Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11176/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27th September 2018	**On 22nd October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

T M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Bandagani, Counsel instructed by Duncan Lewis and Co
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

This is an appeal by TM against the decision of Judge Nixon to dismiss his appeal against refusal of his Protection Claim. I extend the anonymity direction that was made by the First-tier Tribunal.

1. The factual basis of the appellant's Protection Claim may be conveniently summarised as follows.

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2. The appellant was born in the Democratic Republic of Congo but moved to Rwanda when aged 19 years. He was became a close friend of a lawyer, Toy Nzamwita, to whom he referred what appeared to be a straightforward medical negligence claim. However, upon investigation, Mr Nzamwita discovered evidence suggesting that the victim had in fact been murdered by the Rwandan government. At the end of December 2016, Mr Nzamwita was shot and killed by the police in what his family believed to be staged incident. On the 15th January 2017, the appellant was kidnapped and detained for three days by government agents. He was beaten and questioned about both Mr Nazamwita and the case he had been investigating. The appellant initially denied all knowledge of these matters, but under torture he eventually told them what he knew. Although they released him, his captors made it plain that they were not satisfied he had revealed all that he knew and were not therefore finished with him. On the 25th January 2017, armed men attended at his house but the appellant refused to let them in. The men therefore called his wife's mobile telephone and threatened to eliminate him. The men returned on the 20th February 2017. On this occasion, the appellant decided to let them in. He was again questioned about Mr Nzamwita. They returned for a third time in March 2017, but the appellant saw them entering his house and so he ran away. His wife later informed him that they had ransacked the house and slapped her in front of the children. The appellant and his family flew from Rwanda airport on the 2nd April 2017 and arrived in the United Kingdom on the following day. He claimed asylum on the 4th May 2017 for fear of being killed on return due to his imputed political opinion.

3. The judge accepted that Toy Nzamwita had been killed and that the appellant had been a friend of his. He did not however accept the appellant's account of the circumstances in which Mr Nzamwita had died, and neither did he accept his account of being kidnapped and subsequently visited at his home by the authorities. The grounds essentially attack the reasons given by the judge for not accepting the appellant's account. I consider them in turn.

4. The first ground argues that the judge failed to attach appropriate weight to the opinion of a country expert, Dr Andrea Purdekova. This is what the judge said of her opinion at paragraph 20:

> The conclusion of Dr Andrea Purdekova that political dissidents and critics are at risk of persecution is not disputed. Indeed there are a number of objective materials within the appellant's bundle confirming the same. The real question for me to determine is whether or not the appellant's account is credible …

In support of this ground, Mr Bandagani referred me to several passages in Dr Purdekova's written report in which she variously describes the appellant's account as "wholly credible" and "very plausible". I would first observe that Dr Purdekova seems not to have distinguished between the discrete concepts of plausibility and credibility. Indeed, she appears to use the terms interchangeably. Mr Bandagani accepted that, whilst Dr

Purdekova was entitled as an expert to comment upon the plausibility of the appellant's account, matters appertaining to the appellant's credibility as a witness of truth were entirely a matter for the judge. I am nevertheless prepared to accept that despite her somewhat inexact use of language, Dr Purdekova was seeking to convey her opinion that all aspects of the appellant's account were plausible. The remaining question is whether the judge failed to attach appropriate weight to that opinion when assessing the appellant's credibility. After some initial scepticism, I am persuaded that he did. Whilst the judge was right to say that it was for him to determine whether the appellant's account was credible, he did not in my judgement appreciate the true significance of Dr Purdekova's opinion. That significance lay not in the undisputed fact that "political dissidents and critics are at risk of persecution", but rather in the finding that the appellant's detailed description of events was plausible when viewed within the context of background country information concerning Rwanda.

5. The second ground is that the judge failed to take account of or give reasons for rejecting the appellant's explanation for how, if he was the subject of adverse interest by the Rwandan authorites, he was nevertheless allowed to leave the country. The appellant's explanation was this was that his cousin had served in the Rwandan army and had facilitated his escape by paying a large bribe to an official. The judge dealt with this issue (amongst others) at paragraph 22, finding that if the appellant's account had been true then the authorities would have detained him, "once he had made plain his plans to leave the country". There is no mention of the appellant's explanation of his cousin paying a bribe. It is moreover unclear from the judge's reasoning as to how the appellant had supposedly, "made plain his plans to leave the country", given that his application for a visa to enter the United Kingdom would have been made to the British rather than to the Rwandan authorities. I therefore find this ground has also been made out.

6. The third ground is that the judge failed to take account of or give reasons for rejecting documentary evidence which the appellant argued supported his claim. The precise nature of the document in question is arguably obscure. It is dated the 6th June 2017 and refers to the appellant's property as being "abandoned". Whilst it is debatable as to whether the document supported the appellant's oral testimony that the state had confiscated his property, it nevertheless remains the fact that the judge did not address it. I therefore find this ground has been made out.

7. I am not persuaded that the fourth ground is made out. It complains that the judge's use of phrases such as, "I would have expected" and "it makes little sense", betray an inappropriately subjective approach to fact-finding. Absent independent evidence to support it, I would accept that a judge should be extremely cautious about basing a finding upon concepts such as 'implausibility' and 'inherent improbability'. Nevertheless, there comes a point when a judge is entitled to consider that a claimed action or event is so contrary to universally accepted norms of human behaviour and/or physical laws of nature, that it can safely be discounted as contrary to

common sense. In my judgement, the judge's reasoning in this regard fell on the right side of that line.

8. Having upheld three of the four complaints concerning errors in the judge's reasoning, I have concluded that his conclusion that the appellant would not be at risk of persecution on return to Rwanda is unsafe. I accordingly set aside the decision and remit the appeal to the First-tier Tribunal for a complete rehearing.

Notice of Decision

9. The appeal is allowed and the decision of the First-tier Tribunal is set aside.

10. The appeal is remitted to the First-tier Tribunal for complete rehearing (no findings of fact being preserved) before any judge other than judge Nixon.

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 their 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: 15th October 2018

Deputy Upper Tribunal Judge Kelly