



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

Appeal Numbers: PA/12369/2018
PA/12367/2018, PA/12381/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9 May 2019**

**Decision & Reasons Promulgated
On 20 May 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**[R U] (FIRST APPELLANT)
[T U] (SECOND APPELLANT)
[K M] (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P Burrett, Counsel, instructed by Jackson & Canter
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellants, nationals of Rwanda, have permission to challenge the decision of Judge Fowell of the First-tier Tribunal (FtT) sent on 20 March 2019 dismissing their appeals against the decision made by the respondent on 11 October 2018 to refuse their protection claim. Since the appeals of the second and third appellants, who are children of the first appellant, are dependent on the first appellant's claim, I shall refer below to "the appellant" until the final paragraph.
2. The appellant's grounds contend that the judge erred in: failing to give due weight to the contents of the expert's report (grounds 1 and 2); misconstruing the evidence (ground 3); failing to consider material

evidence (ground 4); attaching weight to irrelevant matters (ground 5); failing to give fair notice to issues deemed relevant to the decision (ground 6); and failing to apply the correct standard of proof.

3. After discussion with both representatives, Ms Everett accepting that there were significant shortcomings in the judge's decision, I stated that I would be setting aside the decision of the judge for material error of law in a written decision to follow shortly.
4. Without seeking to go through the grounds sequentially, I am persuaded that the judge's decision contains several errors. The judge was wrong at paragraph 50 to state that the appellant made no mention in her witness statement of being taken down to a river and threatened with drowning (the witness statement did refer to this); wrong in paragraph 57 to count against the appellant that she could have obtained evidence from her mother (the appellant's evidence was that her mother was deceased and the judge did not state that this claim was rejected); and wrong to state at paragraph 47 that there was no evidence to suggest that those who had merely signed the petition supporting the candidature of Diane Rwigara were being rounded up as a matter of course (paragraph 61 of the expert report states that "[m]any of those who signed the petition were pursued too. However, because they were only low-level activists, there is very little reported about them"). Although not a point directly raised in the grounds, I would also observe that in counting against the appellant her two and a half month delay in claiming asylum, the judge does not appear to have properly engaged with her explanation for the delay. Further, it is doubtful that the judge was entitled to extract from the appellant's evidence that she had learnt about her husband's arrest in mid-February (see paragraph 61); that is not what she said in terms about when she learnt.
5. Taken cumulatively the three aforementioned errors amount to a material error of law. I see no alternative to setting aside the decision of the judge and remitting it to the FtT to be heard afresh (not before Judge Fowell). Whilst the appellants may face an uphill task in refuting the respondent's identification of a significant number of shortcomings in her account, they are entitled to a de novo hearing to put her case.

6. To conclude:

The decision of the FtT judge is set aside for material error of law;

The case is remitted to the FtT (not before Judge Fowell).

No anonymity direction is made.

Signed

Date: 16 April 2019



Dr H H Storey
Judge of the Upper Tribunal