



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01363/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 3rd September 2018

Decision & Reasons Promulgated
On 17th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

[L M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan, Counsel, instructed by Parker Rhodes Hickmotts

For the Respondent: Mrs R Pettersen, HOPO

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Dearden made following a hearing at Bradford on 28th February 2018. The judge dismissed the appellant's appeal against the refusal to grant her asylum on 15th January 2018.
2. In the reasons for refusal letter it was accepted that the appellant's husband had been suspected of being involved in the murder of President Laurent Kabila which took place on 18th January 2001. Her husband had worked for the former President Mobutu

who had lost power in 1997 and those suspected of being supporters of the previous Mobutu regime were also suspected of the murder.

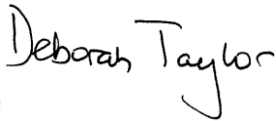
3. At the hearing Mrs Pettersen made it clear that the facts as claimed by the appellant were accepted, which include her husband having been imprisoned for six months before escaping, and thereafter soldiers coming to the appellant's house asking for him. The appellant was raped and her twin children were murdered. Both the appellant and her husband fled to South Africa where they were granted refugee status. It was following difficulties in South Africa that the appellant decided to come to the UK.
4. It was the respondent's case that the historic problems which the family had had with the regime in the DRC did not present a current risk.
5. The appellant challenges Judge Dearden's decision on the grounds that he had unfairly gone behind the concession in the reasons for refusal letter, mischaracterising the appellant's claim when he wrote, at paragraph 29:

"I find that there is no real risk of the appellant being targeted as a result of her husband working for the Mobutu regime as an accountant a long number of years ago."

6. Although Mrs Pettersen defended the determination I am satisfied that the judge did not properly assess the current risk on the basis of the appellant's case as it was put and accepted by the respondent. For example, there is no reference to the persecution of the appellant following her husband's escape from prison.
7. The judge did not assess the question of risk on return through the correct prism. The question is important because, according to the current country guidance, those having or being perceived to have a military or political profile in opposition to the government would be at risk on return. Moreover, in BK (Failed asylum seekers) DRC CG [2007] UKIAT 00098 the Tribunal recorded, on behalf of the Secretary of State, that it was conceded by the respondent that for the purposes of the appeal conditions in DRC prisons and detention centres were contrary to Article 3 of the ECHR. The Tribunal stated that the effect of the concession was that a period of detention in a DRC prison exceeding approximately one day would violate the detained person's rights under Article 3 of the ECHR. The Tribunal said it was clearly warranted by substantial and compelling evidence.
8. Given this family's accepted history it was incumbent on the judge to consider whether the authorities would question the appellant on a return and whether that questioning would lead to detention.
9. Moreover, if the judge was going to conclude, as he did, that the appellant's husband could not be described as an opponent and critic of the government then this is a matter which ought to have been put to the representatives.
10. Accordingly the judge erred in law and his decision is set aside.

11. Ms Khan asked for a remittal to the First-tier because of the procedural unfairness in the hearing before Judge Dearden and said that the appellant ought not therefore to be deprived of a right of onward appeal. She also wanted to produce an expert report in relation to current risk, given that the events took place many years ago. It was therefore not possible to conclude the hearing today. Mrs Pettersen made no objection to that course of action.
12. Accordingly the decision of Judge Dearden is set aside. It is remitted to be heard before another Judge of the First-tier Tribunal at Bradford at a date to be notified. The appellant's representatives are to produce an expert report for the hearing within the next eight weeks.

No anonymity direction is made.



Signed

Date 14 September 2018

Deputy Upper Tribunal Judge Taylor