IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002727

First-tier Tribunal No:
PA/53130/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 June 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

EBZ
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr D Forbes, Lifeline Options Community Interest Company
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 1 December 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (*and/or any member of her family)* are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

identify the appellant and or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of the DRC. She arrived in the United Kingdom in February 2015 and claimed asylum. Her claim was refused by the respondent in March 2019 and the appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Aziz for reasons set out in a decision promulgated on 24 May 2019.

2. The appellant made further submissions to the respondent in July 2020. On 23 April 2021 the respondent, having considered those further submissions concluded the appellant has failed to establish that she has a well-founded fear of persecution and will be at risk on return to the DRC. The decision gave rise to a right of appeal. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Gribble for reasons that set out in a decision dated 11 May 2022.

3. The appellant claims that in reaching her decision Judge Gribble failed to properly address the Article 8 claim by reference to paragraph 276ADE(1)(iv) of the Immigration Rules and s117B(6) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and paid insufficient attention to material evidence provided by third parties. Permission to appeal was granted by First-tier Tribunal Judge Cartin on 15 June 2022. Judge Cartin said:

> "2. The grounds are somewhat clumsily drafted. However, I take ground 1 to be a submission that the Judge erred in not sufficiently reasoning why it was reasonable for the Appellant's 7-year-old child to be required to leave the UK. I reach this view based on the Appellant's citation of paragraph [69] of the determination and paragraphs [12(1)] and [30] of NA (Bangladesh) [2021] EWCA Civ 953 in the grounds.
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> 3. Looking at the Judge's findings in this regard, I consider it to be arguable that the Judge has not sufficiently reasoned this conclusion and that this is an arguable error of law. I grant permission to appeal on all grounds."

The appeal before me

4. At the outset of the hearing before me, I invited Mr Forbes to summarise the two grounds of appeal. The first ground relates to the judge's assessment of the Article 8 claim by reference to the appellant's son. Mr Forbes submits the judge failed to give adequate reasons for her conclusion that it would be reasonable to expect the child to leave the United Kingdom. The second ground of appeal concerns the assessment of the claim for international protection. Mr Forbes submits that in reaching her decision, Judge Gribble failed to adequately address the evidence of Mr Bukasse. I take each ground of appeal in turn.

Article 8 and the appellant's son

5. In the grounds of appeal the appellant claims that at paragraph [69] of her decision, Judge Gribble failed to consider the relevant evidence before

the Tribunal. Mr Forbes submits there was evidence in the form of an entry in the appellant's medical records (GP records) of the appellant's attendance at the GP surgery 22 February 2022. The entry in the record show that the appellant attended in a wheelchair and reported that she has a 7-year-old child who has not been to school for a month as the appellant is *"afflicted by RA and is under the care of Rheumatologists".* The appellant is noted to have been staying in a room in a friend's house for the past moth as she is in need of care. Mr Forbes accepts that was the only evidence before the Judge regarding the child and his school attendance, but he submits, that was a significant piece of evidence that was not properly addressed by the judge.

6. Mr Williams submits Judge Gribble correctly directed herself as to the law. At paragraph [69], the judge referred to the lack of evidence before the Tribunal regarding the child's best interests. The Judge noted there is no suggestion that the appellant cannot take care of the child. Mr Williams submits that according to the respondent's records the appellant has been living at an address in Handsworth, Birmingham. If it is correct that the appellant had been staying in a room in a friends house in Walsall for the past month when she visited her GP in November 2022, that may explain why the child had not been attending school. There was no evidence before the Tribunal from the school attended by the child and Judge Gribble was right to note that there was no involvement from any statutory agencies. Mr Williams submits that at paragraph [63], the Judge makes findings that are relevant to the question whether it is in all the circumstances, reasonable to expect the child to leave the UK. Those findings are not challenged by the appellant.

7. There is no merit in the first grounds of appeal. The Article 8 claim is addressed at paragraphs [62] to [70] of the decision of Judge Gribble. The judge noted the appellant speaks Lingala and retains cultural links to the DRC through her UK based family. She was not satisfied the appellant has no relatives in the DRC. The judge noted the appellant has physical health issues but had provided no evidence that treatment is not available to her in the DRC. Judge Gribble had regard to the relevant public interest considerations set out in s117B Nationality, Immigration and Asylum Act 2002 ("the 2002 Act", and at paragraph [68] to [70], she had particular regard to the appellant's son. She said:

> "68. In evaluating (6) I need to consider the appellant's son S. He is just 7 and is a qualifying child. I will not rehearse the wealth of case law about the assessment to be undertaken or s.55 of the Borders, Citizenship and Immigration Act 2009 within my assessment of reasonableness, I begin with the case of Zoumbas [2013] UKSC 74 and treat his best interests as a primary consideration. In KO (Nigeria) v SSHD [2019] UKSC 53 it was stated that the assessment of the best interests of children must be made on the basis that the facts are as they are in the real world and if neither parent has the right to remain then that is the background against which the assessment is to be conducted. NA (Bangladesh) [2021] EWCA Civ 953 confirms that this is the starting point.

> 69. In dealing with S's best interests the evidence I had about him was extremely limited. His father is said to be not known. He has no known health issues and no special educational needs. He speaks Lingala. He is just 7. His best interests clearly lie in remaining in the care of his mother. There is no suggestion that she is unable to take care of him. There is no involvement from any statutory agencies save education.
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> 70. On that basis I cannot conclude it is in his best interests to be separated from his mother or that it is unreasonable for him to leave the UK with her. Therefore, the interference with private and family life is proportionate. It is not incompatible with article 8 and would not result in unjustifiably harsh consequences for the appellant or her son."

8. Contrary to what is said in the grounds of appeal, Judge Gribble properly noted that in KO (Nigeria) v SSHD [2019] UKSC 53 it was stated that the assessment of the best interests of children must be made on the basis that the facts are as they are in the real world and if neither parent has the right to remain, then that is the background against which the assessment is to be conducted. I accept, as Mr Williams submits, the appellant does not challenge the findings that the child's father is said to be not known. He has no known health issues and no special educational needs. He speaks Lingala. At paragraph [36] of her decision, Judge Gribble had noted the appellant's evidence that her son is fit and well and attended school. She had confirmed he has no special needs and is a good student. The only issue is that sometimes the appellant cannot take him to school due to her illness. That is reflected in the entry in the GP records that Mr Forbes relies upon. The appellant also confirmed she spoke Lingala to her son. It was undoubtedly open, on the extremely limited evidence before the Tribunal for Judge Gribble to conclude that his best interests clearly lie in remaining in the care of his mother. It was open to Judge Gribble to note there is no suggestion that the appellant is unable to take care of her son and the lack of involvement from any statutory agencies save education.

9. In NA (Bangladesh v SSHD [2021] EWCA Civ 953, the Court of Appeal confirmed that where a child whose parents had no entitlement to leave to remain in the UK sought leave to remain under the Immigration Rules para.276ADE(1)(iv) on the basis that they had seven years' continuous residence and it would not be reasonable to expect them to leave, the starting point is that it would be reasonable to expect them to leave with their parents. The 'seven-year provision' whether by reference to paragraph 276ADE of the Immigration Rules or s117B(6) of the 2002 Act regarding a qualifying child that has lived in the United Kingdom for a continuous period of seven years or more, does not create a presumption in favour of a 'seven-year child', and thus their parents, being granted leave to remain.

10. There is nothing in the decision of Judge Gribble that suggests that she adopted anything other than the correct approach to her analysis of the Article 8 claim as far as it related to the appellant's son and his best interests. The decision reached was one that is rooted in the evidence and was plainly open to the judge.

The international protection claim

11. Mr Forbes submits that at [55], Judge Gribble refers to the letters written by Mr Bukase and states that he provides no evidence of his identity or how he knows the church was raided. However, at page 73 of the appellant's bundle, there is an article (blog); "It was not for any revenge that the book was written" that was published on 27 December 2016 by Yongo gérard. The article refers to Mr Bukasse in two extracts which state:

> "…
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> In Kinshasa, two other disciples, Mulgali Jean Pierre and Mukenge Bukase Mathieu, followed suit. They made a programme in the form of an interview, their right of reply. One asked questions to the other and the two continued, unscrupulously, to play wizard apprentices.…
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> ….
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> The book was a very noticeable contribution. He was obviously a big scam from the Prophet Mukungubila. All regrets for the souls of these two disciples (Mungali Jean Pierre and Mukenge Mathieu Bukasse), as for others who have paid for their naïveté by endorsing fraud, falsehood, ignorance and hypocrisy for personal gain.
>
> …"

12. Mr Forbes submits there was also a reference to Mr Bukase in the newspaper article published on 4 November 2019 that was at pages 129 and 130 of the appellant's bundle. The translation of the published article states:

> "…
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> The fate of the man of God Mukungubila, his apostles and that of his followers are not to ignore. For those who do not know it, during the verdict at Ndolo Prison on March 12, 2019, the Sheperd Mukungubila and is to apostles Mathew Mukenge Bukase and a certain Pierre, had been sentenced to death. However, although followers have been sentenced to 20 years in prison…
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> …
>
> Mr Mathieu Mukenge, who returned to Kinshasa on February 28, 2019, in the hope of seeing their file closed concerning the fate of the followers who were still in prison in Ndolo and in Katanga, knows something about it.…"

13. Mr Forbes submits the reference to Mathieu Mukenge in the newspaper article published on 4 November 2019 is a reference to Mr Bukasse and the reference to him in those articles to Mr Bukasse is evidence of his prominence and ability to speak to the matters he referred to in his letters. Consistent with the newspaper article published on 4 November 2019, Mr Bukasse had confirmed that he returned to Kinshasa in February 2019. Mr Forbes submits Judge Gribble failed to give anxious scrutiny to the evidence before the Tribunal, which was sufficient to enable the judge to depart from the adverse credibility findings previously made.

14. Mr Williams submits Judge Gribble carefully considered the documents that are now relied upon by the appellant and her account of events. The judge considered the 'land documents'. He submits there was no ID document to confirm Mr Bukasse was the author of the letters and the

provenance of the blog/article relied upon by the appellant is not made out. There was no evidence before the Tribunal as to how and where the article/blog was published. In any event, in considering the letters written by Mr Bukasse, it is clear from what is said at paragraph [55] that the judge was aware of the press article. The judge was entitled to note the press article does not state its sources and there is no explanation as to how it came into the possession of the appellant.

15. This ground too has no merit. The background to the appellant's claim for international protection is summarised at paragraphs [3] and [4] of the decision. At paragraphs [6] to [11], Judge Gribble sets out documents relied upon by the appellant in support of her further submissions. The oral evidence of the appellant is summarised at paragraphs [25] to [37] of the decision. The judge's findings and conclusions are set out at paragraphs [42] to [61]. As far as the claim for international protection is concerned, at paragraph [56] of her decision, Judge Gribble said:

> "This appellant was found to have fabricated her claim by a Judge in 2019. She was not deemed a credible witness then and the 'new' evidence before me, taken together in the round and applying the lower standard is not in my view sufficient to begin to displace those findings for the reasons set out above. Her credibility is damaged further by her clumsy attempt to provide documents which blatantly contradict the ones provided in 2019. The appellant is not and has never been at risk from the government of the DRC. Her claim continues to lack credibility. I have no hesitation in echoing the past findings, that the claim has been manufactured. She is not at any risk from the government at all."

16. Judge Gribble went on to refer to the relevant background material and country guidance and concluded, at [59], that the appellant's asylum claim has been fabricated. The judge readily accepted the societal discrimination that exists, but found the appellant has not shown that she personally would be at risk of gender-based persecution.

17. In Tanveer Ahmed v SSHD [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. What others might have published and said about Mr Bukasse is not evidence of his identity sufficient to establish that he is the author of the letters relied upon by the appellant, or that he can attest to the matters set out in his evidence.

18. It is clear in my judgement that Judge Gribble adopted the correct approach to her consideration of the documents relied upon. She considered each of the documents and whether the document is one on which reliance should properly be placed after looking at all the evidence in the round. The letters written by Mr Bukasse could not be considered in isolation. Judge Gribble clearly explains at paragraphs [49] to [56], the concerns she had about the documents when considered against the evidence as a whole.

19. The appellant's general assertion that Judge Gribble failed to give adequate reasons for her decision adds nothing. I have reminded myself of what was said in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy means no more nor less than that. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the appellant to know why she has lost, and it is also to enable an appellate court or Tribunal to see what the reasons for the decision are, so that they can be examined in case there has been an error of approach.

20. Judge Gribble carefully considered the claims advanced by the appellant and reached conclusions and findings that were open to her on the evidence before the Tribunal. She gives adequate reasons for the findings made. A fact-sensitive analysis was required. In my judgement, the findings made by Judge Gribble as to the international protection and Article 8 claims were rooted in the evidence before the Tribunal. It was open to her to conclude that the appellant is not a witness of truth for the reasons set out in her decision. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that she attached to the evidence either individually or cumulatively, was a matter for her. I am satisfied that the Judge's decision is a sufficiently reasoned decision that was open to her on the evidence.

21. It follows that I dismiss the appeal.

Notice of Decision

22. The appeal is dismissed.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 May 2023