of her membership of the UDPS or any other political activities or political affiliations. The asylum claim was therefore dismissed.

The grounds of appeal and the error of law hearing

11. The grounds contend that the FtJ failed to give any or satisfactory reasons as to why the Appellant would not come to the adverse attention of the authorities on return to the DRC given the FtJ's apparent acceptance of the father's high profile role, and the FtJ's acceptance that the Appellant is a low level member of the UDP's in the UK. The grounds additionally content that the FtJ failed to make any finding as to whether the Appellant's sister was an officeholder in the UDPS in the UK, an additional factor that, when cumulatively considered, may render the Appellant at real risk of ill-treatment if removed.

12. Upper Tribunal judge Kamara granted permission in the following terms:

Notwithstanding the judge's unchallenged credibility findings, it is arguable that the judge's conclusions as to risk on return to the DRC are flawed if it

is the case that it was accepted that the Appellant's father was a high-profile UDPS member, when combined with the Appellant's low-level UDPS activities in the UK as well as her sister's involvement as a UDPS officeholder in the United Kingdom.

13. At the outset of the 'error of law' hearing I indicated to Mr Tufan my concern at the apparent absence of any specific findings of fact by the FtJ in relation to the Appellant's account of events in 2012 that caused her to flee the DRC and her father's position within the UDPS. Mr Tufan accepted that there did not appear to be any specific findings in relation to the core of this core aspect of the Appellant's account, although the FtJ had rejected the Appellant's claim to be a member of the UDPS prior to January 2015 had found that her sister was incredible, and had appeared to take the Appellant's case at its highest. I additionally indicated my concern at the absence of any finding relating to the sister's involvement in the UDPS in the UK, despite the FtJ finding that the sister was not credible. Mr Tufan accepted that there was no specific finding on this point.
14. After receiving further brief submissions from both representatives I indicated to the parties that I was satisfied the FtJ had materially erred in law and that the determination was unsafe.

Discussion

15. Whilst the FtJ found that aspects of the Appellant's claim were not credible (such as her claim to have been a member of the UDPS UK prior to January 2015), there have been no actual findings of fact in respect of the Appellant's account of the shooting by soldiers that caused the death of her father and her sister in 2012. Whilst the FtJ found that the Appellant's credibility was damaged by her delay in claiming asylum and her use of a false identity, and that the Appellant's sister was not credible, it is not apparent from a holistic assessment of the decision whether the FtJ regarded these adverse credibility points as fundamentally undermining the core elements of the Appellant's account. There has simply been no factual findings as to whether the Appellant's father was killed in the manner claimed, or in respect of the position held by the Appellant's father in the UDPS.
16. Although the FtJ gave an indication that she was considering the Appellant's claim at its highest, her conclusion at [89], that the high profile of the Appellant's father would not of itself place the Appellant at risk, was not supported by adequate reasoning. Given that the Appellant's account of the prominence of her father and the circumstances of his death were supported by the UDPS letter of 11 May 2015, and that the FtJ did not find this letter unreliable, it was incumbent on the FtJ to give a reasoned explanation as to why the Appellant would not come to the adverse attention of the authorities if returned to the DRC, particularly given the acceptance that the Appellant was a low-level member of the UDPS UK and the evidence that her sister held a position within the UDPS UK. There has been no

assessment at all of this last point. The UDPS letter of 11 May 2015 stated that LM was an active member of UDPS UK, attended meetings and, in September 2014, was appointed Under Secretary of Ligue des Femmes in the local London Branch. Having regard to the country guidance cases and the background evidence provided by the Appellant, and in the absence of any specific finding of fact as to the core of the Appellant's account of the position held by her father, I am satisfied that the decision is unsafe.

17. Given that there have been no primary findings of fact in respect of the Appellant's account of the events that are said to have occurred in 2012, or of the position held by the Appellant's father, it is appropriate to remit this case back to the First-tier Tribunal to be considered again by a judge other than judge Malcolm. I canvassed with the parties whether any factual findings should remain. Mr Tufan noted the DNA evidence provided by the Appellant and the absence of any challenge by the Respondent in the rule 24 response or at the hearing to the factual finding that the Appellant is a citizen of the DRC. In these circumstances the First-tier Tribunal is directed to consider the matter afresh save that the Appellant is to be regarded as a citizen of the DRC, that she is the sister of LM, and that her date of birth is 7 March 1995.

Notice of Decision

The First-tier Tribunal decision is vitiated by a material error of law. The matter is remitted back to the First-tier Tribunal to be determined afresh, save for the retained findings identified at paragraph 17 of this decision, by a judge other than Judge of the First-tier Tribunal Malcolm.

Signed



Upper Tribunal Judge Blum
Date 21 July 2017

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Upper
Date 21 July 2017

Tribunal

Judge

Blum