



IAC-AH-DP-V1

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

Appeal Number: PA/12187/2018

**THE IMMIGRATION ACTS**

**Heard at Royal Courts of Justice, Decision & Reasons Promulgated  
Belfast  
On 5 December 2019  
Extempore**

**On 1 June 2020**  
.....

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**L B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr McTaggart instructed by R P Crawford & Co, solicitors

For the Respondent: Mr Govan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1.—The appellant appeals with permission against a decision of First-tier Tribunal Judge Gillespie promulgated on 2 July 2019 in which he dismissed the appellant’s protection appeal which was an appeal against a decision of the respondent made in September 2018.

2.—The appellant’s case is that she is at risk on return to the Democratic Republic of Congo where she worked as a doctor and where she had suffered significant and serious abuse on account of actual perceived

political opinions. The facts are set out in some detail in the refusal letter and in the decision; there is no need to rehearse them here.

- 3.—The thrust of the challenge to the decision is that Judge Gillespie did not accept that the appellant was credible for a number of reasons; primarily, as is challenged in the grounds, that she would have disclosed earlier that she had been raped. Judge Gillespie did not accept the other incidents which were said to have occurred after that primarily [41] because he had rejected the account of the first part.
- 4.—Permission was granted by Judge Hollingworth on 22 August 2019.
- 5.—I am satisfied that Judge Gillespie erred in his approach to the part of the appellant's claim that she had been raped in two different ways. First, there appears to have been no proper reference to the gender guidelines, no attempt to consider that there might have been other reasons why she did not disclose it and just as importantly Judge Gillespie did not raise this issue with parties during the hearing. As Mr McTaggart submitted, it was not part of the Secretary of State's case that this delay damaged the appellant's credibility.
- 6.—I conclude also that this error was clearly material as it features not only in his dismissal of the first part of the appellant's claim but also he uses it from paragraph 41 onwards as a reason to dismiss the appellant's account of what happened after that which was equally of importance to her claim.
- 7.—For these reasons I am satisfied there was a procedural error amounting to a material error of law in this case and on that basis alone the decision needs to be set aside and given the nature of the error remitted to the First-tier Tribunal.
- 8.—For the sake of completeness, I consider it necessary to reach conclusions about Judge Gillespie's approach to fact-finding. There are two factors to which my attention was drawn where Judge Gillespie appears to have abdicated his responsibility to make findings of fact. At paragraph [38] he refers to the Secretary of State's conclusions as "sustainable". Judge Gillespie was not considering an application for judicial review. This is an appeal on the facts; it is not the judge's role simply to review the respondent's conclusions. What the Judge Gillespie should have done is to make findings; he did not do so. Similarly, at paragraph [63] Judge Gillespie made the same error.
- 9.—Judge Gillespie's handling of the expert evidence of Dr Kane is also flawed. It is simply not clear from what Judge Gillespie wrote what he accepts and what he did not. It is unclear whether he accepts the appellant has been diagnosed with PTSD or not.
- 10.—Any one of these errors is sufficiently serious to amount to a material error which would have caused this decision to be set aside and for these reasons as I have already said the decision is set aside. The effect,

cumulatively, of the errors is such that the appellant did not receive a fair hearing, and so the appeal is to be remitted to the First-tier Tribunal as it will be necessary to make fresh findings on all issues; none of the findings can be preserved.

11.—I will also in this case make an anonymity order. I am frankly at a loss to understand how the First-tier Tribunal could not have made an anonymity order in this case.

### **Notice of Decision**

- 1.—The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- 2.—The appeal is remitted to the First-tier Tribunal for a fresh decision to be made on all issues ~~on the issue of dependency between the appellant and the sponsor.~~ (amended pursuant to rule 42, Tribunal Procedure (Upper Tribunal) Rules 2008)

### **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.

Signed

Date 18 December 2019



Upper Tribunal Judge Rintoul