



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/03735/2017

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 28 June 2019**

**Decision & Reasons Promulgated  
On 03 July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES**

**Between**

**B. M.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation;

Appellant: Ms Brakaj, Iris Law Firm

Respondent: Ms Pettersen, Home Office Presenting Officer

**DECISION AND REASONS**

The Appellant, a citizen of the Republic of Congo, entered the UK legally and then made a protection claim which was refused on 5 April 2017. The Appellant's appeal against that decision was first heard and dismissed by First tier Tribunal Judge Kempton in a decision of 5 June 2017. That decision was set aside by the Upper Tribunal on 16 April 2018, and the appeal remitted for re-hearing de novo.

The appeal was then heard, and dismissed, by First-tier Tribunal Judge Hands, in a decision promulgated on 7 March 2019. The Appellant's application for permission to appeal was granted by First-tier Tribunal Judge Welsh on 17 April

2019. The Respondent did not reply to that grant with a Rule 24 response, and neither party applied pursuant to Rule 15(2A) to introduce further evidence.

The Appellant's case was that as a result of her experience of persecution she was seriously unwell. The nature of her illness could have had an impact upon her ability to give evidence, or at least, the way in which she did so. It is common ground before me that the Judge's decision cannot be read as engaging with the medical evidence, and considering whether there might be such an impact, in assessing the weight to be given to the Appellant's evidence and its credibility.

The Appellant relied upon documentary evidence to corroborate her account. Although the Judge noted its existence in the course of her rehearsal of the evidence [16] it is common ground before me that she made no findings in relation to its existence and content, or, reliability.

In the circumstances both parties agree that a fresh hearing is the only pragmatic course open, because it cannot be said that the Appellant has yet had a fair hearing of her appeal. I agree. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than either First-tier Tribunal Judge Kempton or First-tier Tribunal Judge Hands, at the North Shields Hearing Centre.

A French interpreter is required.

The remitted appeal is suitable for the short warned list. The parties should expect the appeal to be called on for hearing at short notice after 5 August 2019.

#### Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing, with the directions set out above.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  
Deputy Upper Tribunal Judge J M Holmes

Date 28 June 2019

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.