



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11379/2018**

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision & Reasons
Promulgated
On April 23, 2019**

On April 3, 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR B K-P
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Bachu, Counsel, instructed by Tan Law Solicitors

For the Respondent: Mr Howells, Senior Home Office Presenting Officer

Interpreter: Ms Leschen

DECISION AND REASONS

1. On June 25, 2017 the appellant, a national of the Democratic Republic of Congo, entered the United Kingdom as a visitor having been issued with a visa enabling entry clearance until September 29, 2017. His wife had similarly been issued with a visit visa until the same date. He claimed asylum for them both on July 17, 2017. The respondent refused his application on September 12, 2018.

2. The appellant appealed this decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 26, 2018. His appeal came before Judge of the First-tier Tribunal Graham on November 29, 2018 and in a decision promulgated on January 14, 2019, the Judge dismissed his appeal on protection and human rights grounds.
3. The appellant appealed the dismissal of his protection claim/article 3 claim on January 28, 2019 arguing the Judge had materially erred by failing to have regard to all the documents when making findings on credibility. In granting permission to appeal on February 13, 2019 Judge of the First-tier Tribunal Keane gave permission on all grounds but identified two areas, in particular, namely the possible failure of the Judge to take into account (a) information given to the Immigration Officer by the appellant during his interview and (b) the appellant's explanation provided in the witness statement about the ACHDF (Congo Alliance for the Defence of Human Rights and Fundamental Freedoms).
4. Pursuant to Rule 14(1) of the Tribunal Procedures (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an anonymity order may therefore be to prohibit anyone not merely the parties in the case from disclosing relevant information. Breach of this order may be punishable as a contempt of court.

SUBMISSIONS

5. Ms Bachu adopted both the grounds of appeal and her skeleton argument. She submitted the Judge had firstly, failed to assess all the evidence and this was unfair and secondly, the Judge did not assess risk on return based on accepted evidence.
6. Ms Bachu referred to AM (Fair Hearing) [2015] UKUT 656 and paragraph 30 of SB (Sri Lanka) v SSHD [2019] EWCA Civ in which the Court of Appeal identified what the Tribunal should be considering when assessing a protection claim.
7. At paragraph 38, the Judge found the appellant had not addressed whether the ACDHF existed in the DRC. Whilst the Home Office had referred to a country information report no such report was included. The appellant had produced evidence (a letter at page 26 in the appellant's bundle) to show the party did exist and this undermined paragraph 39 of the respondent's decision letter and the Judge's finding on this issue. Ms Bachu submitted the letter was neither taken into account nor analysed by the Judge and the Judge did not put disputed issues to the appellant. The Judge also did not consider accepted evidence (see pages 55-90 of the appellant's bundle and the respondent's letter) that people who belonged to this group or had a political profile were at risk. The Judge failed to

make findings on this despite the respondent having accepted the appellant held the position of a government minister.

8. Mr Howells referred to paragraphs 38 to 39 of the Judge's findings on whether the group existed and submitted the Judge had concluded there was no reliable evidence. At paragraph 40 she found that even if the group had existed then there was no evidence the appellant was connected to it. The Judge made adverse findings in paragraph 38 which she held against the appellant. Although the Judge may have erred in paragraph 39 the Judge dealt with the minutes and membership card and gave reasons for no reliance being placed on them and those findings had not been challenged. Any error was not material.
9. The Judge went on to make credibility findings from paragraph 41-51 which led the Judge to find he was not at risk. At paragraph 52, the Judge rejected his claim to be president or in the alternative, considered the argument the organisation did exist. The grounds of appeal did not challenge those other findings.
10. He submitted that BM and others (returnees-criminal and non-criminal) DRC CG [2015] UKUT 00293 only dealt with Apareco and did not deal with the group the appellant claimed to be connected with.
11. In response, Ms Bachu submitted the Judge had erred in paragraph 39 and the grounds did challenge other areas. The Judge's failure to make findings infected other findings.
12. Whilst the decision of BM did not deal with his group, the Judge accepted he was a member of the MLC and became a government minister as claimed. There had been no analysis of whether this would place him at risk on return and this amounted to an error in law.

FINDINGS

13. The grounds of appeal lodged in this case and expanded on by Mrs Bachu challenge firstly, the Judge's consideration of the evidence and secondly, the application of BM and others.
14. Dealing with the second ground first Mrs Bachu argued that any high-profile political figure would be at risk of persecution. The Judge referred to BM and others in paragraph 33 (when summarising the respondent's case) but made no finding on risk to persons who held a position of authority.
15. The Upper Tribunal in giving guidance stated:
 1. A national of the Democratic Republic of Congo ("DRC") who has acquired the status of foreign national offender in the United Kingdom is not, simply by virtue of such status, exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR in the event of enforced return to the DRC.

2. A national of the DRC whose attempts to acquire refugee status in the United Kingdom have been unsuccessful is not, without more, exposed to a real risk of persecution or serious harm or proscribed treatment contrary to Article 3 ECHR in the event of enforced return to DRC.

3. A national of the DRC who has a significant and visible profile within APARECO (UK) is, in the event of returning to his country of origin, at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in MM (UDPS Members - Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers or spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.

4. The DRC authorities have an interest in certain types of convicted or suspected offenders, namely those who have unexecuted prison sentences in the DRC or in respect of whom there are unexecuted arrest warrants in the DRC or who allegedly committed an offence, such as document fraud, when departing the DRC. Such persons are at real risk of imprisonment for lengthy periods and, hence, of treatment proscribed by Article 3 ECHR.

16. In MM (UDPS Members - Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023 the Tribunal identified risk categories as persons having or being perceived to have a military or political profile in opposition to the government.
17. The appellant's claim was that he became President of the Alliance for the Defence of Human Rights (ACDHF) which was in conflict with the Kabala regime and this led to his arrest and detention in 2014 and 2016 and his removal from his home in 2017. The respondent did not accept this aspect of his claim although accepted he had been a member of the Movement for the Liberation of the Congo (MLC) and had become a government minister.
18. Applying the country guidance, I find nothing to support a general submission that any person who held a political post of some importance was at risk. The fact the appellant had been a member of the MLC and a government minister did not mean he was at risk of persecution. The country guidance decisions clearly identified those persons at risk and in paragraph 33 the Judge did give reasons for rejecting this aspect of his claim. I do not accept the Judge erred when deciding this issue.

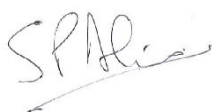
19. The other issue for me to consider is whether the Judge erred in his assessment of the evidence put forward to support the appellant's claim that he had been detained as claimed.
20. The Judge set out both the appellant's and respondent's claims and the grounds argue the Judge failed to consider all the evidence when making his findings. Mr Howells argued that the Judge did consider the appellant's claim and gave reasons for rejecting it in paragraphs 38 and 39 of his decision.
21. The grounds of appeal challenged the Judge's approach, particularly in paragraphs 34-41, but I am satisfied that reading the decision as a whole, the Judge has considered various aspects of the appellant's claim and made a number of adverse findings. The general findings made in paragraphs 35-36 were not the reason for the Judge rejecting this appeal but were additional factors that the Judge concluded undermined the appellant's credibility.
22. Between paragraphs 38 and 41 the Judge considered the evidence. Mrs Bachu criticised the Judge's approach, but the Judge made it clear in paragraph 6 that he would have regard to the appellant's bundle and referred to this evidence in paragraph 39. The Judge made adverse findings that he felt undermined the appellant's credibility and addressed other aspects of his evidence in paragraph 40.
23. Having rejected his claim to have been President, the Judge proceeded to look at his appeal in the alternative namely that his account of being President was plausible. The finding at paragraph 41 was clearly open to him as were the subsequent findings about his alleged detentions and subsequent releases. In paragraph 51 the Judge concluded that the appellant's oral evidence was materially different to that given in his witness statements and ultimately, he concluded at paragraph 52 the appellant was not credible.
24. Mrs Bachu argued the Judge did not follow the approach in AM (Fair Hearing) and SB (Sri Lanka) v SSHD but this was a detailed decision in which the Judge made a number of adverse findings for which he gave his reasons.

DECISION

25. I find there was no error of law and I uphold the original decision.

Signed

Date 10/04/2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because I have dismissed the appeal.

Signed

Date 10/04/2019

A handwritten signature in black ink that reads "SPALIS". The signature is written in a cursive style with a long horizontal stroke at the end.

Deputy Upper Tribunal Judge Alis