



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12484/2017 (V)**

THE IMMIGRATION ACTS

**Heard at: Field House
On: 16 March 2021**

**Decision & Reasons Promulgated
On: 25 March 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BLANCHE MUESSE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Collins, instructed by Sentinel Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant is a citizen of the Democratic Republic of the Congo (DRC), born on 7 August 2000. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her asylum and human rights claim.

3. The appellant arrived in the United Kingdom on 27 September 2013 and claimed asylum on 2 October 2013. The basis of her claim, as originally made, was that her family had been targeted in the DRC because of her father's political activities with the UDPS. Her father had been a follower of Tshisekedi and an opponent of the government and she had delivered newspapers and leaflets for her father from a young age. Her father was arrested in June 2013 when soldiers came to their house and told her that they intended to arrest her as well. They took her father away and he had not been seen since. She went to stay with her uncle for two weeks, together with her siblings but her uncle sent her siblings to other people's houses because he said that he could not keep all of them. He arranged for her to come to the UK.

4. The respondent, in refusing the appellant's claim on 27 October 2014, did not accept her account to be credible and considered that she was at no risk on return to the DRC. However, the appellant was granted leave to remain as an unaccompanied asylum-seeking child, until 26 April 2017. An appeal against the decision to refuse her asylum claim was lodged and, whilst there was subsequently an indication that the appeal was not being pursued by the appellant, there was no formal withdrawal before the Tribunal and the appeal was therefore determined in her absence and dismissed on 6 July 2015.

5. On 14 June 2017 the appellant's aunt applied on her behalf for further leave to remain. The application was refused in a decision of 9 November 2017, in which the respondent maintained the refusal of the appellant's asylum claim and concluded that she could not meet the requirements of paragraph 276ADE(1) and that there were no exceptional circumstances outside the immigration rules.

6. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Oliver on 4 January 2018 and was dismissed in a decision promulgated on 29 January 2018. However, that decision was set aside in the Upper Tribunal on 7 August 2018 on the grounds that Judge Oliver had failed to take account of the appellant's age when assessing credibility. The case was remitted to the First-tier Tribunal to be heard afresh.

7. The appeal was then heard by Judge Greasley on 3 July 2019. The appeal was no longer pursued on protection grounds, but only on Article 8 human rights grounds. The appellant gave evidence before the judge, stating that she was 18 years of age and had been living in the UK for six years with her aunt and cousins who were now her family and were very close. She had had no contact with her father or siblings since leaving the DRC and did not know what had happened to them. Her aunt had travelled to the DRC in 2014 but was not able to locate them. Her mother had left the family home when she (the appellant) was about 10 years of age to go on a business trip and had never returned. The appellant's aunt stated that in April 2019 she had received a call from the UDPS to say that they believed that the appellant's father had been killed. The appellant still feared returning to the DRC. The appellant claimed to have travelled to the UK with a lady known as Ruth and they had been met at Victoria bus station by her aunt who had not known that she was coming to the

UK. The judge then heard from the appellant's aunt, a British citizen who had left the DRC in November 2000 and claimed asylum in the UK and had naturalised in 2008. She was the sister of the appellant's mother. She claimed to have received a call in September 2013 asking her to meet a stranger at Victoria station and discovered that the stranger was with the appellant. She denied that there had been a planned migration for the appellant. She said that she had returned to the DRC in 2014 and had tried to locate family members but had been unable to do so.

8. The judge did not accept the claim that the appellant would have no family support if she had to return to the DRC. He found there to be no supporting documentary evidence suggesting that the appellant's aunt had returned to the DRC in 2014 or at any other time. He noted in any event that the appellant's aunt had conceded that she had not sought to make any enquiries with the local police or authorities or with any of the appellant's siblings' schools and denied knowing what employment her own brother had in the DRC. The judge did not find her to be a truthful witness and he rejected her account of how she had no idea of the appellant coming to the UK. The judge found it likely that the appellant still had family members in the DRC, including her parents, and considered that she would not therefore be returning without any family support. The judge found that the appellant could return to her family in the DRC and that she would be able to obtain further education or find employment there and he considered that her removal to the DRC would be proportionate and would not breach her Article 8 rights. He therefore dismissed the appeal on all grounds.

9. Permission was sought by the appellant to appeal to the Upper Tribunal on the grounds that the judge's reasoning in concluding that she had family in the DRC was unsustainable. The judge had failed to make findings on the appellant's evidence and made irrational findings about her aunt's evidence. The judge disbelieved the appellant's aunt's evidence that she had returned to the DRC in 2014, but extracts from her passport which were before the judge showed that she did in fact visit the DRC in 2014 and his disbelief of that matter tainted the rest of his credibility findings. The judge also erred by relying on adverse findings made in previous judicial decisions which had been set aside. The judge's analysis of whether the appellant had a protected family life under Article 8 and his rejection of the matter was flawed and inadequately reasoned.

10. Permission was granted in the First-tier Tribunal on 28 August 2019. The matter then came before me for a hearing, by way of skype for business.

Hearing and submissions

11. Mr Collins submitted that the appellant's evidence had consistently been that she did not know where her family was and had no contact with them. The judge failed to make any findings on the appellant's evidence, which was a material error as the appellant would be returning to the

DRC as a lone, vulnerable woman after being in the UK since the age of 13 years and would be at risk in line with the background country evidence. The judge's rejection of the claim that the appellant's aunt had been back to the DRC in 2014, in the light of evidence before him confirming that account, was also a material error as it tainted his findings on credibility in general. The judge also erred by referring to, and relying upon, previous adverse findings made by the First-tier Tribunal when the appellant's first appeal had been heard in her absence at a time when she had in fact withdrawn her appeal and the decision in the second appeal had been set aside. Finally, the judge erred in his findings on family life as he gave inadequate reasons for rejecting the family life between the appellant and her aunt and cousins despite their very close bonds and the fact that she had lived with them since the age of 13.

12. Ms Cunha submitted that the judge could not have ignored previous findings on the appellant's protection claim when that claim, albeit no longer pursued, was still relevant to the matter of 'very significant obstacles to integration'. The judge was entitled to have regard to the adverse credibility findings previously made against the appellant in her protection claim, when considering her Article 8 claim. Although the judge had made a clear error in rejecting the appellant's aunt's claim to have travelled to the DRC in 2014, that was not a material error because the judge gave other reasons for concluding that the account of that visit was not credible. The judge was entitled to conclude that the appellant's family remained in the DRC and that she would not, therefore, be returning as a single female with no support network. The judge's decision was entirely sustainable.

13. Mr Collins reiterated the submissions previously made in response.

Discussion and conclusions

14. The judge's conclusions on 'very significant obstacles to integration' for the purposes of paragraph 276ADE(1) and on Article 8 family and private life outside the immigration rules were very much predicated upon the rejection of the appellant's account of having lost contact with her family and having no knowledge of the whereabouts of any family remaining in the DRC. It is the appellant's case that the error made by the judge in rejecting the claim that her aunt returned to the DRC in 2014 was a material one, as it tainted the judge's credibility assessment and undermined all his adverse findings in regard to that matter, such that he was wrong to reject her account of having no family in the DRC.

15. It is not in dispute that there was an error in the judge's finding at [44] that there was no evidence of the appellant's aunt having returned to the DRC in 2014. The appellant's bundle, at page A13, contained a copy of her aunt's passport showing a stamp for her journey to the DRC in 2014. However, I am entirely in agreement with Ms Cunha that the error was not a material one, because it was the nature of, and reasons for, the trip that were of relevance, and that was only one of the reasons why the judge

disbelieved the account of the trip. The evidence of both the appellant and her aunt, in their statements and before the judge, was that the purpose of the trip in 2014 was to try and find out news about her parents and siblings, yet the evidence before the judge was that the appellant's aunt had not had time to visit the family property, that she had not sought to make any enquiries with the local police or other authorities, that she had made no enquiries with the appellant's siblings' schools and that she was unable to contact her brother's employers to ask about his whereabouts as she did not know what his employment was. At [50] the judge found that even if the appellant's aunt had visited the DRC in 2014, it could only have been for some other purpose than that claimed, given her failure to make any enquiries or checks from obvious sources, and he did not accept her account of having gone to the DRC to find the appellant's family members. It seems to me that the judge was perfectly entitled to reach such an adverse conclusion and to reject the appellant's claim on that basis alone and I do not accept the suggestion that such a conclusion was undermined by the judge's error as to whether the journey to the DRC had actually taken place.

16. There were, in any event, further reasons given by the judge for finding the evidence to lack credibility. Those included the findings made at [45], on the account of how the appellant came to be with her aunt in the UK, which the judge was fully and properly entitled to reject for the reasons given. The judge also took account of the fact that the appellant's protection claim, albeit not pursued before him, had been rejected as being based upon inconsistent evidence which in turn reflected adversely on her credibility.

17. The judge's findings in that regard in fact formed the basis of the fourth ground of appeal argued before me, which contended that he had erred in law by being influenced by adverse findings made in previous judicial decisions which had been set aside. However, that was not the case with the decision in the appeal in 2015. Whether or not that appeal proceeded in the appellant's absence and despite the appellant having sought to withdraw it, there were unchallenged adverse findings made by the respondent with reference to various inconsistencies in the appellant's claim which both the previous and current judges were entitled to consider. Likewise, the appellant's decision not to pursue the appeal before Judge Greasley on protection grounds, albeit for reasons relating to the change in the country situation, nevertheless left unchallenged the adverse credibility findings made by the respondent.

18. That also leads on to Mr Collins' first ground of appeal, namely the judge's failure to make findings on the appellant's own evidence. It is clear from the above and from his findings at [43] that the judge did consider the appellant's evidence, to the extent that he took note of adverse findings made previously on her protection claim, which claim included her account of her family members in the DRC. In any event, I reject the suggestion that the judge reached his adverse conclusions about the existence of family members remaining in the DRC on the basis of the appellant's aunt's evidence alone without taking account of the appellant's evidence. It is

manifestly clear that the judge was addressing the evidence of both the appellant and her aunt when concluding that the entire story had been fabricated, with the account of the absence of family in the DRC having been presented to provide a basis for claiming that the appellant, as a lone female without support, could not return to the DRC.

19. As for the grounds challenging the findings on family life, it is clear that the judge had regard to all relevant matters and took full account of the appellant's relationship with her aunt and cousins. The judge's findings in that regard were clearly and properly influenced by his previous conclusion that the appellant's immediate family members remained living in the DRC, that she had retained contact with them and that they could support her on her return there. The judge was accordingly fully and properly entitled to conclude as he did.

20. For all of these reasons I find that the grounds disclose no errors of law in the judge's decision. The judge's decision is a detailed and comprehensive one taking into account all of the evidence and providing cogent reasons for the conclusions reached on all grounds.

DECISION

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 16 March 2021