



**UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 27 March 2014

Decision Promulgated:  
On: 02 April 2014

Before

**Upper Tribunal Judge Pitt**

Between

**ANM  
(ANONYMITY ORDER MADE)**

Appellant

and

**Secretary of State for the Home Department**

Respondent

Representation:

For the Appellant: Ms Cohen, instructed by Hammersmith and Fulham Law  
Centre

For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

**DETERMINATION AND DIRECTIONS FOR REMITTAL TO FIRST-TIER  
TRIBUNAL**

1. This is an appeal by the appellant against a determination dated 19 December 2013 of First-tier Tribunal Judge C H Bennett which refused her asylum and human rights appeal.
2. Under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I continue the anonymity order made by the First-tier Tribunal, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant or her child. I do so in order to avoid the likelihood of serious harm to the child arising from her identification and to the appellant on the basis of the matters forming the substance of her asylum claim.
3. The appellant is a citizen of the Congo and was born on 14 December 1976. She claims asylum on the basis of her family's involvement in politics in the Congo, in particular the UDAPS party of President Lissouba and also on the basis of her husband's involvement with the regime of President Kabila in the Democratic Republic of Congo and her subsequent mistreatment by Moroccan police and DRC nationals whilst she was in Morocco in November 2011.
4. The challenge to the decision of the First-tier Tribunal was that it:
  1. approached the medical evidence incorrectly
  2. took into account irrelevant evidence and was unduly speculative
  3. was based on procedural irregularity where weight was placed on evidence from a hearing abandoned because the appellant was not fit to give evidence
  4. misapplied country guidance

**Preliminary Issue**

5. The grant of permission to appeal dated 30 January 2014 of First-tier Tribunal Judge Levin stated in paragraph 3 that grounds 1 and 3 were "not arguable". Ground 1 was stated not to be arguable because of "the Judge's careful analysis of the medical evidence and his detailed assessment thereof". Ground 4 was stated not to be arguable as "the Judge took into account the country guidance". The final paragraph of the grant of permission states "Grounds 2 and 3 disclose arguable errors of law which were material to the Judge's dismissal of the appeal."

6. Mr Melvin maintained that the grant of permission was limited to grounds 2 and 3. Ms Cohen argued to the contrary, relying on the reported case of Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304 (IAC).
7. Because, for the reasons set out below, I find that ground 2 has merit such that the decision of the First-tier Tribunal contains an error on a point of law such that the matter had to be set aside and decided *de novo*, the question of whether the grounds before me were limited is not determinative. I therefore address it only briefly.
8. The second paragraph of the head note of Ferrer states:

“Where the First-tier Tribunal judge nevertheless intends to grant permission only in respect of certain of the applicant’s grounds, the judge should make this abundantly plain, both in his or her decision under rule 25(5) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and by ensuring that the Tribunal’s administrative staff send out the proper notice, informing the applicant of the right to apply to the Upper Tribunal for permission to appeal on grounds on which the applicant has been unsuccessful in the application to the First-tier Tribunal.”
9. Even if the comments made by Judge Levin in paragraphs 3 and 4 of his decision were intended to limit definitively the grant of permission, there was no dispute before me that proper notice of this, enclosing Form IA68, was not sent to the appellant. For that reason it appeared to me that any limitation on the grounds argued before me would not be the correct procedure.
10. That was additionally so where the reasons given for purporting to limit grounds 1 and 4 did not address what were detailed and multi-faceted grounds. The purported refusal of permission to appeal ground 1 omits consideration of the challenge to Judge Bennett’s legal analysis of case law on the correct approach to medical evidence. Ground 4 was not a challenge that the country guidance was not taken into account, as suggested by Judge Levin in his paragraph 3, but that country guidance was not correctly applied, page 21 of the grounds containing the full ground apparently missing from the copy placed before Judge Levin.

#### Error of Law

11. Prior to the hearing before Judge Bennett, on 12 July 2013 the appellant had an hearing before First-tier Tribunal J Simpson. That hearing was adjourned due to her ill-health and the concern raised that she was not fit to give evidence. I was assisted as to what occurred during that hearing by the transcript provided by Ms Cohen which Mr Melvin did not suggest was other than an accurate record.

12. The respondent's Presenting Officer on 12 July 2013, Mr Briant, accepted that the appellant had "been in some distress" such that the hearing should be adjourned for an assessment of whether she was fit to give evidence. Judge Simpson recused himself from any future hearing where it was possible that the evidence he had heard was "tainted" because the appellant had not been fit to give evidence.
13. When the matter came before Judge Bennett on 1 November 2103, [10] of his determination shows that he proposed to take into account the Presenting Officer's note of evidence from 12 July 2013. The same paragraph shows that this course of action was opposed by counsel for the appellant.
14. Judge Bennett decided at [10] that the Presenting Officer's note of evidence was admissible "unless excluded by a statutory provision or common law rule" neither of which, in his view, applied. He concluded [10] thus:

"The crucial questions to be determined, in relation to Mr Briant's note were,

- (a) whether Mr Briant's note was accurate
- (b) what weight I should place on the content of the note, taking into account such medical evidence as there might be relating to Mrs M's condition and fitness to give evidence.

I therefore concluded that Mr Briant's note was admissible in evidence and that I should consider its content."

15. Judge Bennett made adverse credibility findings based on the Presenting Officer's note at [32(b)], relying on that section of it covering the appellant's evidence on the constitution of Parliament in the Republic of Congo.
16. I had a number of difficulties concerning the admission of the note of the Presenting Officer. Firstly, Judge Bennett admits it and places reliance on it without deciding on the accuracy of the note, the question he posed himself at the end of [10]. There is nothing to show that he assessed its accuracy. Indeed, the section set out at [32(b)] suggests that it was not a clear record, the first question and response being:

"Q How Parliament organised?

A. Represent [illegible]"
17. It also remains unclear and troubling to me why, if Judge Bennett proposed to take into account the oral evidence from 12 July 2013, he relied on the Presenting Officer's note without, apparently, even comparing it to the Judge's record of


- proceedings or any note taken by the appellant's representative on 12 July 2013.
18. Secondly, Judge Bennett also failed to answer his second question at [10] as to whether the appellant had been fit to give evidence before Judge Simpson. He makes no finding on that specific issue so was not in a position to decide what weight to place on the Presenting Officer's note of evidence.
  19. As indicated by Mr Melvin, the adverse credibility finding at [32(b)] was clearly not the only matter that Judge Bennett found went against this appellant. The findings on credibility are set out at some length in [31] to [37].
  20. However, to my mind, it was clearly procedurally incorrect to rely on a record of evidence from the hearing of 12 July 2103 in the light of the matters set out above. It was also not possible to say how Judge Bennett's view that the oral evidence the appellant did give, even if he did not hear any, undermined her credibility, impacted on his approach to other parts of her evidence and her credibility overall, the assessment of credibility not being a technical or mathematical exercise but a holistic one.
  21. It was therefore my conclusion that as the remaining credibility findings were potentially tainted by the procedural unfairness that the decision could not stand.
  22. I therefore find that the decision of the First-tier Tribunal discloses an error on a point of law such that it should be set aside and re-made *de novo*. As the appellant was deprived of a fair hearing before the First-tier Tribunal, the appeal is remitted to be re-decided following paragraph 7.2 of Part 3 of the Senior President's Practice Statement dated 25 September 2012.

## DECISION

23. The decision of the First-tier Tribunal discloses an error on a point of law such that it is set aside to be re-made.
24. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

**DIRECTIONS**

25. The appeal will be heard at the Taylor House hearing centre on 3 July 2014 before a panel other than First-tier Tribunal Judge J Simpson and First-tier Tribunal Judge C H Bennett.
26. By 26 June 2014, the parties are to file with the First-tier Tribunal and serve on the other party ALL evidence relied upon in a consolidated, indexed and paginated bundle.

Signed:   
Upper Tribunal Judge Pitt

Date: 31 March 2014