



IAC-AH-CJ-V1

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

Appeal Number: AA/03600/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20th January 2016**

**Decision & Reasons Promulgated
On 18th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

C M

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Muirhead (Counsel)

For the Respondent: Mr E Tufan (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Ian Howard, promulgated on 23rd October 2015, following a hearing at Hatton Cross on 17th July 2015. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female citizen of the Democratic Republic of Congo, who was born on 6th October 1969. She appealed against the decision of the Respondent dated 13th February 2015, rejecting her asylum claim under paragraph 334 of HC 395 and her claim for humanitarian protection under paragraph 339C, and her claims under the Human Rights Convention.

The Appellant's Claim

3. The Appellant's claim is that she comes from a family who actively support the Bundu dia Kongo (BDK) and that her parents disappeared after attending a BDK rally, and she believes that the government is responsible for their disappearance. The Appellant herself became a more active supporter in the BDK. She was subsequently detained and imprisoned until a cousin in the army heard about her arrest and arranged for her release. The heart of the Appellant's claim is that she went into detention, was tortured, and after being beaten, she was taken to the hospital for treatment, and during the same torture she was digitally penetrated, groped and raped and that, "she claims that it was from hospital that her cousin was able to secure her release" (see paragraph 19).

The Judge's Findings

4. The judge observed how central to the Appellant's claim was her arrest, detention, torture, and hospitalisation and that,

"She was quite clear that she was sent to hospital to be treated for a nosebleed. At the same time she asked me to conclude that her abductors seriously sexually assaulted her, yet were content, or sufficiently concerned about the nosebleed to release her from their custody to a hospital. Given the dynamics for which the Appellant argues I found it incredible that those who have just beaten and raped her would, for a nosebleed, show such concern or compassion to send her off to hospital. Indeed the background material Mr Muirhead properly asked me to consider is clear evidence of a security force whose attitudes and actions are malign in the extreme and not consistent with the Appellant's evidence of concern for a nosebleed." (See paragraph 23)

5. The judge went on to conclude that, "in short the fundamentals of the Appellant's case are such as I am not satisfied, even to the lower standard that she has ever had any involvement with the BDK in the DRC". The judge went on to reject the claim both under the Human Rights Convention and under Article 8 of the ECHR.

Grounds of Application

6. The grounds of application state that having determined that the Appellant was not a member of the BDK political group, despite having the same being made known in the written grounds at paragraph 15, the Tribunal Judge neglected to consider the very real and pertinent issues of risk upon return faced by the Appellant as a result of her membership of a particular social group and vulnerability in the face of sexual violence faced by women in the DRC.

7. On 18th November 2015, permission to appeal was granted by the Tribunal.

Submissions

8. At the hearing before me on 20th January 2016, the Appellant was represented by Mr Muirhead of Counsel, and the Respondent was represented by Mr Tufan. Mr Muirhead handed up a helpful skeleton argument to me, upon which he sought to place reliance. In essence, his submission was that the judge simply failed to give any consideration to the fact that the Appellant was released from her incarceration and there was nothing described in this regard either at paragraph 20 or 23 of the determination. Secondly, the judge failed to take into account the extremely high incidents of sexual assaults and rapes in the DRC, to which this Appellant would be highly vulnerable if returned.
9. For his part, Mr Tufan submitted that the grounds were succinct. However, there is nothing there about how the Appellant obtained her release from incarceration. Nor was there anything there about how she went into hospital or came out of it. Therefore, even if the judge erred in any particular respect, it could not be deemed to be material for the purposes of this appeal.
10. In reply, Mr Muirhead submitted that if one looks at the country guidance cases it is quite clear that there are 48 rapes per hour in the DRC and the Appellant stands to be at serious risk of sexual violence if she had to go back. It is clear from the country guidance provided (see pages 109 to 113) that the risk is very real. The risk of violence against women is exceptionally high so that almost every woman at some point or other is sexually molested. These were matters that the judge ought to have taken into account.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
12. First, in relation to the Appellant's core aspects of the claim, the judge is quite clear that he has had regard to the fact that "central to the Appellant's claim is her arrest, detention, torture and hospitalisation" (see paragraph 23), but the judge simply does not find the claim as put to be credible. The judge rejects completely the account that the Appellant's tormentors allowed her to be released to hospital because she had a nosebleed.
13. Second, the Appellant, during her interview, explained that she was arrested due to her having previously travelled to Europe, and there is nothing here to the effect that she fears sexual ill-treatment as a primary reason for seeking international protection.

14. Third, the Appellant's representative may well now raise the issue of high sexual violence in a country like the DRC, but the Appellant's core claim was not based on this. Her core claim (see paragraph 16) was in relation to her active support for the BDK, which the judge rejected.
15. But in any event, even if that were to be an aspect of her claim, the country guidance case does not say that a woman from the DRC cannot be returned back to that country simply on account of a fear of sexual violence, even if that were to be the case.
16. For all these reasons, the judge's decision does not exhibit an error of law. I have had regard to the latest Tribunal determination in the case of **Dasgupta [2016] UKUT 00218**, which is to the effect that an intervention by the Upper Tribunal to upset the findings of a Tribunal of fact below, can only be justified on the basis of the principles in the well-known common law case of **Edwards v Bairstow [1956] AC 14**. I find that this Tribunal cannot intervene for the reasons set out in **Dasgupta**.
- ~~17. No anonymity direction is made.~~

Signed

Date

Deputy Upper Tribunal Judge Juss

13th February 2016