Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number PA/02580/2017**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
on 8 March 2022

Decision & Reasons Promulgated
On the 30 March 2022

Before

UT JUDGE MACLEMAN

Between

TARA KAZADI MBUYI-BIUMA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Gray & Co, Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of the Democratic Republic of the Congo (DRC), sought asylum on or around 6 September 2016. The respondent refused her claim by a decision dated 3 March 2017, accepting at [41] that the appellant "became a member of the UNDEF [National Union for Federalist Democrats] in 2013" and was a "low level member", but declining at [42 – 43] to accept that she was in charge of propaganda and mobilisation for women, was subject to an arrest warrant, or was in genuine fear on return.

2. The FtT dismissed her appeal, but that decision was set aside, because the Judge had regard to country guidance for the Republic of the Congo

(capital, Brazzaville) not the DRC (capital, Kinshasa). The case was remitted to the FtT for hearing anew.

3. FtT Judge Buchanan dismissed the appeal by a decision promulgated on 29 November 2018.

4. The FtT refused permission to appeal to the UT.

5. The appellant applied to the UT for permission on grounds set out in her application dated and filed on 11 January 2019, headed as (1) failing to carry out verification checks on the documentary evidence, (2) failing to assess the evidence in the round, (3) failing to recognise that the claim was not inherently implausible, and (4) misunderstanding the evidence.

6. The appellant had produced letters dated 30 January and 11 April 2017 from a barrister in DRC, the second of which referred to a "search warrant" or "All Ports Warning" (APW) dated 24 August 2016, issued by the National Intelligence Agency (NIA) relating to the appellant and her party membership. The respondent did not doubt the registration or *bona fides* of the barrister, but did not accept that the APW was a reliable document. The FtT at 9.4 gave it no material weight, and at 9.18 was not persuaded of the truth of the appellant's account beyond the extent accepted by the respondent.

7. (The author of the letters is referred to in the various decisions and other documents as an advocate, barrister, solicitor, and lawyer. All such references appear to be to the same person, Maître Bonaventure Mautu Boleke, "avocat".)

8. The UT refused permission on 28 January 2019.

9. The Court of Session reduced the UT's refusal of permission. In his Opinion, [2019] CSOH 93, dated 19 November 2019, Lord Arthurson recorded at [2] that the petitioner (the appellant) insisted for purposes of her challenge only on ground (1), which was argued under reference to *PJ (Sri Lanka)* [2015] 1 WLR 1322 and to *AR* [2017] CSIH 52. He concluded at [13]:

> It is clear that the APW in the petitioner's case requires to be viewed as being at the centre of her request for protection … accepting once more that the obligation to verify arises exceptionally, I am of the opinion that such an obligation arguably arises on the particular facts … It being accepted that no attempts to verify having to date been instigated on behalf of the respondent … an arguable error of law arises …

10. On 30 September 2021 UT Judge Allen granted permission:

> Though, in light of what was said by the UT in *QC* [2021] UKUT33 (IAC), I see little force to ground (1), the other grounds raise points which are on balance arguable, and I do not rule ground (1) out as a consequence.

11. (The only effect of the grant is that all grounds are opened for argument. However, I observe from the administrative file that Judge Allen had before

him the grounds and the Court's interlocutor, reducing the previous refusal of permission, but did not have the Opinion of the Lord Ordinary.)

12. *QC* bears mainly on ground (1), but I quote both parts of the headnote:

> **Verification of documents**
>
> (1) The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence.
>
> **The Mibanga duty**
>
> (2) Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the "Mibanga duty" to consider credibility "in the round" can be understood (Francois Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual's credibility.
>
> (3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome.

13. It was common ground at the hearing before me that the standing and credentials of the barrister were not in issue, so there was no question of a duty of further verification in that respect; and that the respondent could not be expected to make direct enquiries of the NIA, being the claimed agents of persecution, which would be contrary to principle and practice.

14. In his submissions Mr Winter did not give up the verification ground, but he said that it had become something of a "red herring", and his argument went to the reasons for finding the APW not to be a reliable document. He said that the crux was at ground (1) paragraph [4], which says:

> The key error is that the *bona fides* of the lawyer who confirmed there was an APW was not challenged. Even if there were some concerns about the documentation, the fact of the matter is that the *bona fides* of the lawyer were not challenged and no verification carried out by the respondent.

15. Mr Winter founded on *PJ* at [41]:

> In my judgment, [FtT] Judge Woodcraft doubted the validity of these documents (certainly, to a material extent) on a significantly false basis. Thereafter, [UT] Judge Kekic – having accepted Mr Jayasinghe's status as a lawyer – failed to address the key issue that then arose, given the suggested source of these documents (a court in Sri Lanka) and the route by which they were obtained (two independent lawyers who sent them directly to the appellants' solicitor in the United Kingdom). Whilst it is undoubtedly the case that false documents are widely available in Sri Lanka, once it was established that the documents in question originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the appellant does not have a well-founded fear of persecution. Prima facie, this material reveals that the appellant has previously been arrested in connection with a bomb, three members of his family had close LTTE connections and he is wanted for questioning "*to decide whether he had been engaged in LTTE terrorist activities*". But perhaps of greatest significance, there is a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration stating that the appellant is in the United Kingdom and that he is to be arrested on his return to Sri Lanka. In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material – retrieved independently, it is to be stressed, by two lawyers from the Magistrates' court on separate occasions – is that the appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities. Judge Kekic suggested that the inference to be drawn from the evidence was that Mr Jayasinghe had "*obtained false evidence*" and that "*the appellant had forgotten the account he had previously given when these falsified documents were prepared*". However in my view, without an adequate explanation, it is difficult to understand how the appellant could have falsified a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration ordering the appellant's arrest which he then placed in the court records so that it could later be retrieved by two separate lawyers. At the very least, this feature of the evidence required detailed analysis and explanation.

16. The principal further points which I noted from submissions for the appellant were these:

(i) This case is highly analogous to *PJ*, because evidence arrived through a lawyer whose status as such is not doubted.

(ii) The FtT's error was absence of a reason for finding the document unreliable.

(iii) The FtT failed to explain how the appellant might have infiltrated a forged document into the NIA.

(iv) The explanations by the FtT at 9.2, 9.3, 9.4 did not answer the above .

(v) The explanation at 9.11 was also inadequate, because the FtT did not deal with the question of bad faith on the part of the lawyer.

(vi) In terms of *QC,* there were no cogent reasons for rejecting the evidence.

(vii) The error was material. It required the decision to be set aside.

(viii) The UT should find that the APW is a genuine document, and allow the appeal.

(ix) Alternatively, the case should be remitted to the FtT.

17. Mr Winter did not insist on, or had nothing to add to, the rest of the grounds. The above are the only points which require specific treatment

18. To place the challenge in context, the following is a summary of the detailed reasons in the FtT's decision:

9.1, difficult to comprehend a proactive approach by the authorities against someone who distributed leaflets months earlier, when the Secretary-General overseeing events throughout the country remained at liberty to operate from UNDEF Headquarters in Kinshasa.

9.2, arrest warrant months after the incident, inconsistent with background evidence of state actions.

9.3, no background evidence of warrant procedure as claimed; unlikely authorities would invite activists for interview, when they might fear arbitrary detention.

9.4, inaccuracy in translation of letter; no explanation why barrister would be given copy document, not addressed to appellant; nothing to suggest such a document would ordinarily be given to lawyers for an accused.

9.5, claimed narrow escapes and warnings from authorities, but able to travel in and out of DRC without incident in summer 2016.

9.6, unexplained why if in danger in 2016 the appellant would visit UK with her boyfriend on holiday, leaving her two children in DRC .

9.7, claimed relationship with a UNHCR officer for 6 years, including the period of alleged incidents, but no evidence from him; difficult to understand why such a person would abandon the appellant due to reluctance to become involved in "political issues", when her account demanded international protection.

9.8 no reason for the sponsor of UK visit visas, also said to work for UNHCR, to decline to provide supporting evidence; no evidence from another person said to have helped the appellant and taken her to claim asylum.

9.9 no explanation for absence of evidence from father of the appellant's children, with whom she had remained on good terms, and who must have known what happened to her during her last few years in DRC.

9.10, contradiction whether appellant's mother an in-patient or out-patient at a hospital.

9.11, contradiction whether barrister aware of APW from appellant's party colleagues, or from the authorities, when visiting her mother in detention.

9.12, alleged release of appellant's mother from detention upon barrister's protest of illegality, inconsistent with background information on behaviour of authorities.

9.13, appellant's account of incident in September 2015 inconsistent on whether she was being monitored before being abducted, or was associated with opposition only due to her ethnicity and on sight of her voting card.

9.14, unlikely account of a guard releasing someone of her claimed importance for a bribe.

9.15, incident in May 2016, difficult to understand appellant's account of escape while being closely followed .

9.16, remarkable given appellant's claimed prominent role that she chose to go on holiday to the UK the day before another "general strike"; "grave reservations that an activist would voluntarily go on holiday at the very time…".

9.17, newspaper extract lacking any convincing context, and newspaper not produced.

9.18, reflecting on whole evidence, not persuasive to lower standard.

19. In my opinion, that resolution of the facts did not involve the making of any error on a point of law.

20. The finding at [41] of *PJ* at 41 is one of inadequacy of reasoning in a particular set of circumstances. The present case is analogous only to the extent that some of the evidence was sent by a lawyer whose status as such is not doubted. The outcome remains to be judged on the whole reasoning of the FtT, not on the single basis of the conduit through which the evidence arrived. The absence of challenge to the standing or *bona fides* of the barrister was one feature of the evidence, but it was not a trump card.

21. The reasons given by the FtT are of varying strength, and some, in isolation, might well be argued away; but none of those reasons are shown to be wrong, and most have not been challenged.

22. Some of the reasons are obviously powerful. For example, it is striking that the FtT identified the absence of evidence from four persons, at least three of whom should have been able to provide highly relevant

statements. The appellant has not (even since the hearing in the FtT) advanced any sensible explanation for those gaps in her case.

23. The other criticisms were all well within the tribunal's rational scope.

24. The challenge based on absence of reasoning is unsustainable, on reading the FtT decision fairly and in full. The appellant's line of argument asks the tribunal for specific answers to impossible questions. It was not for the tribunal to divine how evidence came into existence, or what the underlying truth is; only to decide if the case advanced, as a whole, was worthy of credit to the lower standard. That task involved deciding the reliability of the APW in the light of, and by reference to, the rest of the evidence; which is exactly what the tribunal did.

25. The decision of the FtT shall stand.

26. The FtT made an anonymity direction, but proceedings in the Court were not anonymised. No application was made to the UT. There is no ongoing need for departure from the principle of open justice. This decision is not subject to an anonymity order.

H Macleman

11 March 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.