Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11589/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 13 March 2020	**On 23 March 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MZ
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr M Schwenk, instructed by WTB Solicitors LLP
For the respondent: Mr A Tan , Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant(s).

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Garratt promulgated 19.11.18, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 14.9.18, to refuse her application for international protection made on 13.4.18.

2. First-tier Tribunal Judge Chohan refused permission to appeal on 13.12.18. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Plimmer granted permission on 22.1.20, finding it arguable that:

   (a) The First-tier Tribunal failed to take into account relevant country background evidence, in particular evidence concerning the role of the Catholic Church in demonstrations, as asserted by the appellant;

   (b) The First-tier Tribunal gave inadequate reasons for finding that the appellant's sur place activities would not lead to prospective risk, in the light of the heightened political tensions in the DRC.

3. Mr Tan confirmed that there was no Rule 24 response from the respondent.

Error of Law

4. For the reasons set out below, I find there was no material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.

5. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor, unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility, or the evaluation of risk does not give rise to an error of law. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because a judge has concluded that the story proffered is untrue. However, if a point of evidence of significance has been ignored or misunderstood, that may be a failure to take into account a material consideration.

6. Mr Schwenk divided his submissions into issues relating to the adverse credibility findings and the application of the Country Guidance to the facts as found by the Judge.

7. The first argument raised is that in grounds from [4] onwards, which criticise the judge's adverse credibility findings at [46] and [48] of the decision, relating to the claimed arrest on 25.2.18, and which is argued to be consistent with country information confirming the harsh prison conditions and treatment in the DRC. Whilst the appellant's account was that she was detained for about a month and mistreated, until she escaped.

8. In relation to the circumstances of the appellant's claimed arrest, detention and ill-treatment on 25.2.18, the judge stated at [48] that there was "no objective material or media report to confirm that the Catholic Church held the demonstration and several people were arrested." The

grounds and Mr Schwenk referred to page 11 and paragraph 4.1.5 of the CPIN which reports the statement of the UN Secretary General on 1.6.18. This was to the effect that the Comite Laic de Coordination, said to be associated with the Catholic Church, organised demonstrations on various dates, including 24.2.18. Strictly speaking, the extract does not demonstrate that it was the Catholic Church which held the demonstration on 25.2.18 and, more significantly, it does not refer to there being any arrests at all at any of the demonstrations, whereas the appellant claimed that at least 15 people were arrested. Mr Schwenk argued that the lay committee must be taken to be part of or associated with the Catholic Church, but there is no evidence before the Tribunal to that effect. The general country information relied on does not bear sufficiently directly on the appellant's claim.

9. At [46] the judge pointed out that the appellant's account was inconsistent with the UDPS letter of 13.9.18 in that the UDPS claim that they organised the peaceful demonstrations. Whilst the letter states that she went missing it does not specifically state that she was arrested at the demonstration, as she claims.

10. The grounds go on to refer to reports "widely published in the national and international media and internet" that the Catholic Church held demonstrations in DRC and many people were arrested during the rallies. However, Mr Schwenk conceded that this information is not within the material put before the First-tier Tribunal, although he attempted to argue that as a matter of fact, post-decision evidence on the point ought to be admissible. The fact remains that that evidence was not put before the judge and he cannot be criticised for not looking at media reports not drawn to his attention or put before the Tribunal.

11. Curiously, there was no challenge to the remainder of the findings at [48] of the decision that the appellant was not detained and mistreated in February 2018, findings supported by the cogent reasoning set out therein.

12. It follows that on a straight-forward reading of the decision, the judge was entitled to state that there was no objective material or media report to confirm that the Catholic Church held the demonstration and that several people were arrested. The information relied on is too vague and insufficient to demonstrate that the judge was in any material error in the finding made. The ground attempts to make more out of the objective material than it in fact permits.

13. The second issue addressed was the alleged arrest in 2016, rejected by the findings at [45] of the decision, and addressed at [8] of the grounds, which submit that the Judge failed to take into account country background information to assess the credibility of the appellant's account of her arrest in 2016 and release, referring to the CPIN at 2.4.2.

14. For his part, Mr Schwenk submitted that the CPIN at 2.4.2 supported the appellant's account. However, once again, the information relied on is not quite how it is painted in the grounds. 2.4.2 does in fact not state that anyone was arrested during the December 2016 protests. Neither does it state that any such persons were released. Properly read, it appears that a promise was made, inter alia, to hold elections and release political prisoners. The election was never held and the extract states that other elements of the agreement made in December 2016 remained outstanding, including the continued detention of around 118 political prisoners. This material is scant support for the appellant's claim and there is no error in the judge's finding at [45] of the decision, which is cogently reasoned.

15. The third issue raised by Mr Schwenk is the judge's treatment of the UDPS membership card. The grounds from [10] onwards criticise the judge's findings at [42] and [43] that the appellant failed to demonstrate that she was the holder of a properly obtained and authorised UDPS membership card. However, cogent reasons were given for that conclusion, open to the judge on the evidence. Mr Schwenk suggested that the judge found that the membership card was not authentic and should have applied a higher standard of proof applicable to fraud or forgery, an argument not pleaded in the grounds. On a proper reading of the decision it is clear from the last sentence of [42] that what the judge found was that "the evidence does not enable me to conclude that the appellant is the holder of a properly obtained and authorised membership card for the UDPS." Effectively, the judge was applying Tanveer Ahmed [2002] UKAIT 00439, where it is for the appellant to demonstrate that a document is reliable. Mr Schwenk pointed to the opening sentence of the next paragraph at [43], to suggest that the judge found the card fabricated or fraudulent. Even if no more than 'not authentic' that is not the point being made by the judge at [43] of the decision. It is clear that the judge was conceding that whether even without a valid or authentic membership card did not mean that the appellant was not a UDPS supporter. That is entirely different to a finding of forgery or fraud. In any event, as pointed out this was not pleaded in the renewed grounds on which Mr Schwenk relied.

16. Criticism is also made at [10] of the grounds that the judge failed to examine the original documentation but relied on the colour photocopies in the bundle. When pressed on this Mr Schwenk did not pursue this point. There was no obligation on the judge to examine the original document; the judge is not an expert. It follows that no error of law is disclosed by this aspect of the grounds.

17. In relation to the above points, it should also be remembered, as Mr Tan pointed out, that there are several negative credibility findings in the decision which have not been challenged, including the finding at [41] of the decision that the judge did "not find it credible that the appellant would take to active membership of the UDPS when she still had young children to care for. Similarly, there was no challenge to the application of section 8 at [50] of the decision, or the findings in relation to the sur place

activities at [51] of the decision. It follows that there were a number of key adverse credibility findings in the context of which the relevance of other challenged findings must be considered.

18. In relation to the application of the Country Guidance to the facts found by the Tribunal, Mr Schwenk and the grounds criticise the judge's findings and conclusion at [52] of the decision, where the judge relied on MM (UDPS members, risk on return) DRC CG [2017] UKAIT 0023. It is argued that the judge failed to allow the appeal on the accepted facts and [2] of the grounds asserts that the judge failed to properly assess whether the appellant is at risk of persecution considering the prevailing political climate, the nature and profile of her activities and the organisation she represents, and whether she had come to the attention of the authorities. Reference was made to [202] of MM, set out at [3] of the skeleton argument, as to risk fluctuating in accordance with the political situation. However, on a proper reading of that paragraph it is clear that the Upper Tribunal held (continued to believe) that low level members/sympathisers of the UDPS will not be at real risk on return to the DRC in the current climate "but conclude that it is too early in the process of transition of the DRC to democratic rule, to find that there is no continuing threat on the part of the current Kabila regime to persecute UDPS activists." It was in relation to activists and not low-level members or sympathisers that the Upper Tribunal's comment about fluctuating risk applied. The grounds are something of a deliberate misreading of the passage.

19. Mr Schwenk also drew my attention to 2.4.10-11 of the CPIN in this regard, referring in 2018 to heightened tension around the build up to the December 2018 elections. However, the passage relates to those with a known political profile or position in an opposition party being more at risk than ordinary members. Even with the heightened tension, "Rank and file party members and low-level activists are generally unlikely to be at risk of such treatment." Once again, the background information relied on does not bear out the argument of the grounds. It is clear that at [52] the judge was considering the risk involved of the appellant being returned to the DRC as "a failed asylum seeker who will not be recognised as a political activist or someone who has previously been detained for such activity in that country." This followed the judge's rejection of the appellant's factual claim of events in the DRC and the finding at [51] that her involvement with the UDPS in the UK "did not take the form of activism amounting to sur place political activity that would put her at risk if returned to the DRC. In that respect I bear in mind that membership fo the UDPS is not, in itself, an offence." Applying the Country Guidance, the judge found at [52] that low level membership of or sympathy with the UDPS will not for that reason alone put individuals at real risk on return. The judge also took into account heightened tensions because of the prospective elections of 2018. "As I have concluded that the appellant has not shown that she is an active member of the UDPS or that she has engaged in open opposition activities such as demonstrations or been arrested, I cannot conclude that she will be at real risk of serious harm amounting to persecution if returned. For these reasons the appellant is

not a refugee." It follows that contrary to the assertions in the grounds, the judge has taken account of the CPIN and the heightened political tension. All the matters raised at [2] and [3] of the grounds have been taken into account but in the light of the rejection of the factual claim, the dismissal of the appeal was inevitable.

20. The final point taken by Mr Schwenk was another matter not pleaded in the grounds, suggesting that when finding at [41] of the decision the appellant would not become involved with young children, the judge made a statement he would not have made about a man, implying sexism. When I pointed out that the point had not been pleaded and no challenge had been made in the grounds to the findings in [41], Mr Schwenk submitted that it was a *Robinson*-obvious point, which I do not accept and declined to hear further submissions on such a point.

21. The remaining grounds are a plain disagreement with the findings and conclusions of the First-tier Tribunal, arguing at [11], for example, that even on the judge's findings the appellant has a political profile sufficient to create a very real risk on return to the DRC, relying on her detention without charge on two separate occasions on grounds of her political opinion. However, the judge found at [40] that the appellant's evidence of active membership of the UDPS or accounts of two arrested and harassment at demonstrations to be credible. The judge set out her reasons for that conclusion in the succeeding paragraphs of the decision. It follows that the premise of the remaining grounds is entirely inconsistent with the findings of the First-tier Tribunal and disclose no error of law.

22. In VW (Sri Lanka) [2013] EWCA Civ 522 at [12], LJ McCombe stated, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." Sadly, this is such a case.

Decision

23. For the reasons explained above, the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Upper Tribunal Judge Pickup

Dated 13 March 2020