



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/12243/2018

THE IMMIGRATION ACTS

**Heard at Glasgow
on 26th July 2019**

**Decision & Reasons
Promulgated
On 21st August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**MM
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by DMO Olabamiji,
Solicitors
For the Respondent: Mr K Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Lea dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of DRC. She claims that while in DRC she joined an underground opposition organisation known by the initials APARECO. In February 2018, on a Sunday when the appellant was

attending church, the police raided her house and detained her husband. The appellant was warned not to go home as the police were looking for her. She took her children to her father's house, where she stayed until an agent made arrangements for her to travel to the UK in April 2018.

3. The Judge of the First-tier Tribunal did not believe the appellant's evidence about her alleged experiences in DRC. In particular, the judge did not believe the appellant's account of how she joined APARECO in DRC and the judge noted that the appellant had not joined APARECO in the UK.
4. Permission to appeal was granted by the Upper Tribunal. The grounds for granting permission to appeal arose from the judge's treatment of the appellant's alleged membership of APARECO. The judge arguably erred in finding the appellant's account of how she joined APARECO in DRC was not credible and also by drawing an adverse inference from the appellant's failure to join APARECO in the UK. It was suggested in the grant of permission to appeal that this latter point was not put to the appellant at the hearing.
5. Permission to appeal was not granted in respect of a further ground in the application contending that the judge did not have proper regard to an expert report. At the hearing Mr Winter did not seek to pursue this ground on behalf of the appellant.

Submissions

6. In relation to how a person becomes a member of APARECO I was referred to the procedures described in BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 00293. Mr Winter submitted that according to paragraph 99 of this decision, APARECO issued membership cards until 2013 when the membership cards were replaced by what he referred to as a “consensus mechanism”. Mr Winter further submitted that a “consensus” mechanism was consistent with the appellant's evidence of having been introduced to other members before she joined.
7. I understood from Mr Winter that it was not contended that the issue of the appellant's involvement in the UK with APARECO was not raised before the First-tier Tribunal. Mr Winter informed me that, according to the Presenting Officer, the appellant had been asked if she was involved with APARECO in the UK. He submitted, however, that APARECO has no presence in Glasgow, where the appellant resides.
8. So far as regime change in DRC was concerned, Mr Winter submitted that even though Kabila was no longer President, the country guideline case of BM should still be followed. If it was

accepted that the appellant's husband was detained and had disappeared, then the appellant would be a person at risk on return.

9. Mr Winter continued by stating that a different judge might have taken a different view on certain issues, such as whether it was plausible that the authorities would not have looked for the appellant at her father's house. The appellant had a friend in DRC, Bienvenue, with whom she was in touch. For Bienvenue to have looked for the appellant's husband might have put him at risk. It was illegal in DRC to be a member of APARECO and, as the appellant said at Q80 of her asylum interview, her activities for APARECO were carried out in secret. Although at her interview the appellant did not know where the headquarters of APARECO was located, she knew that it was in Europe, which was correct.
10. For the respondent, Mr Young began by pointing out that the membership process described at paragraph 99 of BM was not a "consensus" mechanism, as referred to by Mr Winter, but a "census" mechanism. It was further pointed out that the process described at paragraph 99 of BM for becoming a member applied to becoming a member in Europe, not in DRC. It was also pointed out that APARECO has an online presence even though there was no physical presence in Glasgow.
11. Mr Young submitted that the grounds in the application for permission to appeal did not justify setting aside the decision of the First-tier Tribunal. The judge was entitled to find that it was not plausible that the appellant would have joined APARECO in DRC without any checks or vetting. The appellant could have engaged with APARECO outside DRC through its website.
12. In response Mr Winter acknowledged that APARECO has an online presence. The organisation has office-bearers outwith DRC, as mentioned at paragraphs 50-58 of BM, and there are meetings in England. The vetting process for new members was described at paragraph 53 of BM. There was nothing to indicate that the census mechanism for recording membership did not apply inside DRC as well as outside. It was the appellant's evidence that in DRC she was introduced to a group of 5 people before she was vetted. She did not say she was told they were members. Her evidence was consistent with the census mechanism. Her introduction to the 5 people may have been part of the vetting process. The description of how the appellant joined APARECO was plausible. Even if she was not involved with APARECO in the UK, if it was accepted that she was a member in DRC then this was material. Her husband was kidnapped and the authorities were looking for her.

Discussion

13. Much of the attention at the hearing before me was directed to the process for becoming a member of APARECO and the procedures for recording membership as described in BM. In DRC itself APARECO is an underground organisation, as found at paragraph 87(iii) of BM. In DRC it operates in secrecy, as pointed out by the appellant in answer to Q80 at her asylum interview. I note also that in response to Q44 at her asylum interview the appellant is recorded as saying: "Every group is formed of 5 people, the leader of the group was Mama Mado, I was very close to Mama Mado, it was her who introduced me to the group (she introduced you to APARECO?) yes."
14. Mr Winter referred to a vetting process for potential members, described in evidence recorded at paragraph 53 of BM. While Mr Winter seemed to assume that the process for becoming a member would be the same both outside and within DRC, I was uncertain of the basis for such an assumption. The findings made in BM, in particular those at paragraph 99, clearly referred to a person who had joined APARECO after arriving in the UK. At paragraph 20 of her decision the Judge of the First-tier Tribunal referred to the appellant as saying in her statement that the process of applying online to join the organisation described on the APARECO website applied only to Europe.
15. The Judge of the First-tier Tribunal then proceeded to find at paragraph 20 that it was not plausible that the appellant's friend would have introduced her to members of the group before the organisation had been able to vet her, stating: "The Appellant in her oral evidence accepted that her friend introduced her to the five people in her group before the Appellant had gone through the vetting process. So the vetting process clearly happens in DRC as well as in Europe. The Appellant claims that the group in the DRC operates underground and this is consistent with the background information. However, this being the case, it is not plausible (given the risks involved) that the Appellant's friend would introduce her to members of the group before the organisation had a chance to vet the Appellant. The Appellant stated that she had to give her ID to her friend but she does not even know where her friend took this to have it checked."
16. In response to this Mr Winter submitted that the appellant was not told the 5 people to whom she was introduced were members of the group. This submission, however, is not consistent with what the judge recorded at paragraph 20 of her decision as the appellant's oral evidence, namely that she was introduced to the 5 members of her group before she had gone through the vetting process.

17. It seems that even if the process for becoming a member of APARECO is different in DRC from the process established in BM, there is still some sort of approval or vetting involved. This would be consistent with APARECO's existence as an underground organisation in DRC. At paragraph 20 of her decision the Judge of the First-tier Tribunal found that it was not plausible that the appellant would have been introduced to members of the group before the organisation had an opportunity to vet her. This was a finding that the judge was entitled to make. In doing so the judge did not disregard either any part of the appellant's own evidence about this matter or the country guidance in BM.
18. It seems to me that Mr Winter's concern, based on BM, about the carrying of membership cards having been replaced since 2103 by "internal census records" has little relevance to the appellant's situation. As was pointed out in evidence recorded at paragraph 52 of BM, there is no membership list in DRC. Indeed, Mr Winter's submission to me when he mistakenly referred to a "consensus" mechanism suggests that Mr Winter may himself have been under a misapprehension that the vetting process somehow involved a consensus among members that a new member should be allowed to join. According to BM, however, the "census mechanism" is a way of recording membership rather than a procedure for admitting new members.
19. The other finding by the Judge of the First-tier Tribunal which is challenged is to be found at paragraph 19 of the decision, where the judge stated that, according to the appellant, she was allowed to join APARECO in DRC without going through the normal procedures because her friend saw she was so interested in it and then commented: "However, despite this, since coming to the UK, where she would have been able to be a member of APARECO without any danger to herself, she has not joined APARECO and seems to have no further involvement with it. It is clear from the background information that APARECO is an organisation that appeals to Diaspora outside the DRC which makes it even more surprising that the Appellant has not been involved with it since coming to the UK."
20. As already noted, it was suggested in the grant of permission to appeal that this point was not put to the appellant at the hearing before the First-tier Tribunal. The parties nevertheless do not dispute that it was. Mr Winter submitted that there was no physical presence by APARECO in Scotland and no office-bearers, meetings or other activities here. He acknowledged though that APARECO has an online presence, of which the appellant's statement shows she was aware.
21. At paragraph 19 of her decision the judge was contrasting the appellant's alleged enthusiasm to join APARECO when in DRC with

her complete lack of involvement with APARECO when in the UK. This was a matter which the judge was entitled to found upon. Taken in context the judge's comments disclose no error of law.

22. The judge made a number of other adverse findings, to some of which Mr Winter referred, such as questioning why if the authorities in DRC were looking for the appellant they never went to her father's house, where she claimed to have been hiding. Mr Winter did not seek to challenge these other findings but to suggest only that a different judge may not have made them. It was not suggested that these findings were based upon any error of law or that there were any such errors apart from those which have been considered above. Overall the judge made a number of adverse credibility findings. I am satisfied that these findings, which were based upon the evidence and supported by adequate reasoning, do not disclose any error of law.

Conclusions

23. The making of the decision of the First-tier Tribunal did not involve the making of an error of law.
24. The decision dismissing the appeal shall stand.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. As the appellant claims to have belonged to an underground political organisation in DRC, even though her claim has been found not to be credible, I consider it appropriate to make a direction for anonymity in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall identify either directly or indirectly the appellant or any member of her family. This direction applies to the appellant and the respondent. Failure to comply may lead to contempt proceedings.

M E Deans
14th August 2019
Deputy Upper Tribunal Judge

Date: