



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

Appeal Number: AA/01532/2015

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 30 September 2015**

**Determination Promulgated  
On 29 October 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**TK**

Respondent

**Representation:**

For the Appellant: Ms Julie Isherwood, Senior Home Office Presenting Officer  
For the Respondent: Ms Cecilia Hulse, Counsel, instructed by Duncan Lewis Sols.

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is a lone female asylum seeker who might be at risk just by reason of being identified.
2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal allowing the respondent's appeal against a decision taken on 13 January 2015 to refuse to grant asylum and to remove the respondent from the UK.

## **Introduction**

3. The respondent is a citizen of Cameroon born in 1978. She arrived in the UK on 12 July 2013 with a visit visa valid until 3 December 2013. She claimed asylum on 26 November 2013. She stated that her husband was a police officer and he died on 3 December 2010. She was then pressured by her husband's family to marry one of his relatives. She went to stay at her father in law's house and was repeatedly raped by her husband's cousin, from January 2011 until June 2013. When she tried to investigate her husband's death the cousin beat her and threatened to stab her. She did not tell anyone because she was scared of what he would do to her and the children. She later discovered that the cousin had also raped her eldest daughter. Her children went to live with her family in June 2013. She was too frightened to go back to Cameroon to live with her family. The cousin was also a policeman. Her brother told her by letter in November 2014 that he had been attacked by a gang who were looking for her and that her house had been burned down.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that her account was not credible and in any event she could move to another part of Cameroon. Her problems were very local.

## **The Appeal**

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Hatton Cross on 19 May 2015. She was represented by Ms Hulse. The First-tier Tribunal found that the respondent was credible but was not satisfied that the cousin would have any possibility of finding her and subjecting her to further ill treatment if she returned to Cameroon. However, the judge also found that she had little option of places to go in Cameroon and there was a real risk that she would fall into the hands of her family once again. The judge had great concerns about her mental health and physical health if she returned. The appeal was allowed on humanitarian protection grounds and under Articles 2 and 3 of the Human Rights Convention. The appeal was dismissed under the Refugee Convention.

## **The Appeal to the Upper Tribunal**

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent was at risk of indiscriminate violence simply by reason of being present in Cameroon because no reasons were given for that finding. No factors or objective evidence were identified by the judge that would indicate that the respondent would succeed on a stand-alone Article 2 or 3 claim. There was no reference as to why the respondent's mental health problems reached the Article 3 threshold nor any consideration of medical facilities in Cameroon.
7. Permission to appeal was granted by First-tier Tribunal Judge Lever on 8 July 2015 because it was arguable that there was no basis for the judge to find that the respondent was in need of humanitarian protection or that return would breach her protected rights under Articles 2 and 3. The brief

explanation at paragraphs 33-34 of the decision was arguably inadequate and incompatible with the law, particularly having regard to earlier findings.

8. Thus, the appeal came before me

### **Discussion**

9. Ms Isherwood submitted that the appeal was dismissed under the Refugee Convention and the findings are otherwise quite unusual. There is reference to internal relocation at paragraph 19 but no findings on the submissions. The findings at paragraphs 25 are conceded but paragraph 34 is confused and there are no findings about the submissions made on behalf of the Secretary of State. Cameroon is a large country and there is no finding that the respondent cannot go anywhere else. There was no evidence that her abusers would find her elsewhere and the reference in paragraph 34 to "*little option of places to go*" is not based upon the evidence. There is no explanation as to how the objective material helps the respondent's claim and no consideration of the protection available to the appellant in Cameroon. There was certainly no evidence that the cousin had influence over the whole country. There was nothing about medical facilities in Cameroon in the objective material.
10. Ms Hulme submitted that the hearing lasted one hour and fifty minutes. The interviews, witness statement and oral evidence were all before the judge. The judge dismissed the asylum claim because the Refugee Convention was not engaged. The judge found the appellant's evidence to be consistent throughout. There was a jigsaw of evidence including independent medical evidence. The facts were all found as claimed. Three different professionals were involved in the medical reports. The objective evidence was not explicitly dealt with by the judge but the evidence in the bundle justifies the conclusions reached by the judge. The judge clearly considered that evidence at paragraph 34 of the decision. It is doubtful that the respondent could exist on her own because women in Cameroon do not live on their own unless they have a strong position in society. The judge has given reasons and his conclusions are based upon the medical reports. There is a formidable risk on return and the respondent does not have the ability to take the option of internal relocation. The judge was not required to refer to every element of the evidence.
11. Ms Isherwood replied that the situation in Cameroon had to be looked at by the judge. There was no evidence about medical facilities in Cameroon. Paragraph 34 does not refer to non-government organisations or any other support that might be available in Cameroon.
12. The judge was not satisfied at paragraph 31 that the cousin would have any possibility of finding the respondent should she return to Cameroon. However, at paragraph 34 the judge found that the respondent had little option of places to go and that there was a real risk that she might fall into the hands of her family once again. Those findings are essentially unexplained and difficult to reconcile with each other. If there is no possibility of the cousin finding the respondent then no other risk of ill treatment has been identified there appears to be no risk of further abuse.

However, if the respondent is unable to internally relocate and there is a real risk that she will fall into the hands of her husband's family then there might be a risk of further ill treatment from the cousin or others. The findings in relation to risk of further abuse are wholly unclear and that is a material error of law.

13. The finding in relation to humanitarian protection under paragraph 339C of the Immigration Rules is equally unexplained. No consideration has been given to the level of protection in Cameroon and there is no explanation as to why the respondent would be at risk simply by returning to Cameroon. The judge has failed to give adequate reasons in relation to the humanitarian protection finding and that is a further material error of law.
14. Ms Hulse has referred to the extensive medical evidence and objective evidence that was put before the First-tier Tribunal. However, there is no analysis of that evidence and the judge simply refers to "*great concerns about her mental health and her physical health should she have to be returned to Cameroon*". That is not an adequate basis for finding that return would breach Articles 2 and 3. There is no consideration of support that might be available in Cameroon or the objective evidence relating to the position of women in Cameroon. The judge has failed to give adequate reasons for the findings in relation to Articles 2 and 3 and that is a further material error of law.
15. None of that means that the respondent cannot succeed on any of the grounds raised before the First-tier Tribunal. However, anxious scrutiny of the evidence is required to properly assess the various claims as well as proper consideration of the law and adequate reasons for findings and conclusions. None of that is evidence from paragraphs 31-35 of the decision. Given the general absence of analysis and sustainable conclusions (other than in relation to the respondent's own credibility) I do not preserve the finding in relation to the Refugee Convention.
16. Thus, the First-tier Tribunal's decision to allow the respondent's appeal on humanitarian protection grounds and under Articles 2 and 3 involved the making of an error of law and its decision cannot stand.

### **Decision**

17. Ms Hulse invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. Ms Hulse submitted that I should preserve the credibility findings whereas Ms Isherwood submitted that the re-hearing should be de novo with all issues to be considered again by the First-tier Tribunal. I note that the grounds of appeal to the Upper Tribunal do not challenge the positive credibility findings. I have therefore decided to preserve the findings.
18. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined by a judge other than the previous First-tier judge. I **preserve** the findings of fact made at paragraphs 25-30 of the decision of the previous First-tier judge.

Signed 

Date 27 October 2015

Judge Archer  
Deputy Judge of the Upper Tribunal