IN THE UPPER TRIBUNAL
IMMIGRATIONAND ASYLUM CHAMBER

Case No: UI-2023-002834

First-tier Tribunal Nos:
PA/00754/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th January 2024

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JMK
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Secretary of State: Mr E Tufan, Senior Presenting Officer
For JMK: Mr M Moriarty, Counsel, instructed by Luqmani Thompson & Partners

Heard at Field House on 5 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. For the sake of continuity and ease of reading I shall hereafter refer to the parties as they stood before the First-tier Tribunal. The Secretary of State is once again "the Respondent" and JMK is "the Appellant".

2. The Respondent appeals to the Upper Tribunal against the decision of First-tier Tribunal Judge Loke ("the Judge"), promulgated on 6 June 2023. By that decision the Judge allowed the Appellant's appeal against the Respondent's refusal of her protection and human rights claims.

3. The Appellant is a citizen of the Democratic Republic of Congo. In brief summary, she claimed to have been involved with political activities in the DRC on behalf of the UDPS and that this would place her at risk on return. She also claimed to have undertaken certain political activities whilst in the United Kingdom. Finally, the Appellant had provided evidence indicating that she suffered from significant mental health problems and this too was put forward as a basis for international protection, it being said that there was a risk of gender-based violence.

4. The Appellant's original appeal to the First-tier Tribunal was heard by Judge Stedman who, by a decision promulgated on 14 January 2019, found the Appellant to be entirely incredible in respect of her claimed political activities and accordingly dismissed her appeal. That decision was successfully appealed to the Upper Tribunal, which by a decision promulgated on 8 May 2019 concluded that Judge Stedman had erred in law and that his decision should be set aside in its entirety. The Appellant's case was remitted to the First-tier Tribunal. First-tier Tribunal Judge Wylie then reheard the Appellant's case. By a decision promulgated on 23 January 2020 Judge Wylie again dismissed the Appellant's appeal, relying in part on matters deemed to be problematic by Judge Stedman, but also having rejected additional evidence provided by the Appellant. In August 2021 the Appellant made further submissions to the Respondent. These were accepted to constitute a

fresh protection and human rights claim, but those claims were refused with an accompanying right of appeal, which the Appellant duly exercised.

The judge's decision

5. With respect, it is fair to say that the Judge's decision has a number of shortcomings, although for reasons set out later, I have concluded that these do not demonstrate any material errors of law on her part.

6. It is apparent that the Judge did not undertake a particularly careful proofreading of her decision before sending it in for promulgation. Potentially more significant, when referring to the Appellant's procedural history, the Judge had regard only to the adverse findings made by Judge Stedman and not those stated by Judge Wyle in her subsequent decision. It is unclear why this oversight occurred.

7. In summary, the Judge observed that Judge Stedman had made "extremely strong adverse credibility findings". She considered additional evidence provided by the Appellant and, for reasons set out at [10] – [18] found that this was unreliable and that the Appellant had not proved her protection claim, as it related to claimed political activities: [19]. There has been no cross-appeal against that aspect of the Judge's decision.

8. The Judge then turned to consider the Appellant's claim insofar as it related to her mental health and position as a female in the DRC. With reference to the Respondent's CPIN entitled "Gender Based Violence", published in September 2018 (this appears to have been subsequently withdrawn and cannot be accessed), the Judge concluded that, in general, discrimination against women by state and non-state actors was not sufficiently serious to constitute persecution or serious harm. She noted, however, that widows or female-headed households may be at greater risk and that there may be "particular factors relevant to the person" which might result in discrimination becoming so serious as

amount to persecution or serious harm on the basis of gender: [21]. Further country information was then referred to.

9. At [23] the Judge accepted that the Appellant had had a traumatic childhood which "may well have involved abuse and sexual abuse." The evidence demonstrated that the Appellant had been receiving significant professional support in the United Kingdom from a number of organisations and had been under the care of the NHS. The Judge observed that the Appellant had presented as an "extremely vulnerable person" at the hearing. The evidence relating to the Appellant's mental health had, noted the Judge, been a good deal more substantial than when the Appellant's appeal was heard in 2019: [24].

10. At [25] the Judge posed the question as to whether the Appellant might face a real risk of gender-based persecution on account of being "a female with mental health issues" if returned to the DRC.

11. At [26], the Judge stated as follows:

> "Return to the DRC will undoubtedly lead to a deterioration in her mental health condition, which is already significant. In my view the effect on this will be that (*sic*) Appellant simply will not be in a position to relocate from her current situation back to the DRC without a support network, which from the objective evidence cannot be provided by the authorities. Her condition makes it unlikely that if she faced difficulties she would have any capacity to seek protection from the authorities. The Appellant's particular vulnerability and lack of resources in my assessment gives rise to a reasonable likelihood that the Appellant will be internally displaced and/or will be at an increased risk of gender-based violence. At the very least there are substantial grounds to fear that she may face treatment contrary to Article 3."

12. At [27] the Judge stated that the appeal was being allowed on both asylum and Article 3 grounds by virtue of the real risk of gender-based persecution or serious harm.

The grounds of appeal

13. The grounds of appeal, which stand unamended, are very narrowly drawn and I refer to them here in full:

> "… FTTJ Loke errs in the consideration of the appellant's risk on return. In concluding, that she would be at risk of gender-based persecution or treatment likely to breach her article 3 rights, they appear to do so through the prism of her being returned as a lone female, who could be internally displaced, and who would therefore have no support network.
>
> It is unclear on what basis they reach this conclusion, as, having dismissed the appellant's account surrounding her claim to asylum, any suggestion that she would find herself displaced, or without support, must be a mistake as to a material fact, as she would be returning to her family in the DRC and would also therefore have the support and protection of her husband."
>
> [The remaining points are of no relevance to the substance of the challenge.]

14. Following the grant of permission, the Appellant provided a detailed rule 24 response. In essence, this makes the following points. First, the Judge did not approach the issue of risk on return on the basis that the Appellant would be a "lone female"; the basis on which the appeal was allowed was in truth that the Appellant suffered from very significant mental health problems and would not have an appropriate support network in the DRC. Such a support network had to be seen in the context of state of that country, the risk of violence and the lack of protection by the authorities. The response also asserts that the Judge's failure to have referred to the findings of Judge Wylie made no real difference because Judge Wylie had herself made adverse findings that were effectively in line with those made previously by Judge Stedman.

The hearing

15. I was assisted by concise submissions made by Mr Tufan for the Respondent and Mr Moriarty for the Appellant. Mr Tufan accepted that neither the Judge nor Judge Wylie had made a clear finding on the Appellant's husband. He noted that the Judge had not allowed the

Appellant's appeal on the basis of Article 3 based solely on a medical claim. The narrowly drafted grounds of appeal disclosed a material error and the Judge's decision should be set aside. Mr Tufan accepted that if this were done, the Judge's findings on the medical evidence could be preserved.

16. Mr Moriarty relied on his rule 24 response. He emphasised the absence of any finding by the Judge that the Appellant would be returning as a lone female. In light of the grounds of appeal, there was no clear error of law. Mr Moriarty emphasised the unchallenged status of the Judge's findings on the medical evidence and the Appellant's particular vulnerability. He submitted that whether or not the Appellant's husband could be contacted, he would not be in a position to provide any appropriate support network or protection from gender-based violence emanating from either the authorities or non-state actors. Read sensibly, [26] indicated that the Judge had in effect dealt with a risk to the Appellant in her home area and then had gone on to consider the possibility of internal relocation. The overall findings were, despite some shortcomings in the decision, sustainable.

17. At the end of the hearing, I reserved my decision.

Conclusions

18. There have been numerous pronouncements by the Court of Appeal in particular as to the need for appropriate restraint before interfering with a decision of the First-tier Tribunal. There is no need for a judge to refer to each and every item of evidence. There is no need to search for perfection in any given decision. A judge's decision should be read holistically and sensibly. For a recent example of this, see FN (Burundi) v SSHD [2023] EWCA Civ 1350, at [16].

19. Having considered this case with care, I conclude that the Judge did not err in law such that her decision should be set aside in the exercise of

my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Taken as a whole, her conclusions and the stated outcome are sustainable.

20. As already mentioned, the Judge's decision is not without its deficiencies. However, I am concerned with the particular challenge brought against her decision, as set out in the narrowly-drafted and unamended grounds of appeal put forward by the Respondent. That challenge is specifically focused on what is said to be a mistake as to the facts, namely the premise that the Appellant was a "lone female" was wrong; she had a husband in the DRC who (I assume it is contended) would potentially be able to provide support and protection.

21. The first difficulty with the Respondent's challenge is that the Judge did not in fact state that the Appellant would be a "lone female" on return to the DRC. That phrase does not appear anywhere in the decision. Mr Tufan had suggested that by way of implication, what the Judge said in [21] amounted to such a finding. Initially, I had seen some merit in that submission. However, the final sentence of [21] does not relate to "lone females" or "female-headed households". What instead it says is that "particular factors relevant to the person" might take the widespread discrimination experienced by women in the DRC beyond the threshold of persecution and/or serious harm. That sentence is not contingent on the individual already being a "lone female". In addition, at [25] of her decision, the Judge referred to the Appellant as being a "female with mental health issues", *not* a "lone female" with that characteristic.

22. The second difficulty with the Respondent's challenge are the clear findings made by the Judge in respect of the Appellant's mental health problems and the self-evidently significant support which she has required since being in the United Kingdom, as set out at [23]. None of those findings have been challenged. They include the following: the Appellant's PTSD and depression are "acute and chronic"; the Appellant

is a victim of rape and torture; she has a "significant" condition which has been treated by the NHS; the Appellant had been supported by two other organisations; she was an "extremely vulnerable person". It is sufficiently clear to the reader that this was the central factual context in respect of which the Judge went on to consider the question of risk on return.

23. The third difficulty is that the obvious error by the Judge in failing to have to regard to Judge Wylie's credibility findings, whilst seemingly inexplicable, does not on analysis disclose a material flaw in her decision as a whole. The Judge was clearly aware of what she had described as the "extremely strong adverse credibility findings" made by Judge Stedman and those made by Judge Wylie were similarly unfavourable. There is nothing on the face of the decision, or on any other basis, which lead me to believe that the Judge had in mind anything other than that the Appellant had been thoroughly disbelieved in respect of the political activities claim. Further, the Judge rejected new evidence provided by the Appellant in respect of that aspect of her case.

24. It is the case that neither the Judge nor Judge Wylie made specific findings in respect of the Appellant's husband. The Judge had recorded the Appellant's oral evidence that she had last had contact with him in June 2022: [6]. I am prepared to accept that the Judge had that evidence in mind. Assuming for present purposes that the Judge proceeded on the basis that the husband was in the DRC and was potentially contactable, I conclude that her overall analysis on risk is, for the reasons set out below, nonetheless sound.

25. With reference to [26], the Judge was entitled to conclude that a return to the DRC would "undoubtedly" lead to a deterioration in the Appellant's mental health. The Judge was entitled to conclude that the Appellant required a significant support network, as was in place in the United Kingdom. The Judge was also entitled to conclude, based on the country information, that such support provision would not emanate from

the DRC authorities. None of that has in fact been challenged by the Respondent.

26. Based on the country information, the Judge was entitled to conclude that the authorities would be unable to protect the Appellant from gender-based violence from either state or non-state actors. The penultimate sentence of [26] makes reference to the Appellant's "particular vulnerability" and links to this to internal displacement "and/or" an increased risk of gender-based violence. On the evidence, that conclusion was open to the Judge. The possible factor of the Appellant's husband presence could not have made a material difference to the analysis. I accept Mr Moriarty's submission that the husband would not have been in a position to provide any material support in the context of what was required by the Appellant on account of her mental health problems and/or any protection against gender-based violence.

27. The decision of the CJEU in SSHD v OA [2021] EUECJ C-255/19, referred to in the rule 24 response, supports Mr Moriarty's position in respect of the ability of family members to provide protection. Whilst I acknowledge that the Judge did not expressly engage with this particular consideration in her decision, a fair reading of her analysis makes it sufficiently clear that she was in effect concluding that this particular Appellant would be at risk of relevant harm whether or not her husband was present.

28. For the avoidance of any doubt, it is clear that the Judge was not allowing the appeal on the basis of a pure Article 3 medical claim. That is in no way inconsistent with the analysis which she set out at [26].

29. I would add this. If I had deemed it appropriate to set the Judge's decision aside, I would undoubtedly have preserved her findings and gone on to re-make the decision in the appeal for myself, without a further hearing. If I had taken that course of action, I would have assumed that the Appellant's husband was in the DRC and could be contacted in some way. However, I would, like the Judge, have concluded

that the Appellant's very significant mental health problems, combined with the country information, went to demonstrate a real risk of persecution and/or serious harm. The outcome would therefore

Notice of Decision

The appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal shall stand.

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 8 January 2024