



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08527/2013

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke-on-Trent  
On 25<sup>th</sup> June 2014

Determination Promulgated  
On 2<sup>nd</sup> July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

MISS DIANA MUANI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Lane instructed by Braitch RB Solicitors  
For the Respondent: Mc A McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a citizen of the Democratic Republic of Congo born on 9<sup>th</sup> July 1982.
2. She appealed against refusal of asylum and her appeal was dismissed by Judge of the First-tier Tribunal McDade in a determination dated 3<sup>rd</sup> February 2014. The basis of the Appellant's claim arises from her claimed involvement with a NGO named

Clinique Internationale Humanitaire. This is an organisation which worked with homeless orphans. The Appellant claims that in October 2012 she wrote to the government objecting to the practice of asking children to join the army. A few days later she claims that she was arrested by uniformed security service officers and taken to a military base where she was interrogated and tortured. She claims to have been raped and stabbed in the top of her legs and deprived of food and drink for fourteen days.

3. The Appellant claims that she managed to escape when an officer of the same ethnicity as the Appellant took pity on her and arranged for her to travel by boat to Brazzaville. An agent then arranged for the Appellant's journey to the UK using a French passport.
4. Her claim was refused by the Respondent as lacking in credibility. An adverse inference was drawn under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 on the basis that the Appellant did not make contact with the UK authorities on arrival and did not claim asylum until four days later.
5. The Appellant's appeal was dismissed by Judge of the First-tier Tribunal McDade in a determination which is short but robust. Judge McDade dismissed the Appellant's asylum claim as neither plausible nor credible. Her appeal under Article 8 was considered under the Razgar guidance but dismissed on the basis that the decision was proportionate.
6. An application for permission to appeal was refused in the First-tier Tribunal by First-tier Tribunal Judge Simpson who described Judge McDade's determination as careful and well reasoned. The judge's adverse comments were described as fair and reasonable.
7. A renewed application to the Upper Tribunal for permission was granted by Upper Tribunal Judge Chalkley. Judge Chalkley points out in his reasons for decision that nowhere in the determination does Judge McDade set out a brief précis or summary of the Appellant's claim or of her oral evidence. As a result it is almost impossible to determine that he has made adequate findings of fact. Judge Chalkley considered that it was properly arguable that Judge McDade may have erred in law by failing to give any or any adequate reasons for finding that the Appellant's account of rape was not credible. The fact that no medical evidence had been adduced does not mean that a judge does not have to assess the Appellant's oral evidence. Further, it was considered that inadequate reasons had been given for the First-tier Judge's conclusion that he did not believe that the Appellant would not have been in contact with her family.
8. The Appellant's representative served a Rule 24 response dated 9<sup>th</sup> May 2014. The response acknowledges that the determination lacks in detailing the Appellant's basis of claim and lacks a fluid structure such as one would normally expect to see in all determinations. Nevertheless, looking at the determination holistically, it is submitted that notwithstanding these "minor structural errors" in the determination the decision is reasonable and sustainable and in the light of the adverse credibility findings it is submitted that no reasonable alternatively constituted Tribunal could possibly have arrived at a materially different outcome.

9. A reply pursuant to Rule 25 dated 11<sup>th</sup> June 2014 has been drafted by Mr Lane, on behalf of the Appellant. Contrary to the Respondent's response, it is argued that the deficiencies in the First-tier Judge's determination go far beyond minor structural errors and strike at the core of why the Tribunal is expected to give reasons. In summary, it is submitted that the determination is so deficient in reasoning that it amounts to a failure to give reasons at all.
10. Thus the matter came before me in the Upper Tribunal on 25<sup>th</sup> June 2014 for an error of law hearing. The Appellant was present but no interpreter had been provided, in accordance with the Upper Tribunal's standard directions. No request for an interpreter had been made by the Appellant's representative. It was apparent that the Appellant had very little understanding of English but Mr Lane indicated that he was content to proceed with the error of law stage and did not consider that the Appellant would be prejudiced by the absence of a Lingala interpreter.
11. In submissions, Mr Lane relied upon the original grounds in support of the application for permission to appeal, a skeleton argument submitted for the error of law hearing and the Rule 25 reply. The reply submits that –
  - No findings of fact were made as to whether the NGO which the Appellant claimed to have worked for existed and there is no explanation as to why no findings of fact could be made.
  - The First-tier Judge placed too much reliance on the lack of medical evidence in relation to the alleged rape and dismissed the Appellant's account without making any assessment of her oral and written evidence despite her case being internally consistent and consistent with the objective evidence.
  - There was no evidence at all to justify the findings arrived at as to the failure to claim asylum immediately upon arrival.
  - There were no adequate reasons for finding that the Appellant is in contact with her family in the DRC.
12. For the Respondent, Mr McVeety accepted that this is, as he put it, an unusual determination, but nevertheless relied upon the Respondent's Rule 24 response and invited me to conclude that the determination was adequate.
13. In my view this is an unusually short determination for a DRC asylum claim of this nature. Brevity is a commendable quality but it must not be at the expense of or in substitution for adequate reasoning.
14. I respectfully share Upper Tribunal Chalkley's concern that nowhere in the determination does the First-tier Judge set out even a brief précis or summary of the Appellant's claim or of her oral evidence. As a result, the reader knows nothing about the background to the Appellant's asylum claim and in such circumstances it is difficult, if not impossible, to decide whether reasons given are adequate or not.
15. Background evidence clearly demonstrates that the DRC is a potentially dangerous country where serious human rights abuses often go unpunished. It is also a well established principle that adverse credibility findings must only be made after the

most careful scrutiny of the Appellant's case and adequate reasons must be given in support of such findings. That, I regret to say, is not demonstrated in this instance.

16. In support of her appeal, the Appellant relied upon a report by an expert witness who could find no trace of the NGO for which she claimed to have worked. The determination records that the expert tried but failed to find any record of this organisation, which according to the Appellant had nine people working for it. The expert can merely say that there are many organisations in the DRC that are unregistered and local in nature and the fact that they cannot be found through the internet does not mean that they do not exist. The expert expresses the view that the name of the organisation sounds plausible in the light of the work they are said to be undertaking. So far as this aspect of the evidence is concerned, I agree with Judge McDade's conclusion that whilst the absence of evidence regarding this organisation is not in itself adverse to the Appellant's claim it is not of assistance either. It merely does nothing to advance the case.
17. However, so far as other findings are concerned, I agree with Mr Lane's submission that no reasons or inadequate reasons have been given.
18. The Appellant also has a child born in the United Kingdom. At the date of the First-tier Tribunal hearing the Appellant's baby was 2 months old. He is now 6 months and the Appellant brought him with her to the hearing before me because she said that she had no one to assist with childcare. Reference is made to the Appellant's baby at paragraph 7 of the determination but the judge merely concludes that the Appellant and her child would be returned together and that family life would continue as before. This, in my view, is not enough to discharge the Tribunal's duty under Section 55 of the Borders, Citizenship and Immigration Act 2009. The Appellant's situation as a single woman with a dependant child returning to the DRC should have been given more detailed consideration.
19. Having given brief oral reasons for my decision that the First-tier Tribunal's determination disclosed a material error of law by virtue of inadequate reasoning, I directed that it should be set aside. Both representatives invited me to remit the matter to the First-tier Tribunal for a fresh hearing before a different judge. Having reminded myself of the requirements of paragraph 7.2 of the Upper Tribunal Practice Statement, I am satisfied that this is the appropriate course. I am also satisfied that it would be inappropriate to preserve any of the findings made by the First-tier Tribunal. The matter needs to be heard afresh.

## **DECISION**

I set aside the First-tier Tribunal's determination and give the following directions.

## **DIRECTIONS**

1. There shall be a fresh hearing in the First-tier Tribunal at the Stoke-on-Trent Hearing Centre on the first available date.
2. No findings of fact are preserved.
3. A Lingala interpreter shall be provided by the Tribunal.

4. The hearing shall be before a salaried judge of the First-tier Tribunal other than Judge McDade.

**Anonymity**

No anonymity direction is made

Signed

Date 2<sup>nd</sup> July 2014

Deputy Upper Tribunal Judge Coates