Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03824/2017

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 12 June 2018	**On 21 June 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

MAMIE LUYINDULA NKIAMBI
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mamie Luyindula Nkiambi, was born on 5 May 1975 and is a female citizen of the Democratic Republic of the Congo (DRC). She entered the United Kingdom in October 2016 and claimed international protection on that day. By a

decision dated 31 March 2017, the appellant was refused international protection. The appellant appealed to the First-tier Tribunal (Judge Pickup) which in a decision promulgated on 6 June 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had professional representatives before the First-tier Tribunal and also when she applied for permission to appeal. Those representatives have now withdrawn. The appellant was assisted at court by an interpreter in the Lingala language. I was careful to explain the proceedings to the appellant in some detail and told her that she was to let me know if she did not understand any part of the proceedings. I gave her every opportunity to put her case to me.

3. There are essentially two grounds of appeal which are summarised in the application for permission at [4b–c] as follows:

> It is submitted that Judge Pickup erred in refusing to allow the advocate to seek further instructions when the appellant clearly stated in evidence-in-chief that she was unable to declare the truthfulness of her witness statement as she had lied about some aspects of her case out of fear.
>
> Further it is submitted that Judge Pickup's findings are flawed as he proceeded to accept the contents of the appellant's witness statement as her evidence despite her oral admissions that it was not an accurate reflection of her case.

4. The question is whether Judge Pickup conducted the hearing in a fair manner. Judge Pickup's account of what happened differs somewhat from that set out in the grounds. At [32], the judge found that, "[the appellant] contradicted herself in oral evidence and did not appear to understand the difference between what she was now saying and what she had previously said. It was very difficult to extract a clear account from her". At [33] the judge reminded himself that the screening interview was not intended to be an exhaustive or even detailed account. The judge specifically rejected at [39] the appellant's explanation of the discrepancies in her evidence. The judge did not accept the credibility of "her explanation that she was scared in the interview of stating that she was a member [of the UDPS] as she had already inscribed herself a significant role with the party stating in the screening interview that she was a member". At [41], the judge wrote, "the appellant now wants a Tribunal to accept that she was not being truthful in her substantive asylum interview which would mean not simply as to whether she was a member or sympathiser [of the UDPS] but also that she merely attended meetings as she then claimed. This admitted dishonesty, even on her part, seriously undermines her claim. If she has been willing to be, at the very least economical with the truth and more clearly, lying, it is difficult to see how the Tribunal can have any confidence that her present account is the correct and truthful one. By her own admission, the appellant's behaviour seriously undermines her credibility."

5. At [15], the judge records the representative's "[leading] suggestion that [the appellant's] statement contained the truth but it was left far from clear when she stated 'there were things that I said which were not true and things that I said that were true'". At [16], the judge told Ms Hussain (the appellant's representative before the

First-tier Tribunal) that it seemed unlikely that any further progress would be made in clarifying the witness statement by way of re-examination by Ms Hussain of the appellant. The judge records [17] that Ms Hussain did ask for an adjournment to be able to speak to the appellant in private but the judge refused that adjournment. The judge did say, however, that he would give "wide latitude in re-examination issues".

6. I do not find that Judge Pickup erred in law by refusing the application for an adjournment to enable Ms Hussain to speak in private with the appellant after the appellant had commenced giving oral evidence. Any discrepancies between what the appellant intended to say in court and what she had said in her interviews and witness statement should have been addressed by the appellant and her representative before the hearing. It was quite proper of the judge to insist that the appellant provide any explanation for the discrepancy before the Tribunal in open court; whilst there was no reason at all to doubt the *bona fides* of Ms Hussain, an injustice may have arisen if the appellant, in a brief adjournment in private with her representative, became aware of the damage done to her credibility by the discrepancies and subsequently in altered her oral evidence. It is clear from the decision that the judge gave "wide latitude" to Ms Hussain to provide the appellant, in turn, by re-examination, the opportunity to explain the discrepancies in her evidence. The fact that the appellant, despite those efforts, appears to have been unable or unwilling to take that opportunity is not the fault of the judge or, indeed, Ms Hussain. The appellant had given different accounts, she was aware of the damage which the differing accounts had on her credibility, she was given an opportunity to explain the discrepancies and the judge found that the discrepancies undermined her credibility. That sequence of events reveals no error of law on the part of Judge Pickup. On the contrary, the judge conducted the hearing fairly by ensuring that these matters were considered in open court.

7. In the circumstances, this appeal is dismissed.

Notice of Decision

8. This appeal is dismissed.

No anonymity direction is made.

Signed Date 18 JUNE 2018

Upper Tribunal Judge Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 18 JUNE 2018

Upper Tribunal Judge Lane