



IAC-FH-CK-V1

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

Appeal Number: AA/03000/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 October 2015**

**Decision & Reasons Promulgated
On 8 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

V M P

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Mr B Hawkins, Counsel instructed by Fadiga & Co

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State for the Home Department in respect of a determination by First-tier Judge Eban which was promulgated on 22 June 2015 although for convenience and in light of the fact that an anonymity direction is in place, I will use the term appellant to refer to the individual concerned, V M P, date of birth 12 June 1969 and a citizen of the Democratic Republic of Congo.

2. The nature of the appeal brought by the Home Secretary concerns the findings which were made by Judge Eban in relation to the asylum grounds and humanitarian considerations.
3. The background history can be relatively shortly stated in that the appellant had lived for some while in DRC with John Numbi, someone well-known to the authorities and at one time an inspector general of the police. The evidence which the judge found to be proved concerned the relationship of the appellant with Mr Numbi, in particular a number of assaults which he perpetrated upon her and instructions which he gave to his military cohorts to indulge in what was called "correction" whereby they beat her up. She made her way to the United Kingdom in 2009 and her request for asylum arises out of that.
4. There are three grounds of challenge. Although oral argument today has focused on the second of those grounds, I will deal with the three grounds in the order in which they appear, noting that when permission to appeal was granted it was done with far less enthusiasm for the first and the third grounds.
5. Ground 1 reads as follows: "Failing to take into account and/or resolve conflicts of fact or opinion on material matters". The ground quotes from paragraph 21 of the determination which reads as follows:

"The only matter which in my view undermines [the appellant's] credibility in any way is the fact that the passport she used for her visa application in 2009 was issued in 2004. This does not fit with her account ..."

The complaint is made that when Judge Eban deals with consistency and credibility, she fails to resolve this apparent conflict and does not explain why having found that this evidence undermines her credibility she is then prepared to discount it.

6. It is certainly correct that at paragraph 21 the judge draws attention to that issue in relation to the passport. However, this is preceded at paragraph 20 by the following: "I have considered all the respondent's criticisms of the appellant's evidence which are said to go to the appellant's credibility", and then in paragraph 22 the judge says this: "Despite my concern set out above and looking at all the evidence in the round, medical and non-medical, without compartmentalising one or the other and considering the background evidence, I make the following findings." What follows are eight specific factual findings.
7. I am perfectly satisfied reading the determination in its totality that the learned judge took into account the discrepancy in relation to the dates concerning when the passport may have been issued and when the appellant claimed to have and that was part of the background taken into consideration by the judge in reaching those findings. I do not consider it necessary for the judge to have dealt in terms with this one particular matter. It was clearly in her mind. It is referred to on several occasions in the course of the determination and was part of the constellation of factual

matters which the judge brought into account when coming to her conclusions on credibility. I therefore come to the view that there is no error of law disclosed in ground 1.

8. Ground 2, which was advanced with greater force, reads as follows: “Failing to give reasons or any adequate reasons for findings on material matters”, and the alleged error of law in this instance is focused on paragraph 23 of the determination, in particular the section which reads as follows:

“Whilst there is no evidence before me that [John Numbi] still wields power officially there is a serious possibility that he could still arrange to silence the appellant”.

The argument advanced on behalf of the Home Secretary is that this finding is pure speculation and is not founded upon the evidence that was before the judge and that there is material in the refusal letter of 24 April 2014 quoting evidence to the contrary.

9. The dividing line between pure speculation on the one hand and legitimate inference on the other is not always an easy one to draw. Reading this determination in context it seems to me that the conclusions which the judge came to in this instance were properly based on such material as was available and were reasonable inferences which could be drawn. The only contrary material upon which the Home Secretary relies is said to be at paragraphs 26 and following of the decision letter which refer to John Numbi no ceasing to hold “such a prominent public role” and it is suggested that he, being out of power, is no longer a man to be feared. Against that I have been taken to material which was before the judge in the form of documentation at page 256 of the appellant’s bundle and at page H3 of the Home Secretary’s bundle dealing with matters concerning John Numbi. After ceasing to be police chief, he is reported in those documents as still being a powerful political figure and is referred to as being “untouchable” within his home province.

10. There was more than sufficient material for the judge to come to the conclusion which she did. Paragraph 23 read in context says this:

“While there is no evidence before me that he still wields power officially it is reasonably likely that he maintains many old contacts and associations with armed groups. I find that there is a serious possibility that he could still arrange for a member of one of these groups to silence the appellant.”

11. In the following paragraph (paragraph 24), the judge notes:

“As to whether the state would protect the appellant from John Numbi I find that there is a reasonable degree of likelihood that it would not intervene given the net of John Numbi’s political influence and the likely number of his supporters. The police and security apparatus according to the background evidence are undisciplined and corrupt and act with impunity.”

That conclusion is one that was perfectly open to the judge on the evidence which she both read and heard and I do not consider it amounts to an error of law for her to have reached that conclusion on the evidence.

12. Before passing on from this matter, it is worth noting that in the judge's discussion of Article 3 she considers the alternative situation were she to have been wrong in relation to the influence which John Numbi may still have. Paragraph 28 of the determination reads:

"Even if I am wrong and John Numbi no longer holds any influence in the DRC either in order to arrange for the appellant to be silenced or to prevent her obtaining state protection there is nevertheless a reasonable likelihood that the appellant would have been put on a list of 'wanted' persons or suspected offenders or documented as someone who escaped from detention following unofficial release in 2011."

That express alternative finding was part of the judge's determination in relation to Article 3 against which there is no appeal by the Home Secretary. So even if, contrary to my finding, what the judge had said in relation to John Numbi's power was speculation and not reasonable inference there was not a material error because the same result would have come about under the Article 3 analysis in any event.

13. That then brings me to the third ground of appeal which was argued relatively shortly and it reads as follows: "Failing to give reasons or any adequate reasons for findings on material matters". In this regard emphasis is placed upon paragraph 30 of the determination and the finding as to the appellant's risk of suicide which follows a substantial quotation from the Court of Appeal's judgment in **J v Secretary of State for the Home Department [2005] EWCA Civ 629**. The complaint is made that the finding as to suicide risk based upon medical prognosis is infected with errors which the judge may have made elsewhere in the determination on issues of credibility. As I have already rejected the ground of appeal touching on credibility I do not think that there is anything in this third ground. The judge's assessment of the appellant's credibility was full, fair and balanced and in the light of my conclusion above, ground simply 3 falls away.

14. Therefore, for each and all of those reasons this appeal is dismissed.

Notice of Decision

Appeal dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Respondent to this appeal is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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 *Mark Hill*

Date 7 October 2015

Deputy Upper Tribunal Judge Hill QC

TO THE RESPONDENT
FEE AWARD

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

Signed *Mark Hill*

Date 7 October 2015

Deputy Upper Tribunal Judge Hill QC