



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

Appeal Number: PA/02662/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 20 August 2019**

**Decision & Reasons Promulgated
On 9 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**N W S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Marcus of Counsel, instructed by Paragon Law,
Solicitors

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker.

2. This is an appeal by a citizen of the Democratic Republic of Congo against the decision of the First-tier Tribunal dismissing her appeal against the decision of the Secretary of State refusing her international protection.
3. The appeal was dismissed largely because the First-tier Tribunal Judge did not believe the appellant and the First-tier Tribunal Judge has given an unlawful reason for disbelieving the appellant. The First-tier Tribunal Judge has discounted expert evidence because in the judge's view it was not for the expert to comment on the plausibility of various aspects of the appellant's account. That is quite an astonishing observation and I wonder if it is what the judge really meant because it is plainly a matter for the expert in appropriate cases to indicate whether an account is plausible. What an expert must not do is indicate whether an appellant is truthful which is a matter for the judge, but that is entirely different from saying that a story measured against the background evidence is or is not plausible.
4. The parties before me agree goes to the very core of the findings and makes the whole decision unsound. The parties also agreed that the appeal ought to be heard again in the First-tier Tribunal. That of course is a matter for the Tribunal not for the parties but the parties' view is something to which some weight should be given. The point is that the appellant has not had a proper hearing in the First-tier Tribunal because the analysis of the appellant's case is entirely wrong. It is relevant that in those circumstances she wants to go back to the First-tier Tribunal and try again. I agree that that is the just thing to do and I direct the case to be heard again in the First-tier Tribunal.
5. Mr Marcus indicated that the appellant is hoping to serve further evidence. That is a matter for the First-tier Tribunal to decide in accordance with its procedures but I draw attention to the fact that the request has been made before me.
6. I allow the appeal to the extent that I set aside the decision of the First-tier Tribunal and rule that the appeal be heard again in the First-tier Tribunal.
7. I make it clear that no findings are preserved.

Notice of Decision

8. The First-tier Tribunal erred in law. I set aside its decision and I order that the case be determined again in the First-tier Tribunal.



Signed

Jonathan Perkins
Judge of the Upper Tribunal

Dated 7 October 2019

