Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/09979/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15th September 2017	**On 21st November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

J M K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Clarke (Counsel)
For the Respondent: Mr P Duffy (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against a decision to refuse his protection claim was dismissed by First-tier Tribunal Judge M R Oliver ("the judge") in a decision promulgated on 27th February 2017. The judge found the appellant to be an unreliable witness and his claim to lack credibility. He found that the appellant would not be at risk on return to Uganda and doubted the extent of ill-health claimed. In any event, he would have access to treatment on return. So far as Article 8 of the Human Rights Convention is concerned, the judge found that the appellant has no family life in the United Kingdom and that although he may have established a

private life here, the decision to refuse his claim amounted to a proportionate response.

2. In the grounds, it is contended, first, that the judge gave undue weight to an apparent delay in claiming asylum, without properly considering the absence of any encounter between the appellant and Immigration Officers or the appellant's attempt to regularise his position by seeking help from a solicitor. In the second ground, it is contended that the judge failed to properly consider medical evidence and erred in taking into account the modest duration of a medical examination as a weighty factor in this context. The medical expert instructed on the appellant's behalf gave a detailed account of physical and psychological problems and the judge erred in finding that two reports relied heavily on the appellant's own account. The medical expert was clear in finding that his diagnosis was based on careful observation of behaviour, speech and demeanour and not merely on symptoms described by the appellant. Moreover, the evidence showed that the appellant currently receives cognitive behavioural therapy ("CBT"), contrary to the judge's finding that there was nothing to show that he had taken up an offer of such treatment. In the third ground, it is contended that the judge overlooked a witness statement made by the appellant's wife and failed to properly assess country evidence.

3. Permission to appeal was granted by a First-tier Tribunal Judge on 18th July 2017. The medical reports identified a scar on the appellant's body as highly consistent with his account of ill-treatment and, taking into account also the claimed error regarding therapy, it was arguable that the judge had erred.

4. In a Rule 24 response prepared on 10th August 2017, the appeal was opposed by the Secretary of State on the basis that all the evidence before the Tribunal was properly considered. Cogent and sufficient reasons were given for the finding that the appellant was not a credible witness. The judge's overall conclusion was open to him.

Submissions on Error of Law

5. Ms Clarke handed up a skeleton argument. She said that the judge had not taken into account all of the medical evidence. It was accepted that the appellant had been ill-treated in the past. The judge also accepted, at paragraph 30 of the decision that he had been rounded up. This was the core of the appellant's claim. He was an activist and was detained with other anti-government supporters. He had a witness, who said in evidence that she knew the appellant in Uganda when he was politically active. Her evidence was not challenged in the decision. The judge dismissed the appellant's wife's statement because she had not mentioned his political writing. However, a letter from her clearly stated that he was active in politics and that this was the reason why their marriage broke down.

6. The first ground concerned delay in claiming asylum. The appellant had a legal representative but things clearly went wrong and his claim was not

made promptly. However, the judge found that the account was broadly consistent and that the core claim concerned political activities in Uganda.

7. The medical expert, Dr Arnold, saw the appellant for a limited period of time, as noted by the judge in paragraph 26 of the decision. This could not be determinative of the claim to have suffered ill-treatment. Dr Arnold's assessment was based on the appellant's demeanour and not merely his account or his symptoms. Dr Arnold considered clinical plausibility at paragraph 66 of his report, which was very detailed. The judge gave this rather cursory consideration. Again, the oral evidence before the judge concerned events in 2001 in Uganda and was not challenged. Overall, the judge came to an erroneous conclusion, without regard to all the evidence. Undue weight was given to the delay in making the asylum claim.

8. Mr Duffy replied that the judge's analysis was clear. He did not disbelieve the claim that the appellant was ill-treated or that he was rounded up. However, because of the delay and the several iterations of the case, he concluded that the appellant was not a credible witness. This finding was open to him. If the appellant was badly advised by his solicitor at an earlier stage, the representative should have been given an opportunity to comment. The decision contained findings open to the judge on the evidence and there was no material error.

9. Ms Clarke said in a brief response that paragraph 32 of the decision contained no assessment of the oral evidence supporting the appellant's claims regarding events in 2001. It was not apparent that his witness, Ms M had given evidence. There was also little showing an assessment of the country evidence. The judge seemed to have based his findings only on the appellant's evidence.

Findings and Conclusions on Error of Law

10. I conclude that the findings made by the judge were open to him on the evidence before the Tribunal and that no material error of law has been shown in his decision.

11. Dealing with the first ground, the judge is criticised for giving apparently undue weight to the long delay in making the protection claim. The appellant arrived in the United Kingdom in 2003 and claimed asylum only in 2011. He engaged the services of a solicitor but the wrong application was made. Criticism is made in the grounds of an apparent failure on the judge's part to consider that the appellant was not encountered by immigration officers in the years in which he overstayed his visit visa.

12. A careful reading of the decision shows that the judge did not, in fact, give undue weight to delay in making the asylum claim. He had the relevant chronology clearly in mind. His precise adverse finding was in relation to the period of eight years preceding the application made in 2011, when the appellant remained in the United Kingdom as an overstayer but took no steps to approach the authorities. The judge was entitled to give

adverse weight to that substantial period of delay and to disbelieve the claim that the appellant was unaware in those years that he might claim asylum. The judge was also entitled to take into account that, notwithstanding the claim in 2011 to fear ill-treatment on return, there was no mention in the appellant's application that year of the rape of his wife, although he subsequently claimed that this was the final straw in his decision to leave Uganda. His finding in this context appears at paragraph 28 of the decision.

13. In the second ground, criticism is made of the judge's assessment of the medical evidence. I find that the judge did not fall into error here. It is true that in paragraph 31 of the decision the judge observed that two medical reports relied heavily on the account given by the appellant. Ms Clarke drew attention to Dr Arnold's detailed report, which made clear that the diagnostic conclusion drew also on clinical observations of the appellant's behaviour, speech and demeanour, but Dr Arnold's conclusion does not displace or undermine the judge's overall assessment of risk. Paragraph 30 of the decision shows that he proceeded on the basis that the appellant may have been rounded up and ill-treated. However, he was released after a week, not forced to sign a confession and not charged.

14. There is a mistake in paragraph 31 of the decision, where the judge finds it "notable" that for some twelve years the appellant sought no medical help. He mentions a report of an offer of sessions of CBT but finds that there is no evidence that the offer has been taken up. As is clear from the document at page 51 of Part A of the appellant's bundle that is not correct. A therapist wrote on 7th September 2017 to confirm that the appellant received CBT from 11th October 2016 to 22nd March 2017. The CBT sessions commenced some five weeks after the Secretary of State's decision letter, dated 6th September 2016, and concluded five and a half months later, the author of the report recording significant progress in terms of improved mood and decreased anxiety. The factual error on the judge's part is not material, taking into account the extent and duration of the therapy made available. The judge made no material error of law in his assessment of the medical evidence.

15. In the third ground, the judge's overall consideration of the case is criticised. There is no merit here. The judge accepted that the appellant had given a broadly consistent account of his ill-treatment but gave sustainable reasons for concluding that he is not at risk on return to Uganda. The written grounds draw attention to paragraph 19 of the decision, but this is no more and no less than a summary of the appellant's case. It is asserted that the judge "ignored" a statement made by the appellant's wife. This is not so, as is clear from paragraph 29 of the decision. He described the document at page 26 of Part B of the appellant's bundle as a letter rather than a statement, but that is the form it takes in the bundle. The judge gave sustainable reasons for placing no weight on this item, having considered the development of the appellant's case since it first emerged in 2011, eight years after his arrival in the United Kingdom. The judge was also entitled to find that the appellant has

no political profile that would place him at risk, in the light of the evidence given by
Ms M, summarised at paragraph 24 of the decision.

16. The judge's overall assessment was open to him. He had in mind the broadly consistent account of ill-treatment, but found such elaboration of the case over time as to show that the appellant was not a credible or reliable witness and was not of adverse interest to the authorities in Uganda or to anyone else. I conclude that the judge was entitled to make the adverse findings he did and that the decision contains no material error of law. It follows the decision of the First-tier Tribunal shall stand.

DECISION

The decision of the First-tier Tribunal, containing no material error of law, shall stand.

Signed Date

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of
their 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 Date

Deputy Upper Tribunal Judge RC Campbell