



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

Appeal Number: AA/07620/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On 25 February 2016

On 5 April 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MRS DENISE KABANGU MUKENDI
(no anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms P Ma, Solicitor

For the respondent: Ms C Johnstone, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of the Democratic Republic of the Congo born on 4 May 1975. She appeals to the Upper Tribunal against the decision of First-tier Judge Obhi dated 2 September 2015 refusing her appeal against the decision of the respondent dated 21 April 2014 refusing her asylum and humanitarian protection in the United Kingdom and to remove her from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.

2. Permission to appeal was granted by First-tier Tribunal Judge Pooler on 24 September 2015 stating that it was arguable that the First-tier Judge failed to assess the risk to the appellant on return to the DRC in light of her claim to be at risk from my husband's family and that she would have no family support.
3. Therefore, the only issue in this appeal is whether the First-tier Tribunal Judge adequately considered the risk to the appellant on her return to the DRC, in light of the evidence.

The first-tier Tribunal's findings

4. The First-tier Tribunal Judge did not find the appellant credible stating that the appellant's account that her husband has had no contact with her and therefore the baby is not his is undermined by the fact that she herself has provided. It is highly unlikely said the Judge that her husband would have attended any hospital appointments with the appellant, or that he would then go and put his name on the child's birth certificate to state the child is his, unless the child was either his child, or even if the child was not his child, unless he accepted the child as his own. During her evidence the appellant referred to husband as the child's father on more than one occasion.
5. The Judge further noted that the account of the appellant of her rape is further undermined by the fact that she has been inconsistent about whether the rape was perpetrated by the police or soldiers, and even whether she actually saw who they were. The Judge found that having considered the account by the appellant and her evidence, he was not inclined to find that the appellant was a victim of rape as she claims that the child is a product of that rape. He stated that there is a high probability that the child is the child of her husband and the child was conceived when the couple met in the DRC or elsewhere. The judge stated that the absence of the husband is convenient for the appellant as she cannot be asked to confirm through DNA testing that the husband is not the father of the child.
6. The judge noted that what appears to have happened is that the relationship between the appellant and the husband broke down and the appellant is unable to apply for leave to remain under the Immigration Rules, and so has applied for asylum. The appellant is in an unfortunate situation. She does have serious medical problems, and her heart failure as is documented by her records. She has the care of a young child who appears to have been abandoned by her husband, whom she came to join.
7. The Judge stated that while he has a great deal of sympathy with the appellant in what is an impossible situation for her to be in, not least because of her poor health, she cannot succeed under the Refugee Convention. The country guidance case does not apply in this case because it is not a political case.

8. The appellant has a young child with her who she claims that the child is not her husband. However, he is registered as the father of the child and therefore there is a presumption of legitimacy in relation to the child, which can only be rebutted through evidence that he is not the father. He would have to agree to a DNA test if he does not accept that the child is his. Presumably the appellant will be able to seek some child support from him in relation to the child on that basis. If the child is not his, then the appellant will be returned to the DRC with the child, and it is in the child's interest, at this stage of life for her to be with her mother. She is so young that she has yet to establish any real roots in the United Kingdom.
9. The Judge stated that he is more concerned about the appellant's ill-health. She has a number of different ailments, including heart failure, and sickle-cell anaemia. As the respondent notes in her refusal letter there are medical facilities available in the DRC and the appellant has not claimed that they are not. Her condition is being managed and there is no reason to assume that it will not be managed if he returns to the DRC with the drugs that she requires are available. Her illness has not reached the stage where Article 3 is engaged and therefore her removal would not result in the United Kingdom being in breach of its obligations to her.
10. The Judge dismissed the appellant's appeal in respect of asylum, humanitarian protection in human rights grounds.

The grounds of appeal

11. The appellant in his grounds of appeal states the following which I summarise. The Tribunal notes at paragraph 16 of the determination that the respondent accepts that "the appellant being a member of a particular social group, in that she is a victim of sexual violence, who claims to have become pregnant as a result. It is accepted that she would be socially ostracised as a result" the Tribunal found at paragraph 27 and 28 of the determination that the appellant's account of rape was undermined by the fact that she had been inconsistent about whether the soldiers or police had raped. The Tribunal gave weight to immaterial matters which led to the negative finding that the appellant was not a victim of rape and therefore erred in law. It is immaterial whether the appellant was raped by police or soldiers, both are categorised as the authorities and belonging to the government security forces. The Tribunal had regard to the respondent's refusal decision and objective evidence relating to widespread sexual and gender-based violence committed by the security forces of DRC.
12. The Tribunal was referred to the skeleton argument put forward by the appellant's representative and appeal bundle which contained objective evidence relating to the particular risk to a lone woman and child in the DRC. It is submitted that the Tribunal has misdirected himself and only considered the appellant's appeal in the context of domestic violence instead of the risk for the appellant on return to the DRC as a lone woman with a young child. The respondent accepted that the appellant was a victim of sexual violence and it is therefore submitted that the Tribunal has erred

in failing to give reasons and also consideration of the child's best interests whether there exists a reasonable likelihood that the appellant's child would be at risk of sexual violence if they were returned to the DRC. The Tribunal has further erred in failing to make findings whether the appellant and a child could internally relocate within the DRC as a lone woman with a young child and whether she could seek protection from the authorities.

The Rule 24 Response

13. The respondent in her Rule 24 response stated the following. The appellant entered the United Kingdom on the basis of family reunion and that marriage subsequently failed in the United Kingdom. It is clear from the evidence that the Judge rejects the claim that the child is not her husband's at paragraph 28 and 29 of the determination. Given the above it is unclear why the Judge should make a finding on the claim that the ex-husband's family would seek to do harm to the appellant or their grandchild on return to the DRC. It is clear from paragraph 33 that the Judge has considered the refusal letter and the medical evidence that it would be available to the appellant in her home country.

Decision as to whether there is an error of law.

14. I have given anxious scrutiny to the determination of Immigration Judge Obhi and have taken into account the grounds of appeal and the submissions made at the hearing by both parties.
15. The main complaint about the determination is that the Judge did not adequately consider the appellant would be returning to the Democratic Republic of the Congo as a lone woman with a child with no family support.
16. I find that the Judge was entitled and required to reach his conclusion based on his consideration and evaluation of the evidence as a whole. The Judge made a finding based on the evidence that the appellant's child is from her husband and therefore the appellant would not be at risk from her husband's family in the DRC as they would be the child's grandparents.
17. The Judge made many detailed adverse credibility findings against the appellant in respect of which there cannot be any possible error. The Judge found that the appellant finds herself in a difficult position because she is in no position to meet the requirements of the Immigration Rules for further leave to remain and has claimed asylum in order to live in this country. On the evidence it is clear that the appellant has woven a story for her asylum claim which the first-tier Tribunal Judge was entitled not to believe. In the circumstances, the Judge was entitled to find that the appellant can return to the DRC with her child who is the child of her husband.
18. Even at the hearing there was no evidence provided to me that a woman in the appellant's position would be at risk in the DRC. There was also no case law submitted which the Judge had not considered which suggested

that a woman returning to the DRC would be at risk because of the widespread sexual violence in that country or that the authorities cannot provide protection.

19. On the evidence in this appeal, I find that the differently constituted Tribunal would not come to a different conclusion. I find that the grounds of appeal are no more than a quarrel with the Judge's findings. I find that the Judge's reasoning is understandable, and not perverse. I find that the grounds of appeal are no more than a disagreement with the Judge's findings of fact and the conclusions that he drew from such findings.
20. For each of these reasons given by the Judge in his determination he was not satisfied, even to the lowest standard, that the events of which the appellant speaks are credible.
21. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original Judge's thought processes when he/she was making material findings.

22. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why he reached his conclusions. I find that no error of law has been established in Judge's determination. I find that he was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold the decision of the First-tier Tribunal.

DECISION

Appeal dismissed

2016

Dated this 28th day of March

Signed by,

Deputy Judge of the Upper Tribunal

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Mrs S Chana

