



IAC-FH-AR-V1

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

Appeal Number: AA/08632/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2016**

**Decision & Reasons Promulgated
On 3 February 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**A M I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss E Pottle, Counsel, instructed by Fadiga & Co Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a citizen of the DRC and her date of birth is 10 October 1979. On 21 January 2013 she made an application for asylum that was refused by the Secretary of State on State on 20 May 2015. The appellant appealed against that decision and her appeal was dismissed by Judge of the First-tier Tribunal Pears in a decision promulgated on 24 November 2015 following a hearing on 12 November 2015. Permission was granted to the appellant by First-tier Tribunal Judge Grant- Hutchison on 18 December 2015 and thus the matter came before me.
2. The appellant's case, in a nutshell, is that she studied law at Kinshasa University, starting a course there in 2002. She became interested in politics and became an active supporter of the Union for Democracy and Social Progress ("the UDPS"). She was a student advisor for the UDPS. On completion of her studies she became a human rights activist. In 2009 she became an administrative assistant for Pro Justice and in 2011 she was appointed public relations officer for the UDPS in Kinshasa. As a result the activities mentioned the appellant was arrested on 14 December 2012. She was detained for a period of three days and seriously assaulted.
3. The appellant was released (unofficially) and fled to the UK arriving here on 17 January 2013. It was accepted by the First-tier Tribunal and indeed it does not appear to have been challenged by the respondent that the appellant was a member of UDPS but the issue was the extent of her involvement with the organisation and it was not accepted by the respondent that she had been detained or assaulted. The judge found against the appellant, finding that her not to be credible
4. The judge made a number of findings at paragraphs 41 to 56 relating to the appellant's asylum claim.
5. At paragraph (d) of the grounds seeking permission it is asserted that the judge speculated that the appellant did not inform a nurse that she had been seriously assaulted. Reference is made to a letter from Freedom from Torture at page 6 of the appellant's bundle and it is asserted that the judge was wrong to find against the appellant in this respect. The ground is not well drafted but it is asserted that the judge did not properly engage with the evidence from Freedom from Torture which led him to wrongly conclude that she had not informed a medical professional about the assault.
6. In this respect I refer specifically to paragraph 25 of the decision of the First-tier Tribunal which reads as follows:

"At page 6 of the appellant's bundle is a report from Freedom from Torture dated 6 November 2015 and I enquired as to its evidential status because, as it itself accepts, it is 'not an expert medico-legal report'. First paragraph - and it specifically refers to a medico-legal report service which seems to have been used by the appellant. According to the report the appellant was seen by a systemic family life psychotherapist/psychological therapist who has prepared the report. In emotional terms it is a powerful report and, in general outline, repeats her account of what she says happened to her but it

is not a medical report so that there is no diagnosis and it is a report on therapy so that there is no need to be report that recognises the obligations of an expert in legal proceedings. It notes that she has been unable to disclose many details of her rape which may be understandable and which it says is not uncommon. Of course that could further assessment would be required if there was to be a negative determination of her appeal.”

7. The judge went on to conclude thie following at paragraph 43:

“I find if she had been raped there would be evidence of an HIV test and she would have told the Kings’ College maternity unit and they would have recorded something about her detention, assault and rape.”

8. The judge at paragraph 54 stated:

“I have borne in mind the report from Freedom from Torture but bearing in mind that it is not a medical legal report it does not persuade me that the appellant is credible or that she was raped.”

9. The letter from Freedom from Torture as indicated by the judge does not claim to be an expert medico legal report. However, the following is stated by the author of the letter, Miss Berdasco.

“I can confirm the following information: (the appellant) was referred to Freedom from Torture London Centre on 23/01/2013 for a full psychological assessment to consider her suitability for a specialised clinical trauma based intervention as part of a rehabilitation process. She was referred by Nancy Darree, a community specialist nurse in Barry House Health Inclusion Team as she was experiencing difficult feelings regarding her experience of trauma and torture, including of a sexual nature.”

10. The letter is dated 6 November 2015 and is, as concluded by the judge, highly consistent with the appellant's claim. The letter also indicates that the appellant has had psychological therapy and a continued need for therapy and that there is no planned ending in sight and therapy is intended for the foreseeable future.

Error of Law

11. Whilst the letter was not an expert report and as such has evidential shortcomings in relation to the appellant’s account of her condition and history, it is not clear to me whether the judge rejected the assertion in the letter (that a referral had been made) and if this is the case why it was not accepted, or whether the judge simply failed to engage with the issue clearly raised in the letter. Having taken into account the above cited paragraphs of the judge's decision, I conclude that the judge did not adequately reason the finding at [43] and/or he did not properly engage with the evidence and this amounts to an error of law. The judge attached weight to the appellant having not raised the issue with a medical professional when assessing credibility (this is the point he makes at [43]), but the evidence suggested otherwise.

12. There is an error of law raised at paragraph (b) of the grounds. Having considered [12] of the decision of the judge, it is implicit in that paragraph that the judge concluded that the appellant's evidence was inconsistent in relation to membership of the UDPS. The appellant's evidence was that she had been a supporter of the UDPS up until 2009 when she then became a member. There does not appear to me to be any inconsistency in respect of this aspect of the appellant's evidence. Although [12] of the decision is under the heading "Evidence" and the findings are under a separate heading it is clear that the judge made a number of comments and observations under the heading of "Evidence" which are findings and impacted on the overall credibility assessment.
13. Having heard oral submissions from Miss Pottle relating to ground 1 paragraph (a), I am persuaded that the judge erred in failing to engage with the appellant's evidence relating to her main occupation and the duties that she performed for the UDPS in concluding that there was inconsistency between the information given by the appellant in the VAF application.
14. Miss Pottle raised an issue at the hearing which was not raised in the grounds. In her view the judge's conclusion at [43] relating to the evidence of an HIV test was "astounding". In addition, she informed the Tribunal that having spoken to the appellant's representative at the hearing this issue had been raised by the judge and the representative had asked for a short adjournment in order to take instructions which had been granted. The appellant's evidence was that a test had been conducted. In any event, the issue was not raised in the grounds of appeal and is not material to this application. Notwithstanding this, I conclude that the judge materially erred for the reasons that I have given. Whilst I agree with Mr Kotas that there are a number of findings that have been made by the judge which in isolation would be lawful and sustainable, the errors are such that considered cumulatively it is inevitable, in my view, that they are material and therefore the credibility findings generally are infected.

Notice of Decision

15. There is a material error of law. I set aside the decision in its entirety and remit the matter to the First-tier Tribunal for a fresh hearing.

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Signed Joanna McWilliam

Date 26 February 2016

Upper Tribunal Judge McWilliam