



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA101632015

**THE IMMIGRATION ACTS**

Heard at Newport (Columbus House)  
On 31 May 2017

Decision & Reasons Promulgated  
On 12 June 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

J P M M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Howells of Counsel  
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the

Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

### **Introduction**

2. The appellant is a citizen of the Democratic Republic of Congo ("DRC"). He was born on [ ] 1962. He arrived in the United Kingdom on 17 January 2015 on a business visa which he had obtained from the British High Commission in Pretoria, South Africa. On 2 March 2015, the appellant claimed asylum.
3. The basis of his claim was that he had established a media company called Camera ou Realité ("CoR") which produces news programmes and documentaries. He was an investigative journalist and took a particular interest in the wrongdoings of the DRC government. He claimed that in November 2013 he and his family were abducted and detained by government agents. Whilst in detention, he was accused of being a traitor and was tortured. He subsequently escaped with the aid of a Catholic priest who had been summoned to give him medical treatment. The priest agreed to help the appellant escape and he did so disguised as a priest. He left the DRC by aeroplane to South Africa using his own passport which the priest had obtained for him. He claimed that seven months after he escaped, in September 2014 South African agents of the DRC attempted to abduct him but he escaped. He applied for a visa to come to the UK which he obtained and came to the UK where he claimed asylum on 2 March 2015.
4. On 1 July 2015, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and on human rights grounds.

### **The Appeal**

5. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 27 October 2016, Judge A D Troup dismissed the appellant's appeal on all grounds. He found the appellant's account to be a fabrication. In addition, he concluded that the appellant's *sur place* activities in the UK with APARECO did not create a real risk on return.
6. The appellant sought permission to appeal to the Upper Tribunal. His discursive grounds were self-evidently prepared by the appellant in person.
7. On 8 December 2016, the First-tier Tribunal (Judge I Murray) granted the appellant permission to appeal on the basis that the judge had arguably erred in law in reaching his adverse credibility finding.
8. On 21 December 2016, the Secretary of State filed a rule 24 notice seeking to uphold the judge's decision.

### **The Submissions**

9. Before me, the appellant was represented by Mr Howells who, despite being instructed shortly before the hearing, helpfully provided a skeleton argument in

which he set out three grounds of appeal. Mr Mills, who represented the Secretary of State, raised no objection to the reliance upon the carefully articulated grounds of Mr Howells.

10. Mr Howells raised three grounds which, he submitted, establish that the judge had erred in law in his assessment of credibility. The grounds did not challenge the judge's adverse finding that the appellant was not at risk as a result of his *sur place* activities in the UK.
11. First, Mr Howells submitted that the judge had failed to assess the credibility of the appellant's account of torture which was set out in detail in the report of Dr Wickert on behalf of the Medical Foundation dated 22 February 2016 at paras 11-39 (pages 161-164 of the appellant's bundle before the First-tier Tribunal). Mr Howells submitted that the judge had simply dismissed the appellant's account of detention and torture on the basis that he did not accept that the CoR existed. The expert had commented on the appellant's demeanour during his interview and the appellant had been subject to no cross-examination or questions from the judge in relation to the issue of torture. Mr Howells submitted that the judge's failure to make any finding on the central issue of the appellant's claim that he had been detained and tortured was an error of law.
12. Secondly, Mr Howells submitted that the judge had failed properly to take into account the medical report which supported the appellant's claim to have been tortured. The expert's report noted that a number of injuries on the appellant's body were consistent with his account and two were "highly consistent" with his account, namely a scar on his left face which was highly consistent with his account of blunt force trauma to the face and secondly the scarring to his anus which was highly consistent with his claim to have been anally raped whilst in detention. Mr Howells also pointed out that the expert also concluded that the appellant was suffering from PTSD caused by his experiences and ill-treatment in detention in the DRC. Mr Howells submitted that the judge erred in law by failing properly to take into account the expert's conclusion in assessing the credibility of the appellant's claim and in particular his account of being tortured.
13. Thirdly, Mr Howells relied on a number of matters set out at paras 11 and 12 of his skeleton argument which he submitted the judge had wrongly taken into account in assessing the appellant's credibility because they were peripheral to the core of his claim or, in reaching findings on the matters set out, the judge had failed to consider all the evidence.
14. Mr Mills submitted that the judge was not required to set out and deal with each and every point raised by the expert. He accepted that the report was supportive of the appellant's claim but, he submitted, the judge had taken it into account in the round on the basis of all the evidence. He submitted that the expert had concluded that injuries were either "consistent" or "highly consistent" but, in accordance with the Istanbul Protocol, the expert had recognised other causes were possible. In particular, in relation to the two injuries said to be "highly consistent", the expert had

recognised in relation to the scar on the appellant's face that it could have been as a result of another cause "such as an assault or road accident" (see para 108); and in relation to the anal injury, the expert had stated that such injury was "most commonly" caused by constipation and other causes also existed (see paras 127 and 128). Mr Mills submitted that it was not for the expert to decide whether the appellant was credible and the judge was entitled to find, for the reasons he gave, that the injuries were not as a result of the causal events claimed by the appellant, namely his torture. The judge had set out the appellant's account of torture at paras 15-19 and he was required to do no more than that. The judge dealt with the expert report, in particular, at para 64 and, given that the expert report gave the judge room to find that other causes were possible, it could not be said that his finding was not properly open to him.

15. As regards Mr Howells third point, Mr Mills submitted that the matters relied upon by the judge were not peripheral, in particular whether the media company existed at all was central to whether he was detained and tortured. He submitted that the judge's reasoning was, contrary to Mr Howells' submissions as set out in paras 11 and 12 of his skeleton argument, properly open to him.

### **Discussion**

16. It may be helpful to take Mr Howells' Grounds 1 and 2 together as there is a degree of overlap between them.
17. Mr Howells placed reliance upon the judge's failure, as he contended, to make any finding in relation to the appellant's claimed detention and torture. Mr Howells placed reliance upon the detailed account which the appellant had given Dr Wickert in his interview with her and set out at paras 11-39 of her report. He placed reliance upon Dr Wickert's comments about the appellant's demeanour at paras 15, 18, 21, 22, 23 and 26. Further, he relied on the fact that the appellant had not been cross-examined or asked questions by the judge about his claim to be tortured.
18. There is no doubt that the appellant's credibility, including of his detention and torture, was in issue before the judge. The judge clearly had in mind the circumstances of the appellant's claimed detention and torture which he set out in some detail at paras 15-20 of his determination as follows:
  - "15. In November 2013 he was abducted by government agents and was detained. At the same time his wife [] and daughter [] were abducted but his two sons, who were at school at that time, were taken by a friend to safety in Congo Brazzaville. A's offices were searched and much of his property confiscated, and four colleagues - [X], [Y], and [Z] - were arrested.
  16. A was interrogated by an army General who wanted to know for whom he was working, accused him of being a traitor and warned him that he would be executed for treason.
  17. A was slapped and verbally abused, hooded and placed in a foul cell infested with rats and other vermin. He was beaten and raped by soldiers. On the third day the General paraded A's four colleagues in front of him and shot each of them dead,

saying that he wanted the information that he believed A had, and told him that he was “*deadly serious*”. A was compelled to write a statement confessing to alleged crimes and saying that it was he who had killed his colleagues.

18. During his incarceration A was given meat to eat, which had a strange taste and smell; he was later told that it was from the bodies of his wife and daughter, and their severed heads were shown to him. He was continuously beaten, knocked unconscious, and injected with a cocktail of drugs.
19. Later he was transferred to a prison in Lubumbashi, a city in the province of Katanga, where the interrogation and torture continued. He was told that the documents seized at his home incriminated him. He was continuously violated, sexually and psychologically.
20. After about a month in Lubumbashi a Catholic priest was summoned to give him medical treatment. The priest was Father [], who A knew from primary school; A told him that he was working for freedom against government oppression through his media company. The priest agreed to secure A’s release, recovered A’s passport from his friend [] who was holding it for him, and obtained travel documents. Disguised as a priest, A left the detention centre and was driven straight to the airport, where he flew to Johannesburg the same day, 7 February 2014.”

19. It was not incumbent upon the judge to set out each and every part of the appellant’s evidence in the form of what he told Dr Wickert in his interview. Further, Mr Howells reliance upon Dr Wickert’s comments about the appellant’s demeanour in truth take the appellant’s case that the judge did not properly consider his evidence no significant way forward. Indeed, it would have been dangerous (perhaps impermissible) for the judge to base his credibility finding – one way or the other – upon the appellant’s demeanour whether in interview or in giving evidence before him (see e.g. HK v SSHD [2006] EWCA Civ 1037 at [46]).
20. Further, it is not right, with respect to Mr Howells, to suggest that the appellant’s evidence concerning his detention and torture was not challenged in cross-examination at the hearing. At paras 41-43, the judge records the cross-examination of the appellant in relation to discrepancies as to the period of time he claimed to be detained:
  - “41. As for A’s detention in November 2013, he agreed that he had been detained in Kinshasa for one month and in Lubumbashi for one month and one week. In reply to Q44 of the AIR, A had said he had been held for one month but in evidence said that that related only to the time spent in Lubumbashi, not the whole period of detention.
  42. At paragraph 36 of his witness statement he said “*I was detained for around one month*” and when asked why he had said that if in fact he had been detained for two months, he simply replied “*no*”.
  43. It was put to him further that in his Grounds of Appeal at page 141 of the bundle under the heading ‘Para 25’, he had said he was detained for four to five weeks in Kinshasa and for about two months in Lubumbashi. He was asked why he had stated that period if in fact he had been detained for one month and one week as he

now claimed. He replied that there was a misunderstanding and confusion. He was detained for two months and one week overall."

21. Whilst the appellant was not cross-examined about the minutia of his torture, clearly he was challenged, in effect, as to whether he had been detained at all. That can be the only point of the cross-examination recorded at paras 41-43 of the determination.
22. Mr Howells contention that the judge did not, in effect, engage with and make findings upon the appellant's claim to be tortured is, in my judgment, simply not sustainable. As I have already indicated, the judge set out the evidence of the appellant concerning his claimed torture and the cross-examination directed to whether he was detained (and therefore whether the opportunity to torture him as claimed ever arose) in his determination. The judge made clear findings (which subject to points raised in Ground 3) led the judge to find that he did not accept the underlying aspect of the appellant's claim that he had been detained and tortured because he worked for his own media company CoR and had provided material, albeit "non-sensitive" to Canal 5 – which he claimed was a national broadcaster. The judge gave detailed reason at paras 50-56 for not accepting the veracity of this aspect of the appellant's account, including that there was no trace of a channel called Canal 5 even though the point had been raised by the respondent in the refusal letter. Further, the judge gave a number of reasons at paras 57-58 why he considered it implausible that the appellant had been detained as he claimed including that security was so lax (despite him being accused of treason) and interviewed by "an army general") that he was permitted visits from a priest who provided him with the means to escape disguised as a priest.
23. In reaching his adverse finding, I do not accept Mr Howells' submission that the judge failed properly to take into account the evidence of Dr Wickert. The judge summarised Dr Wickert's opinion at paras 46-48, including that she had found twenty of his scars to be "consistent" with his account and two to be "highly consistent" with his account. At para 48, he noted that Dr Wickert concluded that the appellant was suffering from PTSD caused by experiences and ill-treatment in the DRC.
24. Then, at paras 63 and 64, the judge gave his reason for not accepting the causal connection between the appellant's scars and his claimed trauma as follows:
  - "63. I have taken into account fully the medico-legal report of Dr Wickert who examined A on three occasions and found his injuries to be consistent or highly consistent with his account. Those terms are defined at Appendix D to the report as follows:
 

*'Consistent with: the lesion could have been caused by the trauma described, but is non-specific and there are many other possible causes.'*

*'Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes.'*
  64. Dr Wickert concludes at paragraph 171 that, taken together, the overall pattern of lesions is highly consistent with the account given of A's ill treatment and

detention, and in keeping with the timescale given. I bear in mind that the report is carefully written and has 178 paragraphs, 6 appendices and 7 illustrations arising from three meetings with A.

Unlike Dr Wickert however, I have had the advantage of hearing and reading all the evidence in this appeal. I conclude that although A has the scars described in the report, given my findings above, they were not caused by the trauma described by A but by other causes. I have carried out an overall evaluation of A's account and have to disagree with the findings of Dr Wickert as to the causes of both his physical and psychological symptoms."

25. It is quite impossible to conclude that the judge did not take into account Dr Wickert's opinion. But, as Mr Mills submitted, Dr Wickert's opinion about the causal link between the scarring and the trauma claimed by the appellant that he suffered in detention was not determinative. Dr Wickert, in accordance with the Istanbul Protocol, even in relation to those which were "highly consistent" with the appellant's account, identified that other causes, indeed other specific causes, could be attributed to his injuries. As I have said, Dr Wickert's evidence was not determinative. The judge had, as in every case, to consider all the evidence. He did precisely that and gave reasons why he did not accept that the appellant's account was truthful. I will return to some of the challenges in relation to that shortly under Mr Howells' Ground 3. However, subject to those points, the judge clearly considered all the evidence including Dr Wickert's evidence relating to the appellant's physical and psychological symptoms but he did so, correctly, in the context of all the evidence. The expert evidence left room for the judge to find rationally that the causal connection had not been established and that, for the reasons he gave, the appellant's account was not truthful.
26. In my judgment, the judge carried out the task he was required to do in assessing the appellant's credibility in the light of the expert report and was entitled to find that the appellant's account was not true and that, therefore, in not accepting the appellant's account, he had failed to prove he had been detained and tortured as he claimed.
27. For those reasons, I reject Mr Howells' Grounds 1 and 2.
28. That then leaves Ground 3 which sets out as a number of points in paras 11-12 of Mr Howells' skeleton argument.
29. First, it is said that the judge was wrong to take into account that the appellant had offered no explanation as to why he would collect "sensitive" material when he did not offer that to Canal 5. The judge was clearly aware that the latter was the case as he made the point specifically in para 51 of his determination. However, it is said that the judge failed to take into account that in his interview with Dr Wickert he said that he would use the "more sensitive subjects" to produce a documentary in the future. It is unclear whether this passage in the expert's report, not found in the appellant's witness statement or oral evidence, was ever drawn to the judge's attention. In fact, in cross-examination he was asked why he had made programmes which could not or would not be broadcast and, as the judge recorded at paras 37

and 56 of his determination, he replied that: “As a patriot, I have to do so because of the suffering of the people and it is a job I like. I am passionate about it.” There is no reference there to what it is said he said to Dr Wickert in his medico-legal interview.

30. Mr Howells relied in his skeleton argument on the appellant’s explanation that he had come to the attention of the authorities, not through the broadcast of any material, because he had been filming in the aftermath of a number of murders. That appears to be a reference to an answer at question 19 of his asylum interview where he said:

“A lot of people used to call me to come and record, the killing of people. That’s how they knew and I had recorded those pictures.”

Whilst the judge did not make specific reference to that evidence, he did refer to the fact that the appellant:

“Gave no particulars of the nature of the intimidation which he claims to have suffered, and did not elaborate upon the vague generalisations contained in that paragraph [namely paragraph 13 of his statement].”

31. Paragraph 13, quoted by the judge at para 52 of his determination, stated:

“I received a lot of information about Congolese mass killings, government corruption. I received many threats, anonymous calls, I was subject to intimidation”.

32. Mr Howells did not direct me to any other specific evidence from the appellant as to how it was he came to the attention of the authorities. In my judgment, there is no doubt that the judge carefully considered the evidence and was entitled to take the view that the appellant’s evidence was “vague” and that he had not offered a satisfactory explanation as to how he came to the attention of the authorities.

33. But, in truth in relation to that aspect of the appellant’s account, the fact remains that the appellant presented no evidence that the television channel, Canal 5 existed. This was despite the fact that the respondent raised in the refusal letter in 1 July 2015 that:

“Background information that lists over 50 Congolese TV channels does not make reference to any such channel, nor can such a channel be found using a comprehensive internet search” (see para 18).

34. Given the appellant’s account that he was providing material for broadcast on Canal 5, and that it was a recognised national channel, the judge was entitled to take into account the absence of any supporting evidence for its existence (see TK (Burundi) v SSHD [2009] EWCA Civ 40). This was, in truth, highly damaging of the credibility of the appellant’s account.

35. Secondly, Mr Howells criticised the judge for taking into account at para 58 of his determination that it was not credible that the authorities would allow a Catholic priest to attend him in prison and provide him with the means to escape and also to infer that security for a prisoner such as the appellant accused of treason would be very tight in contradistinction to the ease with which the appellant escaped. Mr



Howells submitted that the judge had ignored the appellant's evidence, again found in the medical report [at para 32] that the priest had "medical training". Mr Howells submitted that it was pure speculation by the judge as to the level of security that would exist.

36. The judge's reasoning at para 58 is as follows:

"On that evidence, A was regarded very seriously indeed by the authorities and accused of the most serious crime that could be committed in any nation state. A senior army officer dealt with the interrogation over an extended period in both locations and four of A's work colleagues were murdered (as were his wife and daughter). Given my conclusions about CoR however, I find that it is less than realistically likely that CoR came to the attention of the authorities at all and thus scarcely likely that A would have been arrested and treated as claimed. Even if it were the case, it is scarcely probable that a Roman Catholic priest, whose loyalties did not lie with the regime, would be introduced in order to tend to A, thus enabling him to assist A to escape. On A's evidence, he was accused of treason against a brutal regime: it is not credible that security was so lax as to enable A to walk out of detention unchallenged, albeit disguised as a priest, and not credible that he could exit the country by air on his own passport without any challenge whatsoever.

It may be the case that security arrangements for petty criminals in the DRC is lax but for a prisoner accused of crimes of the highest order, that is to say treason, and who has been subjected to interrogation by a General over two months, I have to conclude that security would have been very tight indeed. The apparent ease of A' escape is simply not credible in such circumstances."

37. The only reference to the priest being "medically trained" is in the expert's report. Again, it is far from clear that this was drawn to the judge's attention or relied upon before the judge. In any event, the real point being made by the judge in the first half of para 58 is that it was not probable that the authorities would allow a Catholic priest, who was not likely to be supportive of the regime, to be put in a position where he could assist the appellant's escape. I see nothing irrational or impermissible in the judge taking such a view. Likewise, although the judge made no reference to any background material, in the absence of any evidence that security arrangement for all prisoners were "lax", it was in my judgment reasonably open to the judge to doubt the account of the appellant's escape on the basis that security would be expected to be tight for a prisoner who had been considered a traitor and had been interrogated by an army general which indicated his significance to the authorities.
38. Thirdly, Mr Howells criticised the judge at para 59 of his determination for counting against the appellant an inconsistency in his evidence about his place of residence on the basis that what he had said in the visa application was likely to be true. Mr Howells submitted that the judge had failed to take into account that the appellant's evidence was that the visa application had been filled in by his employer.
39. The judge no doubt had the appellant's explanation in mind as he set it out in para 44 of his determination. Whilst he failed to grapple with that explanation in para 59, given the totality of the judge's reasoning his finding on this issue, even if his

reasoning is inadequate, was not material to his ultimate conclusion on the appellant's credibility.

40. Fourthly, Mr Howells criticised the judge's reasoning that the appellant's description of his intimidation was vague (see para 53) and of his escape from South Africa (where he also claimed to have been kidnapped) was vague (see para 60). Mr Howells submitted that the appellant had not been cross-examined on these issues and as a result lesser weight should have been placed upon these reasons by the judge.
41. Mr Howells himself accepts that the issue was only as to the weight to be given to the "vague generalisations" in the appellant's evidence. The judge's reasoning in paras 53 and 60 made up only a small part of the totality of the judge's reasoning. It was always open to the appellant in his witness statement, or through his oral evidence-in-chief, to provide greater detail of his account. His account was, in fact, clearly challenged by the respondent and I do not accept Mr Howells' submission that it was somehow the obligation of the Presenting Officer or the judge to ask further questions in order to give the appellant an opportunity to fill out his "vague" evidence. In any event, the judge's reasoning in paras 53 and 60 formed only a small part of the totality of his reasoning and I am wholly unpersuaded that he was irrational in the weight that he placed upon this aspect of the appellant's evidence.
42. Finally, Mr Howells submitted that the judge had been wrong to doubt the appellant's account that he was wanted by the authorities in the DRC because he had been able to leave the DRC on his own passport.
43. At para 61, the judge noted that the appellant had been allowed to escape detention, not once but twice, and had been permitted to leave the DRC on his own passport on two occasions. It was open to the appellant to introduce evidence before the judge, but none was, that the DRC authorities were not interested in escaped prisoners who had been accused of being traitors such that they could freely pass through Lubumbashi Airport. In the absence of such evidence, it was a reasonable inference for the judge to draw that a person of considerable interest to the DRC authorities which the appellant claimed to be, was likely to encounter difficulty in leaving the DRC through an international airport. In any event, again this reasoning played only a small part in the judge's overall consideration of the evidence and reasons for finding the appellant's account not to be credible.
44. Standing back and considering the judge's reasoning overall, despite the imperfections that Mr Howells relies upon in the judge's reasoning, overall his findings are properly sustainable on the evidence before him. His reasons were adequate to sustain those findings which were not, in my judgment, irrational or otherwise materially legally flawed.
45. For these reasons, I also reject Ground 3.

**Decision**

46. For the above reasons, the First-tier Tribunal did not materially err in law in reaching its adverse credibility finding and in concluding that the appellant had not established a real risk of persecution or serious ill-treatment if returned to the DRC. That decision, therefore, stands.
47. The appellant's appeal to the Upper Tribunal is, accordingly, dismissed.

Signed

A Grubb  
Judge of the Upper Tribunal

Dated 9 June 2017

**TO THE RESPONDENT  
FEE AWARD**

No fee award is payable.

Signed

A Grubb  
Judge of the Upper Tribunal

Dated 9 June 2017