



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02180/2016

**THE IMMIGRATION ACTS**

Heard at HMCTS Employment Tribunals,  
Liverpool  
On 2 May 2018

Decision & Reasons Promulgated  
On 1 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

AK  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Holmes instructed by CAB Bolton.

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

**DECISION AND REASONS**

- 1 The appellant, a national of the Democratic Republic of Congo, appeals against the decision of Judge of the First tier Tribunal Tobin, dated 6 September 2017, dismissing the appellant's appeal against the decision of the respondent dated 21 February 2016 refusing his protection claim.

- 2 The appellant gave an account of having been associated with the Filimbi movement in the DRC, and had come to the adverse attention of the authorities there, including having been arrested, detained, and seriously beaten in detention. The respondent refused his protection claim, asserting various inconsistencies and implausibilities in his account.
- 3 On appeal before the Judge, the appellant relied on a report of Dr. R Lennard of the Medical Foundation dated 4 July 2017, in which the doctor set out her opinion that the appellant had posttraumatic stress disorder, cognitive impairment of concentration and memory, and showed elements of ‘confabulation’ in answering questions about his detention, where he had no memory of what happened, and also had moderate depression (paras [127-129]). The doctor also expressed the view, adopting the Istanbul protocol, that marks on the appellant’s body were highly consistent with his having been burnt with a hot object, and had a number of scars which were typical of his having been injured with a bayonet (paras [102-103], and [126]).
- 4 There was also before the judge a single page document from the Asylum Seekers Service, Britannia Hotel, Manchester relating to a meeting with the appellant in November 2015. Under the title ‘Social’, is the following: ‘Victim of sexual abuse none’ and ‘History of physical abuse none’.
- 5 The Judge dismissed the appeal, disbelieving the appellant’s account of having been involved in Filimbi, or having come to the adverse attention of the authorities in the DRC. The Judge referred to the evidence of Dr. Lennard, but was of the view that the appellant ‘seems to have hoodwinked Dr. Leonard’, and placed no reliance on Dr. Lennard’s report (para [40]), preferring the single page report mentioned above.
- 6 In the appellant’s subsequent grounds of appeal the appellant argues, in summary, that the judge erred in law in failing to have any or adequate regard to the report of Dr. Lennard. Permission to appeal was granted by Resident Judge Appleyard on 1 December 2017.
- 7 I set the above matters out in less detail than I would ordinarily do so, as Mr. Bates, appearing for the respondent, accepted at the outset of the hearing that the Judge’s decision contained a material error of law, in failing to have adequate regard to the report of Dr. Lennard.
- 8 I find that that was an appropriate concession to make. For my part, I find that the Judge failed to have adequate regard, when considering the appellant’s credibility, and potential discrepancies within the appellant’s account in particular, to the following: the doctor’s consideration of the issue of confabulation, at [24] and [118] (which discusses how details may sometimes be added to an account innocently, where there are gaps within the memory of an account); the doctor’s observation at [35] that the single page report from November 2015 was a computer-driven report prepared by a nurse practitioner, with no physical examination of the appellant other than to note his height and weight; the doctor’s observations in relation to scars on the appellant’s body (which are not discussed in the Judge’s decision at all), in particular the scars which were highly consistent with the appellant’s attribution of

being burnt, and scars which are said to be typical of injuries caused by a bayonet; passages within the report at [106] regarding the possible effects of amnesia; and the passage at [110] regarding the possibility of embellishment.

- 9 Notwithstanding other difficulties in the appellant's account regarding alleged inconsistencies or implausibilities, I find that the Judge's overall assessment of the appellant's credibility was adversely affected by the Judge's failure to have adequate regard to the medical evidence before him.
- 10 I find that the decision is unsustainable.
- 11 Both parties were content for me to set aside the Judge's decision and to remit the appeal to the First tier Tribunal, due to the extent of the further fact finding that will be necessary in this appeal.

### **Decision**

- 12 The decision involved the making of a material error of law.
- I set aside the judge's decision.
- I remit the appeal to the First Tribunal.
- 13 I was informed that the appellant had recently been convicted of a serious criminal offense, but had not yet been sentenced. Those responsible for listing this matter may wish to liaise with the respondent to determine the appellant's availability to attend the hearing of the remitted appeal.

Signed:

Date: 28.7.18



Deputy Upper Tribunal Judge O'Ryan

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

This is a protection appeal. 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. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.