



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02237/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre  
On 10<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 12<sup>th</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MS N N K  
(ANONYMITY DIRECTION GIVEN)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss J Mason (legal representative), Broudie Jackson & Canter  
For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Lloyd, promulgated on 20<sup>th</sup> March 2018, following a hearing at Manchester Piccadilly on 15<sup>th</sup> March 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of the Democratic Republic of the Congo (DRC) and she was born on 20<sup>th</sup> May 1993. She appealed against the decision of the

Respondent dated 29<sup>th</sup> January 2018, refusing her claim for asylum and for humanitarian protection under paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that she cannot return to the DRC because she fears persecution due to a political activity on behalf of APARECO. She had been detained by the ANR due to such activity. Her grandfather worked with the current leader of APARECO in the former administration of Mobutu in the DRC. The grandfather followed the party due to his link with the leader. The Appellant had an interest in the party. Her brother was also involved and was killed on 29<sup>th</sup> July 2016 because of his affiliation with APARECO. The Appellant claimed that she was arrested and detained for three days in the DRC on 20<sup>th</sup> December 2016. She was at a demonstration protesting against the leader, Mr Kabila. During her detention, she was there raped.

### **The Judge's Findings**

4. The judge observed that the Appellant had not in the screening interview stated that she had been raped but only told her GP that this was the case in the UK. The judge held that the Appellant could not therefore have been raped by the authorities during any period of detention (see paragraph 60). This is because if that had been the case then she would have mentioned it earlier. The judge also held that the Appellant is of no interest to the authorities in the DRC because she was able to leave without any problems on her own passport (paragraph 61).
5. The appeal was dismissed.

### **Grant of Permission**

6. On 18<sup>th</sup> April 2018 permission to appeal was granted.
7. On 27<sup>th</sup> April 2018, a Rule 24 response was entered to the effect that the Respondent does not oppose the Appellant's application for permission to appeal.

### **Submissions**

8. At the hearing before me on 10<sup>th</sup> August 2018, Mr McVeety, appearing on behalf of the Respondent Secretary of State, said that the Secretary of State had already indicated that he would not oppose the application. This being so, this matter should be remitted back to the First-tier Tribunal to be determined by a judge other than Judge Lloyd. Miss Mason stated that, given that the Appellant is a victim of rape, and this appears to have now been conceded by the Secretary of State, she would hope that this would not become an issue again before the First-tier Tribunal. Mr McVeety submitted that he would ordinarily not give such an undertaking, but he is prepared to concede that this was the proper course of action in this particular case.

### **Error of Law**

9. I am satisfied that the making of the decision by the judge involved the making of an error of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. This is a matter where the Secretary of State had conceded that there is an error of law. The judge placed undue weight on the Appellant's failure to mention being raped in her initial screening interview, whereas it is well-known that the screening interview is simply the first opportunity to explain the basis of the claim, and the detail of that claim can subsequently be fleshed out, as has transpired in this case. Second, the judge accepted that there was a demonstration in December 2016. What she appears to have done, however, is to have conflated the issue of arrest at this demonstration with what the authorities did over a year later when she left the DRC. Finally, the judge did not consider properly the fact that the Appellant had been engaged in sur place activities with APARECO in the UK.

### **Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the Tribunal Judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Lloyd, pursuant to practice statement 7.2(b).

An anonymity order is made.

### **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 her or any member of her 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

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> September 2018