

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/08713/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** | |
| **On 24 May 2018** | **On 11 June 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**MMM**

(anonymity direction made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. T. Hodson, Elder Rahimi Solicitors

For the Respondent: Ms K. Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Widdup, promulgated on 25 October 2017, in which he dismissed the Appellant’s appeal against the Respondent’s decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction continuing that which was made in the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“The matters raised in the grounds of appeal raise arguable errors of law in the decision of First-tier Tribunal Judge Widdup, in particular, it is arguable that the Judge misapprehended some of the material facts of the appeal and that he failed to give adequate and sustainable reasons for rejecting the Appellant’s claim to have been detained and ill-treated in September 2016.”

1. The Appellant attended the hearing. He appeared to be unwell, but confirmed that he felt well enough to remain in the hearing room. I heard brief submissions from both representatives. Ms Pal accepted that the decision could not stand. I stated that I would allow the appeal and remit it back to the First-tier Tribunal to be reheard.

**Error of law**

1. Ms Pal accepted that the findings at [50] to [52] of the decision could not be sustained. These state as follows:

“50. Mr N said that the Appellant had been active in the UDPS since 26 June 2013 and on 15 February 2014 he was appointed “in charge of mobilisation”.

51. Mr N’s letter is not based on his own knowledge but on what he says he was told by senior UDPS members in the DRC. According to Mr N he then received a full report about the Appellant on 26 September 2017. That report has not been disclosed. On the second page Mr N said that he was told that all the information about the Appellant could be put in writing. That has not been done.

52. The claim that the Appellant was appointed in charge of mobilisation is not supported by the evidence of the Appellant. He said that he was appointed as an activist for various things (paragraph 15 witness statement) but he did not claim that he was in charge of mobilisation. It would also seem surprising that someone would be appointed to be in charge of anything the day after he joined the party.”

1. These findings do not reflect the evidence, and contradict each other. At [50] it states that the Appellant was appointed in charge of mobilisation on 15 February 2014. However, at [52] the Judge finds that it was “surprising” that someone would be appointed in charge of anything on the day after he joined the party. The finding at [52] does not reflect the evidence, which was that the Appellant “had been active” in the party since June 2013, some months before he claims to have been appointed in charge of mobilisation.
2. Paragraphs [55] and [56] state:

“55. Thus the death of his mother was an important factor in his decision to join. He went on to say that he got to find out other reasons.

56. The death of his mother cannot have been the event which led him to attend party meetings. The death is said to have occurred in May but the Appellant claims that he started attending meetings in March. The Appellant was then asked a series of questions about the aims and objectives of the UDPS. His answers were said by the Respondent to be vague and undetailed. I agree with that description. I also find that the Appellant’s account of his reasons for joining the UDPS and the process of becoming a member was similarly vague .”

1. I find that the Judge has once more erred in his consideration of the Appellant’s evidence regarding the death of his mother and his membership of the UDPS. The Appellant’s evidence was that the death of his mother was an important factor in getting him to join the UDPS. The Appellant attended UDPS meetings from March 2013 onwards. His mother died in May 2013, and he joined the UDPS in June 2013. The Judge has stated at [55] that the death of his mother was an important factor in “his decision to join”. This was the Appellant’s evidence. However at [56] the Judge appears to have confused the evidence of attendance at meetings with joining the party. I find that he has misunderstood the Appellant’s evidence, and the distinction between attending meetings and joining the party.
2. I find that these errors in the Judge’s assessment of the Appellant’s evidence have led him to make an adverse credibility finding against the Appellant, which cannot be sustained.
3. At [63] the Judge states:

“The credibility of the account of the second detention depends on the credibility of the Appellant’s earlier account that he was an active member of the UDPS. I find that that part of his account lacked credibility and that concern, and my other concerns about his credibility mean that I do not find that the Appellant has proved the second detention.”

1. Ms Pal accepted that this paragraph could not stand. The Judge rejected the Appellant’s account of having been detained for a second time on the basis that his account of being an active member of the UDPS lacked credibility. He did not consider separately the evidence of the second detention. Instead he found that, as the first part of the Appellant’s account was not credible, the Appellant had not proved that he had been detained a second time. I have found above that the Judge made errors in his consideration of the Appellant’s account to have been a member of the UDPS. I have found that his credibility findings cannot stand in relation to this part of the claim. I therefore find that this paragraph cannot stand, as the Judge’s finding relies solely on an earlier finding which itself involved the making of an error of law.
2. I find that the decision involves the making of material errors of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. The error affects the credibility findings and therefore, given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

**Notice of Decision**

1. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside.
2. The appeal is remitted to the First-tier Tribunal to be remade.
3. The appeal is not to be listed before Judge Widdup.

**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 8 June 2018

**Deputy Upper Tribunal Judge Chamberlain**