IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal**
Number: PA/02957/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 04 February 2022	**On the 09 March 2022**
Extempore decision	

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MISS NANOU MBOBA-BAYESE
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Forbes, Legal Representative, Lifeline Options CIC
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Democratic Republic of the Congo ("the DRC") who has been in the UK since 2007. She is appealing against a decision of Judge of the First-tier Tribunal Juss ("the judge") promulgated on 15 June 2021 dismissing her protection and human rights appeal.

2. Before the First-tier Tribunal, the appellant claimed to face a risk of persecution in the DRC because of her involvement with the BDK. The

judge rejected this claim, describing it as neither coherent nor plausible. The grounds do not challenge this aspect of the decision and therefore I have not considered it further.

3. The appellant made three further claims before the First-tier Tribunal.

   (a) First, she claimed that removing her to the DRC would violate Article 3 ECHR because there was a high risk that she would commit suicide.

   (b) Second, she claimed that there would be very significant obstacles to her integration in the DRC such that she satisfies the conditions of paragraph 276ADE(1)(vi) of the Immigration Rules.

   (c) Third, she claimed that removal to the DRC would be disproportionate under Article 8 ECHR.

4. The judge's decision does not contain any assessment of Article 3 and suicide risk.

5. With respect to paragraph 276ADE(1)(vi) the judge found that the appellant could re-integrate into life in the DRC because she would have family connections and because of her educational qualifications and work experience.

6. With respect to her medical condition the judge stated in [24]:

> "She says she suffers from depression but as the RL makes clear treatment is available for her in the Congo. I do not accept that she is especially vulnerable as a lone woman and not least because I do not accept that she has lost all contact with relatives back home. Moreover, there is no reason why any support she has from friends in the UK cannot continue when she goes back."

7. With respect to Article 8 outside the Rules the judge stated that in the light of the findings made in respect of paragraph 276ADE there would not be unjustifiably harsh consequences if she was returned to the DRC.

8. The grounds of appeal make three arguments. First, it is submitted that the judge failed to consider objective country evidence about the lack of adequate mental health treatment in the DRC. Second, it is argued that the judge failed to address the issue of suicide risk. Third, it is submitted that the judge failed to consider Article 8 outside the Rules or take into account when assessing proportionality outside the Rules the evidence of the technical difficulties people face communicating electronically with the DRC and the severe problems of housing and transport in Kinshasa. The grounds also note that in the first three paragraphs of the decision the judge referred to a different appellant and described a different case.

9. Before me, Mr Forbes submitted that the judge recognised that the appellant suffered from depression but failed to consider and apply *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17. I asked Mr Forbes to identify the evidence that was before the First-tier Tribunal to substantiate the article 3 claim. He responded by submitting

that the appellant is a single lone woman who would have difficulty accessing services and would face difficulties communicating with people in the UK who might otherwise be able to provide her with support. He claimed that the evidence shows she would have an absence of family support and consequently would face conditions violating Article 3. Mr Forbes acknowledged, when pressed, that there was no medical (or indeed any other) evidence that was before the judge indicating a suicide risk. The only evidence he could point to that potentially could relate to suicide was a letter dated 25 November 2019 confirming attendance at counselling. However, this letter does no more than confirm her attendance at an appointment. Moreover, Mr Forbes had to acknowledge that the appellant's witness statement of 21 March 2021 does not mention suicide.

10. A further argument advanced by Mr Forbes was that there had been a change in policy at the Home Office, who are now – he says - undertaking a more person-centred approach in respect of people such as the appellant who face a difficulty presenting evidence. I declined to hear argument on this point because it is not relevant to any submission made in the grounds of appeal. In any event, it is immaterial because this is an appeal against the decision of the judge, not a challenge to the lawfulness of the respondent's decision.

11. With respect to article 8, Mr Forbes submitted that the judge had only looked at Article 8 from within the Rules and had only given a conclusion about Article 8 outside the Rules without setting out the relevant considerations.

12. Mr Diwnycz, on behalf of the respondent, relied on the respondent's Rule 24 response. At paragraph 4 of that response the respondent stated the following:

> "The claim that the appellant was at risk of suicide on return appears to be utterly unsupported by any actual medical evidence other than limited evidence that she is receiving counselling from a minority women's rights organisation. On that extremely limited evidence and the finding that contrary to her claim she is in touch with her family in the DRC the judge was entitled to conclude that there were no obstacles to her re-integration to the DRC and that her alleged mental health difficulties did not approach the high threshold required to establish a breach of her Article 3 rights."

13. Mr Diwnycz acknowledged that the judge had referred to an incorrect case in the first three paragraphs but he maintained that, although he considered this to be "lamentable", it was immaterial because it was plain from paragraph 5 onwards that the judge engaged with the correct evidence in this case.

14. I have decided to dismiss the appeal, for the following reasons.

15. First, the argument that the judge erred by failing to consider the risk of the appellant committing suicide has no merit because there was no

evidence (medical or otherwise) to support this contention. A better drafted decision would have made a specific finding in respect of the suicide risk given that this was advanced as an argument in the appeal, but as there was no evidence before the judge that could conceivably support such a claim there was no basis upon which the article 3 claim could succeed. In these circumstances, there was no need for the judge to consider *AM (Zimbabwe)* and therefore failing to do so was not an error of law.

16. Second, the judge cannot be faulted for not considering objective evidence about mental health treatment in the DRC as there was no evidence before him about the appellant's mental health. The only evidence was a letter dated 25 November 2019 confirming attendance at an appointment for counselling, but there is nothing in the letter (or elsewhere in the evidence) to indicate what issues were addressed in the counselling or what treatment the appellant needs or might need in the future. There were no GP records before the First-tier Tribunal, nothing to indicate what diagnosis (if any) she has or what medication (if any) she takes. In the absence of evidence relating to the appellant's mental health condition and needs, the judge cannot be criticised for failing to consider what provision may or may not be available in the DRC. Nor can he be faulted for not attaching weight, in the article 8 proportionality assessment, to the appellant's mental health.

17. Third, although the judge's consideration of article 8 is very brief, I am satisfied that the reasons given were adequate. In particular, the judge adequately explained why he was satisfied that the appellant would have family support and would be in a position to obtain employment, given her previous work history in the DRC. Based on these findings, it was open to the judge to find that removal would not be disproportionate. The grounds criticise the judge for not considering the problem of housing and transport in Kinshasa. However, this was adequately addressed by finding that the appellant would have family support and the prospect of employment. The grounds also criticise the judge for not considering the evidence of "major difficulties of technology limiting communication with the DRC". However, there was no expert objective evidence on this – the only evidence on this point was the description by the appellant's friend of his experience when visiting the DRC. The judge was entitled to not attach significant weight to this evidence because the appellant's friend is not, and did not purport to be, an expert able to give an opinion on the availability of communication between the DRC and UK. In any event, the judge's conclusion in respect of article 8 did not depend on the appellant being able to communicate regularly with the UK.

18. There clearly are issues with this decision. The first three paragraphs refer to a different appellant, the appellant's article 3 claim (hopeless though it was) was not mentioned, and the assessment of article 8 is very brief. However, the grounds do not identify any material error and I am satisfied that the judge (a) could not reasonably have reached any other conclusion in respect of article 3; and (b) reached a conclusion that was open to him,

based on the evidence, in respect of article 8 that is supported by adequate reasons.

19. The appeal is therefore dismissed.

Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant without that individual's express consent. Failure to comply with this order could amount to a contempt of court.

Notice of Decision

The appeal is dismissed. The decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

D. Sheridan
Upper Tribunal Judge Sheridan

Dated: 11 February 2022