



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09722/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 20 April 2018

Decision & Reasons Promulgated  
On 03 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

B S M  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D Hodson, Elder Rahimi solicitors  
For the Respondent: Mr S Kotas, Senior Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The Appellant is a national of the Democratic Republic of Congo, born on 22 October 1997. He arrived in the United Kingdom on or around 28 October 2014 at which time he was still a minor. He claimed asylum on the same day on the basis that his father had been a supporter of the UDPS and he had also supported them and had attended a demonstration in 2011 and was subjected to teargas by the police and that he had been arrested in 2014 for distributing leaflets, during which he had been whipped and abused. He claimed that his father had died as a consequence of beatings and torture by the authorities. This application was refused on 15 September 2017 essentially on the basis that his credibility was not accepted.

2. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Geraint Jones QC for hearing on 22 November 2017. In a decision and reasons promulgated on 28 November 2017, the appeal was dismissed.
3. The Appellant sought permission to appeal to the Upper Tribunal in time on 12 December 2017 on the basis of the following grounds:
  - (1) that the judge erred in devoting a large and disproportionate amount of attention to the content of the Appellant's screening interview conducted when he first arrived in the UK as an unaccompanied minor. Reliance was placed on the decisions in GM (risk on return family) Democratic Republic of Congo [2002] UKIAT 06741 and YL (Rely on SEF) China [2004] UKIAT 00145. It was submitted that the judge's approach amounts to a material error of law in circumstances in which the Appellant was a minor and there were no special procedural safeguards in place for the interview and no allowance given for his age by those interviewing him;
  - (2) ground 2 asserted that the judge had given scant attention to the Appellant's lengthy witness statement adopted as evidence-in-chief;
  - (3) ground 3 asserted that the judge gave scant consideration to the Appellant's asylum interview held on 19 June 2017 and had made a material error of fact in that at [26] the judge held as follows "*the Appellant made no claim to the effect that he had ever come to the notice of anybody in authority whilst distributing leaflets. During his interview he did not claim that that had brought him into any kind of trouble*". This is plainly wrong in that at question 44 of the Asylum Interview Record the Appellant made clear he was supporting his father and he said in response to question 93: "*when we were going out to distribute leaflets people from the party in power were coming to threaten us when we were doing these things. They were beating people*", "*we were distributing leaflets, we go to a place where these Kulunas were. They arrested us and threatened us*" and at question 99: "*when the police arrested me they didn't just arrest me they arrested the group of other people ... they were questioning us why we are doing propaganda for that*". When asked where he was arrested the Appellant replied to question 100: "*I was in the market and we were distributing leaflets*". It was submitted that this was indicative of the lack of proper care and scrutiny given by the judge to any source of evidence in the appeal other than the screening interview;
  - (4) ground 4 asserted that the judge had erred in his consideration of the letter from the Mr Punza, President of the FUMA Federation of the UDPS, dated 3 October 2017, and that the judge had carelessly misread the translation when finding at [39] that the letter was of scant evidential weight and significance; and
  - (5) fifthly that the judge erred in his approach to the detailed medical report prepared by Dr Turvill of the Helen Bamber Foundation and that the judge failed to follow the established jurisprudence in respect of assessing the credibility of the account in light of the medical report following JL (medical

reports credibility) China 2013 UKUT 00145 (IAC) and SA Somalia [2006] EWCA Civ 1302.

4. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 25 January 2018 in the following terms

*“Ground 3 has merit as the judge appears to have made a factual error regarding whether the Appellant has claimed he had come to the adverse attention of the authorities while leafleting. This is not a peripheral issue. All grounds may be argued although the rest appear to me to be weaker”.*

5. There was no Rule 24 response lodged on behalf of the Respondent.

#### *Hearing*

6. At the hearing before me Mr Kotas indicated that he accepted that the judge had made a material error of law for the reasons set out in ground 3 of the grounds of appeal in respect of the judge’s finding at [26] of his decision that the Appellant had never made a claim that he had come to the notice of anybody in authority whilst distributing leaflets. He submitted that this was sufficient to undermine the decision as a whole.
7. Mr Hodson in response accepted Mr Kotas’s concession albeit he asserted there was merit in the other grounds of challenge.

#### **Notice of Decision**

8. I find in light of the concession by Mr Kotas, which I consider to have been properly made, that the decision of the First-tier Tribunal Judge contains a fundamental and a material error of fact, at [26], in relation to the judge’s misapprehension of the role the Appellant had played in assisting his father in distributing UDPS leaflets and the fact that the Appellant’s claim was that this had caused him to come to the attention of the authorities.
9. In light of that decision, it did not prove necessary to engage with the other grounds of appeal. The decision of First-tier Tribunal Judge Geraint Jones QC is set aside and the appeal is remitted back to the First-tier Tribunal at Hatton Cross for a hearing *de novo* before a different First-tier Tribunal Judge.

Signed *Rebecca Chapman*

Date: 29 April 2018

Deputy Upper Tribunal Judge Chapman