



**Upper Tribunal  
(Immigration and Asylum Chamber)  
UI-2023-000730**

**Appeal Number:**

PA/50069/2022  
IA/00353/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 21 September 2023**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**MS SHEREAU SHAFALI  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr C Holmes, Counsel  
(instructed by Manuel Bravo Project)

For the Respondent: Ms A Everett, Senior Home Office Presenting  
Officer

**Heard at Field House on 12 September 2023**

**DECISION AND REASONS**

1. Permission to appeal was granted by First-tier Tribunal Judge Parkes on 17 March 2023 against the decision to dismiss the Appellant's protection appeal made by First-

tier Tribunal Judge Emmerson in a decision and reasons promulgated on or about 11 January 2023.

2. The Appellant, a national of the Democratic Republic of the Congo (“DRC”) born on 15 January 1964, claimed asylum on the basis of her political opinion. Her initial application was refused by the Secretary of State for the Home Department on 6 August 2018 and was dismissed on appeal to the First-tier Tribunal by Judge Saffer on 22 November 2022. UTJ Bruce dismissed the appeal from Judge Saffer’s decision on 31 July 2019.
3. The Appellant submitted a fresh claim on 25 March 2021 which was also refused. Judge Emmerson found that the Appellant had not proved that she had been instrumental in securing the release of Mr John L. The judge conducted a meticulous examination of the evidence in his decision. He found, *inter alia*, that the Appellant’s claimed involvement was not supported by a close reading of the evidence she relied on and that she was not at real risk on return to the DRC.
4. Judge Parkes noted that the grounds argued that (a) the judge erred in going behind the agreed position of the parties without raising the concern in the hearing, the issue arising in the decision; (b) the judge did not consider why Mr L. did not give evidence, and (c) applied the wrong standard of proof and acted irrationally. Judge Parkes further noted that a judge is entitled to make findings that depart from the agreed position of the parties, but if so doing must indicate that at the hearing and give those affected the opportunity to address the concerns arising. It was arguable that this had not been done and permission to appeal was accordingly granted with all grounds raised left open.
5. There was no rule 24 notice from the Respondent, however Ms Everett (who had been instructed at short notice) indicated that her position was that the procedural fairness ground was properly raised and that as the parties had agreed a position the judge should have put any concerns directly to the Appellant. That amounted to a material error of law.
6. Mr Holmes for the Appellant was content for the error of law hearing to be resolved on that basis. As the procedural fairness issue conceded went to the heart of the proceedings, the appropriate course was for the decision and reasons to be set aside and for the appeal

to be reheard before a different judge. Ms Everett agreed.

7. The tribunal finds that there was a material error of law which resulted, inadvertently, in procedural unfairness. There can be no doubt that the judge examined the evidence with great care and drew conclusions which were open to him, in the course of a careful and well-structured decision. It was an appeal of some complexity, which required consideration of the previous determination, fresh evidence and also the agreement between the parties about what conclusions should be drawn from parts of the evidence.
8. As Judge Parkes stated when granting permission to appeal, the judge was not bound by the agreement between the parties and was free to form his own assessment of the evidence. The difficulty is that there is no indication that the judge's dissenting view was put to the parties, and to the Appellant in particular, with sufficient clarity, if at all. It may have been a situation where the judge needed to reconvene the hearing for further submission, but if so, that was not done. In any event, the result was procedural unfairness. It is not necessary to consider the other grounds of appeal raised.
9. The regrettable result is that the judge's decision was unsafe and must be set aside, with no findings preserved.

**DECISION**

The appeal to the Upper Tribunal is allowed.

There was a material error of law in the First-tier Tribunal's decision and reasons, which is accordingly set aside, with no findings preserved.

The Appellant's appeal shall be reheard before a different First-tier Tribunal judge at the Bradford hearing centre

**Signed R J Manuell Dated 18 September**  
2023

**Deputy Upper Tribunal Judge Manuell**