



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

Appeal Number: AA 13736 2010

THE IMMIGRATION ACTS

**Heard at Columbus House
On 19 July 2013**

**Determination Promulgated
On 9 August 2013**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MONICA MAKITHA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Fenney solicitor from Duncan Moghal Solicitors & Advocates

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Burundi. She was born on 8 March 1984 and so is now 29 years old. She appealed the decision of the respondent on 22 September 2010 to remove her from the United Kingdom. It was her case that she is a refugee or otherwise entitled to international protection. Her appeal was dismissed by an Immigration Judge in a determination promulgated on 6 November 2010. That decision was appealed to the Upper Tribunal and the Upper Tribunal ruled that there was no material error in the decision of the Immigration Judge. Permission to appeal to the Court of Appeal was given by Hooper LJ on 5 April 2012. On 5 July 2012 Sullivan LJ approved a consent order and allowed the appeal “to the extent that it be remitted to the Upper Tribunal (IAC) for a further reconsideration, without determining the merits of the appeal for reasons set out in the attached Statement of Reasons”.
2. At paragraph 7 of the Statement of Reasons it was noted that the First-tier Tribunal had determined that:

- (a) the appellant is a Burundi national;
 - (b) the appellant probably spent ten years in Tanzania rather than in Kenya;
 - (c) the appellant suffered sexual abuse and
 - (d) Burundi was listed by the US Department of State as a “Tier 2” country in respect of its compliance with the Trafficking Victims Protection Acts (TVPA) minimum standards (i.e. one whose government *does “not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards;”*).
3. By the time the matter reached the Upper Tribunal the respondent unequivocally accepted that the appellant had been trafficked to the United Kingdom for the purposes of sexual exploitation.
4. According to paragraph 13 of the Statement of Reasons:
- “The parties have agreed that this matter should be remitted back to the Upper Tribunal for reconsideration on the basis of following agreed facts:
- (i) the appellant was trafficked into the United Kingdom for the purposes of sexual exploitation;
 - (ii) Burundi has been downgraded by the US Department of State to the “Tier 2 Watch List” in respect of its compliance with the TVPA minimum standards.”
5. There was some discussion before me about the way to proceed. In the end the parties agreed that the effect of paragraph 13 is that I had to decide in the light of the most recent evidence about Burundi’s compliance with TVPA minimum standards if this appellant, as a woman trafficked into the United Kingdom, is now a refugee.
6. It is of course for the appellant to prove her case. She must satisfy me that there is at least a real risk of her being persecuted for a reason recognised by the Qualification Directive.
7. Ms Fenney indicated that this was not a case that needed separate consideration on human rights grounds. If this appellant was at risk then she was a refugee. However she modified her definition of social group. She said that the appellant was “lone woman who was a victim or trafficking” rather than just a “victim of trafficking”. The reference to “lone woman” might be better understood as a refinement of the first point rather than a new departure opening up entirely new issues. Certainly Mr Richards was given an express opportunity to respond to the possible change in tack and did not wish to say more than he had already said.
8. I was told little about the appellant’s child. I know he is a boy born in November 2012. Ms Fenney explained that she did not have the birth certificate at the hearing room but understood it had been disclosed to the Home Office. Be that as it may, it had not been disclosed to Mr Richards or to me. I do not know if the child is a British national.
9. I decided to continue with the hearing before me and to decide it on the evidence that I had received. If my decision in the appeal did not entitle the appellant to some leave to remain in the United Kingdom then thought will be given to any further application that could be framed on behalf of the child rather than the

appellant. That is not a matter for me. I draw attention to it to make clear that I have not overlooked the possibility of the child being a British national and having particular rights of his own to remain but these things have not been established before me.

10. It is the appellant's case that she is of Hutu ethnicity and was born in Burundi. When she was aged about 5 her mother and brother were killed by a Tutsi group who entered the village. Certainly it is wholly consistent with the background material that racially motivated killings were carried out by some Tutsis against some Hutus at around that time.
11. When the appellant was aged 10, and still to some extent under the care of the grandmother, she was corrupted into prostitution. When she was aged 15 she was attacked with a knife and taken to hospital. When she returned from hospital she was told that her grandmother had died and she was on her own. She was taken by two men who pimped her.
12. At some point she was taken to Tanzania and then made her way to the United Kingdom.
13. It will be appreciated from this that the appellant has only lived in Burundi as a child. She lived in Kenya or Tanzania for a little over fifteen years and she has been in the United Kingdom for almost nine years.
14. I note from the papers that the appellant's conduct in the United Kingdom has not always been creditable. She entered under a false identity, which might be excusable given her circumstances, but also claimed asylum in a false identity and having claimed asylum failed to attend appointments so that she was recorded as an absconder. I record these things to make clear that although the appellant has plainly suffered dreadful experiences which are not in any way made less serious by her own misconduct, it does not escape my notice that she has not been straightforward with the respondent's officers even when looking to them for help.
15. Ms Fenney did not wish to call additional oral evidence. She based her case before me on submissions supported by reports in a bundle served on the morning of the hearing. This is substantially the same material served before but it included the US Department of State Trafficking in Persons Report 2013: Burundi Polish Town 19 June 2013. Mr Richards had not seen this before the hearing but given the source of the document sensibly took no objection to its late production.
16. Ms Fenney began by drawing my attention to the Integrated Regional Information Network's News (IRIN), "Burundi: State still accused of killings, cover-ups, 10-10-2012". This report is of limited value. The point I draw from it is that there are still credible accounts of extrajudicial killing and banditry emerging from Burundi. The report includes an observation and rhetorical question from the chairman of the Forum for Strengthening of Civil Society who says: "The killings 'create a climate of control and fear'. They send a message: 'if you want to stand up against us you will end up like that'. How can we make this democracy work if we can kill someone for his ideas?"

17. There is no reason to think that this appellant is at risk because of her ideas but the report does underline the generally high level of lawlessness in Burundi and this must illuminate my findings.
18. The IRIN Report “Burundi Tanzania: a troubled homecoming, 15/10/2012” postulates the very considerable difficulties facing people who are returned to Burundi because of the volumes involved. The suggestion is that community resources, such as schools, are completely inadequate for the increase in population created by the planned return of refugees. The report acknowledges a plan that would involve 35,000 people being returned in three months. The report concluded with an observation that the Burundian government “needs to be better prepared”. Not much was being done for the 3,000 or so who had no land to await their return. This is relevant because the main occupation in Burundi is subsistence farming.
19. This theme relating to the poverty in Burundi is picked up in a further IRIN Report of 21/11/2012 that says:

“The economy of Burundi, one of the poorest countries in the world, is based on subsistence agriculture, in which some 90% of the population is engaged. Few farmers grow enough to sell much of the surplus. The private sector is minimal, and offers few employment possibilities.

Such opportunities are particularly important for former refugees who did not farm while out of the country; for them regarding a plot without agricultural training is not very conducive to economic self-sufficiency.

Many refugees received some form of skills training in camps, such as carpentry, or operated small businesses such as shops or bicycle tax corporations, but find themselves unable to apply such trades back home for lack of materials, capital, access to credit, a recognition of professional qualifications gained in exile, or the social networks that facilitate economic activity.”
20. It is right to emphasise that Burundi is not presented in the background papers as an example of a failed state. There is recognition by a United Nations official on 24 January 2013 that:

“Burundi continues to make steady progress in strengthening governance and recovering from the recurrent strife, but given persistent political tensions and poverty, support from the international communities is still required.
21. The United Nations Children’s’ Fund (UNICEF) Report of 17 June 2013 refers to Burundi having a “high rate of chronic malnutrition” and that 58% of children under 5 are “chronically malnourished”. This is one of the highest rates in the world.
22. The US Department of State, Trafficking in Persons Report 20/11: Burundi, 27/06/2011” describes how Burundi is on a “tier 2 watch list” which indicates that it is in risk of being degraded to a tier 3 state by the Department of State of the United States of America because of its ability to resist trafficking. Burundi is described as a “source country for children and possible women subjected to forced begging and sex trafficking”. The report notes how some families are complicit in the exploitation of disabled children or adults and vulnerable young girls are offered accommodation in the guise of benevolence which turns out to be a

preparatory act of prostitution. The same report acknowledges how “within its limited capabilities” the government is trying to identify trafficking victims and raise public awareness but it was not enjoying any great success in protecting people. The report also noticed how the government had failed to prosecute, still less convict, any traffic offenders in the period considered.

23. A similar report dated 19 June 2013 explains that Burundi was granted a waiver from an otherwise required downgrade to tier 3 because it had a written plan which if implemented would constitute the necessary significant efforts but the report had not been implemented. Elsewhere the “tier” system is explained so that tier 3 is identified as a country whose governments do not fully comply with the minimum standards and are not making significant efforts so to do whereas a country on a tier 2 watch list is not complying but is making significant efforts.
24. Mr Richards made two points of considerable weight. Firstly he said that the appellant is not typical of the people trafficked in Burundi. The report points towards the risk to children although it recognises that there may be a problem for some women.
25. The paradigm example of victims of sex trafficking who are refugees are people who are trafficked and then quickly returned to the country from which they came only to be met again by those who had ill-used them who take them for a second time. This horrid set of circumstances is not relevant to this case. The appellant was not trafficked in Burundi at all. She left Burundi as a child. There is no possibility of her coming across those who corrupted her previously. Her circumstances are entirely different.
26. His next point was that the appellant would return to Burundi with the advantage of a capital sum available to those who return voluntarily which, by local standards, would have significant buying power. She also had the advantage of some education in the United Kingdom. It is plain, for example, that the appellant has some grasp of conversational English which would surely be of advantage to her.
27. These points are undoubtedly well-founded but are not as good as they might at first appear. As indicated above the opportunities for work outside subsistence agriculture are few. It is absolutely right that the appellant might be able to get secure employment amongst the 10% or so who do not work on the land and might be able to use her apparently modest skills in the English language to advantage. If that does not happen even attractive sums of capital run out and will not advantage her. A woman who has been out of the country for most of her life and certainly has no adult experience of living in Burundi and has no relevant skills in the predominant area of economic activity will be in an extremely difficult position. I cannot find that Mr Richards’ suggested scenario is at all probable. It is no more than a happy possibility in a very difficult place.
28. Clearly I must contemplate the appellant returning with her child. His best interests on what I have seen (and the evidence has been very skimpy) would be to remain in the United Kingdom with his mother but as is usually the case with small children being with the mother is more important than being in a particular country. However he will be an added burden on her ability to secure economic

activity. She has a child to feed. I find that a lone woman with her history must be more than ordinarily vulnerable to corruption and to prostitution. However appalling her experiences were she does know how to make a living in that degrading and horrid way. I do not see that she has much else to offer the country of Burundi. I remind myself that I am not dealing with certainties but with real risks.

29. I find that there is a real risk of the appellant coming across people who would coerce her into prostitution in the event of her return. That is sufficient to show that she is a refugee and is entitled to refugee status. As indicated above I am uncertain if this is best categorised as being a victim of trafficking or being a lone woman but for a woman in Burundi in her circumstances there is not much difference in practical terms.
30. I wish to make it plain that this is a case that turns on its own particular facts. There are several pointers to the appellant being in the vulnerable position that I find her to be. This decision that is not intended to suggest that no women can be returned to Burundi. Each case must be looked at on its own.
31. I am satisfied to the low standard required that this appellant risks serious ill-treatment in the event of her return and I allow her appeal on Refugee Convention grounds.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 1 August 2013