



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03993/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 12 July 2017

Promulgated

On 02 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**MISS KMK
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hudson, Counsel instructed by Elder Rahimi Solicitors
(London)

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of the Democratic Republic of Congo (DRC) whose appeal was dismissed on all grounds by First-tier Tribunal Judge O'Garro in a decision promulgated on 21st April 2017. Grounds of application were lodged. It was said that the judge had adopted an erroneous and ultimately unsustainable approach to the documentary evidence, pointing to small errors in the documents produced and then

giving no weight to the documents. A second ground was that there were other documents including letters from the Appellant's cousin and from Miss L, which the judge did not mention. Furthermore, there was extensive medical evidence provided in the appeal which had been ignored. Finally, under ground 3, it was a non-sequitur for the judge to say that because she did not find the Appellant a credible witness she did not accept her claim to be a homosexual. Permission to appeal was granted and a Rule 24 notice lodged stating that the judge's findings in relation to the Appellant's sexuality were ones open to the judge and that the medical evidence did not significantly impact the Tribunal Judge's findings that the Appellant was not credible.

2. Before me Mr Hudson relied on his grounds. The judge had been wrong to utterly discount the documentary evidence and she had ignored the medical evidence. Given those material errors the case should be remitted to the First-tier - unfortunately for the second time.
3. For the Home Office Ms Isherwood acknowledged that the judge had not referred to the medical evidence but relied on what was said in the Rule 24 notice.
4. I reserved my decision.

Conclusions

5. When the judge refers to the fact that there was no credible evidence of her membership of the UDPS the judge bases this on an error in the document which gives her age as 18 years old. Given that this might have been a simple error it seems to me the judge went too far in giving no weight whatsoever to the letter from the Secretary-General of the UDPS. As the grounds say, it was accompanied by documents which shows how the letter was brought to the UK. It was not challenged by the Home Office that the judge ignored letters from the Appellant's cousin and from Miss L, and of course the judge was bound to consider all the relevant evidence presented to her.
6. Unhappily the difficulties in the decision go much further than that. As paragraph 16 of the grounds of application states the judge did not take into account, at all, of the medical evidence. That medical evidence includes, according to the grounds, contemporaneous notes from the Appellant's GP in the UK which indicated that the Appellant suffers from a "deformity of scapula" which the Appellant said was caused by her having been hit repeatedly by a heavy plastic stick or truncheon. It is said there are extensive notes concerning the Appellant's diagnosed PTSD and other psychological symptoms consistent with her having suffered torture while in the DRC. As a result it is said that the Appellant was referred to the Lewisham Primary Care Psychological Therapy Service and to Freedom from Torture.
7. As I understand it, none of this is disputed by the Secretary of State.

8. What we therefore have in this appeal is important medical evidence which goes to the core of the Appellant's claim that she was seriously ill-treated in the DRC. The judge simply failed to deal with this evidence. There is therefore an error in law which is a material one. The decision will have to be set aside.
9. For the sake of completeness and in respect of the sexuality findings the grounds also have some merit as even if an Appellant is not credible on a part of her claim it does not follow automatically that she is therefore lying about her sexual orientation. In fairness to the judge she went on to give further reasons why she did not believe the Appellant's account.
10. However in all the circumstances it has to be said that the Appellant has not had a fair hearing for the reasons stated. Unfortunately, it is clear that further fact-finding is necessary and the matter will have to be heard again by the First-tier Tribunal.
11. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. Given the procedural history of this case, it would be sensible if the next hearing was heard by a Designated Judge if that is administratively manageable.

Notice of Decision

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
13. I set aside the decision.
14. I remit the appeal to the First-tier Tribunal.
15. I shall maintain the anonymity order.

Signed *J Macdonald*

Date 1st August 2017

Deputy Upper Tribunal Judge J G Macdonald