Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09655/2010

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Issued**
On 16th May 2016	**On 19th May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

B M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Devlin, Advocate; Latta & Co., Solicitors

For the Respondent: Mr M Matthews, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Uganda, aged 44. He appeals against a decision by First-tier Tribunal Judge Morrison, promulgated on 12th January 2016, dismissing his appeal against refusal of recognition as a refugee.

2. The case which Mr Devlin advanced in the grounds of appeal, written note of argument and oral submissions is in outline as follows. The judge failed

to explain adequately why parts of an expert report produced by the appellant which were detrimental to his case were accepted, but other parts of the report which were favourable to his case were rejected. The judge gave four reasons for his rejection, none of which stood up to scrutiny, and which applied also to the parts accepted. The decision should be set aside and remitted to the First-tier Tribunal for a fresh hearing.

3. The position of the respondent was that apart from one minor point the grounds disclosed no inadequacy of reasoning, and the decision should stand.

4. Judge Morrison found that the appellant would be returned as someone who was a supporter and latterly a member of the LRA (Lord's Resistance Army) but that in accordance with country guidance and background evidence, and notwithstanding the expert report, he would qualify for an amnesty, which has been in place since 2004. These are the crucial paragraphs of the decision:

> "64. Finally Mr Devlin asked me to take into account Dr Verheoven's opinion as to the risk on return, set out in the final paragraph of his report... After stating that the Ugandan Government does not have a policy of general harassment and punishment of returning failed asylum seekers he goes on to suggest that the appellant, if he was an LRA combatant or perceived as such, *'would potentially face serious repercussions in the form of extensive interrogation and possibly torture'*. He goes on to refer to the amnesty but says that *'Its impact on the conflict has largely fizzled out and harassment of and discrimination against former LRA fighting is widespread. There is a significant difference between what the law states and what the reality on the ground in Northern Uganda looks like. Particularly in those cases where continued ties with Joseph Koni and his organisation are suspected, the CMI does not shy away from using force against presumed accomplices'.* Dr Verheoven concludes ... *'It would not necessarily be so much the alleged attack on Kilak but Mr M's general profile and presumed pro-LRA sympathies or even membership that would constitute a... risk...'*
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> 65. As I indicated earlier Dr Verheoven's report is not sourced but in relation to events which took place in Uganda from 2004 onwards he does have personal experience having spent a year at one of the IDP camps and has visited Uganda on various occasions since. There is nothing in his CV... to suggest that he has any expert knowledge... in relation to returnees. His suggestion that the effect of the amnesty has *'fizzled out'* does not sit easily with the other background information... I also have concerns in that Dr Verheoven does not appear to be aware of the country guidance system and makes no reference to any of the background country information which suggests that a large number of individuals have been granted amnesty and that the amnesty was renewed as recently as 2015... I cannot place any weight on Dr Verheoven's report insofar as it relates to risk on return and... I regard the other items of background country information... as carrying greater weight."

5. The appellant's argument is that the judge justified his rejection of the favourable parts of the report by reference to:

   (i) the lack of sourcing;

(ii) the expert's lack of relevant expertise;

(iii) the inconsistency of his opinion with country background information; and

(iv) the report's lack of reference to the country background information.

6. Justification (i) is said to be illogical, since none of the rest of the expert report was sourced either, in the sense of referring to specific publications and the like. Mr Matthews argued that there was nothing irrational about accepting parts of an expert report and not others, and that the points the judge declined to accept without sourcing were contraindicated by other evidence. Mr Devlin said that lack of sourcing could have been a sensible reason only to reject the *whole* of the report.

7. I am not persuaded by point (i). To accept some parts of the report which did not cite particular sources did not bind the judge to accept others. He was plainly influenced by the fact that there were clear contrary sources of information on the critical issue of the amnesty.

8. Mr Matthews conceded that point (ii) perhaps not well taken by the judge. He said that it was unimportant, while Mr Devlin submitted that the report either stood up as a whole or it did not, and that the expert plainly had appropriate credentials.

9. The expert was suitably qualified, indeed highly qualified. However, it remained for the judge's duty to decide which parts of his report and conclusions carried weight, and in my view he explained why.

10. On point (iii), Mr Devlin endeavoured to show that the judge misunderstood what the expert meant by saying that the effect of the amnesty fizzled out, through quoting the passage in full at paragraph 64 but only in part and to misleading effect at paragraph 65.

11. In my opinion Mr Devlin was trying to draw a non-existent distinction. Contrary to the argument I think the expert was indeed saying that the effect of the amnesty had fizzled out, at least to some extent. The judge was entitled to find the other evidence at odds with that, to prefer that other evidence, and to hold that the amnesty would be available to the appellant. While Mr Devlin sought to persuade me that the judge misunderstood the report in this respect, I was unable to follow this analysis. There does appear to me to be a contradiction between the report and other sources, which the judge had to resolve, and I see no inadequacy of reasoning in his coming down on the side which he did.

12. Mr Devlin's argument concedes that the expert report did not refer to country guidance or country background information, but submits that the undoubted expertise of the author is a good basis for his conclusions, and that the background evidence does not contradict his position nor bear to be comprehensive.

13. In my view the judge was entitled to conclude, for the reasons he gave, that the country guidance and background information show that the amnesty is effective in broad terms and for many thousands of people, the only likely exceptions being high ranking commanders accused of war crimes, a category which does not include the appellant.

14. Mr Devlin submitted that the rape of the appellant's wife in 2004, an incident which the judge accepted, showed that he had no benefit of amnesty. This in my opinion was validly countered by Mr Matthew's submission that in 2004 the appellant was not in the category of an applicant for amnesty.

15. Mr Devlin made an argument in his reply that paragraph 3.16.10 of the respondent's Operational Guidance Note 8.0 December 2013 should be read to the effect that even those perceived as low ranking members of the LRA might be responsible for serious human rights abuses and thereby excluded from refugee protection, which implied that they were to be treated as liable to a risk of persecution in the first place. I do not accept that analysis either of the policy in the OGN or of the underlying background evidence. I accept the respondent's submission that exclusion is considered where the circumstances suggest it, not only where the respondent accepts that there is a risk of persecution.

16. In my opinion, paragraphs 64 and 65 of the decision, read together and in the context of the background evidence and country guidance to which they refer, adequately explanation to the appellant why the opinion of Dr Verheoven on risk to a perceived LRA combatant is not accepted and why the contrary conclusion is reached.

17. The determination of the First-tier Tribunal shall stand.

18. An anonymity direction was made in the FtT. The matter was not addressed in the UT. The direction remains in force.

18 May 2016
Upper Tribunal Judge Macleman