



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/13302/2012

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 21<sup>st</sup> June 2013**

**Determination  
Promulgated  
On 4<sup>th</sup> July 2013**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MR PATRICK ABOG**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Mendoza, Counsel, instructed by Miles Hutchinson & Lithgow

For the Respondent: Mr Clive Dewison, Home Office Presenting Officer

**DETERMINATION AND REASONS**

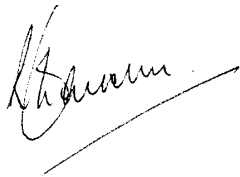
1. The appellant is a citizen of the Democratic Republic of Congo (“DRC”), who was born on 13<sup>th</sup> April, 1973.
2. The appellant has a long and detailed immigration history. He first arrived in the United Kingdom on 25<sup>th</sup> September, 2004, and claimed asylum. The appellant’s application for asylum was refused on 5<sup>th</sup> March, 2005, and he appealed that decision on 31<sup>st</sup> March, 2005, but then appears to have absconded. His appeal was heard in his absence and was dismissed on 23<sup>rd</sup> May, 2005, and his appeal rights were exhausted on 6<sup>th</sup> June, 2005.
3. On 15<sup>th</sup> December, 2005, the appellant again claimed asylum, but this time under an alias *Udo Udo Okwot*, a citizen of Cameroon, born on 17<sup>th</sup> September, 1980. A fingerprint check revealed a multiple application and the appellant was arrested. On 3<sup>rd</sup> March, 2006, at Croydon Crown Court the appellant was found guilty of attempting to obtain leave to enter by deception and sentenced to twelve months’ imprisonment. He was recommended for deportation. He did not appeal either his conviction or sentence.
4. On 12<sup>th</sup> January, 2007, the appellant was released on licence from prison into the care of the Royal Victoria Infirmary, Newcastle upon Tyne and later into the care of Newcastle social services. The former UK Borders Agency was informed that the appellant was terminally ill and would not be leaving hospital. A report from South Tees Hospitals dated 27<sup>th</sup> May, 2009, states that the appellant was diagnosed HIV positive in January 2007 with toxoplasmosis encephalitis. He has significant memory loss and is, or was at that time, in a care home with the support of workers to assist him on a daily basis. On 10<sup>th</sup> May, 2010, UK Borders Agency received a letter from South Tees General Hospital indicating their support to an application by the appellant to remain in the United Kingdom.
5. On 14<sup>th</sup> May, 2010, the appellant was notified of his liability to deportation from the United Kingdom. On 18<sup>th</sup> November, 2010, the appellant stated that he wished to return home to the Democratic Republic of the Congo and on 6<sup>th</sup> December, 2010, this was amended to Cameroon. On 7<sup>th</sup> December, 2010, a letter was sent to the appellant indicating that he could return, voluntarily to Cameroon, or via a facilitated return scheme to the Democratic Republic of Congo. On 13<sup>th</sup> December, 2010, the appellant stated that he was from DRC and not from Congo, but he still wished to return to Congo, since he had family living there. On 11<sup>th</sup> March, 2011, the appellant indicated that he no longer wished to return to Cameroon, and instead wanted his asylum claim to be considered. On 10<sup>th</sup> May, 2011, he indicated that he wished to return to Congo and a further letter was sent to him indicating that he could return voluntarily to Cameroon, or with the facilitated return scheme to the DRC. On 16<sup>th</sup> May, 2011, UK Borders Agency received a fax withdrawing the asylum claim.
6. On 23<sup>rd</sup> September, 2011, the appellant’s social worker confirmed that the appellant did wish to return to the DRC, at the earliest opportunity. The same day a disclaimer was sent to him for him to sign withdrawing any

outstanding application. On 18<sup>th</sup> October, 2011, the signed disclaimer in the case of voluntary departure was received at UK Borders Agency, signed and dated by the appellant on 11<sup>th</sup> October, 2011.

7. On 14<sup>th</sup> November, 2011, a new ICD 0350, Notice of Intention to Deport was issued to the appellant giving him ten working days to reply. On 15<sup>th</sup> December, 2011, UK Border Agency wrote to the appellant requesting a recent medical report from his doctor or consultant. This letter was dated 22<sup>nd</sup> December, 2011, and received by the UK Borders Agency on 5<sup>th</sup> January, 2012. The letter was from South Tees Hospital and it confirmed that the appellant's CD4 count was 589, with a viral load of more than 20. It also confirmed that he was receiving *Tenofovir* 245 milligrams per day, *Kaletra* two tablets twice daily and *Combivir* one tablet twice daily, as well as *Lansoprazole* and *Metroclopramide*, as required. It confirmed that the appellant's viral control to this regime had been excellent. The hospital also confirmed that the appellant is hepatitis B immune.
8. On 3<sup>rd</sup> February, 2012, a new Notice of Deportation decision, plus covering letter, was sent to the appellant at his last known address. Unfortunately it was returned by the Royal Mail marked, "addressee gone away", on 23<sup>rd</sup> February, 2012. On 25<sup>th</sup> April, 2012, UK Borders Agency wrote to the appellant's solicitors enclosing the Notice of Deportation letter, giving ten working days from receipt to reply and no reply was received. As a result the Secretary of State made a Decision to make a Deportation Order on 25<sup>th</sup> May, 2012.
9. The appellant appealed that decision to the First-tier Tribunal and a panel of the Tribunal, First-tier Tribunal Judge D J B Trotter sitting with Mrs L R Schmitt, heard the appellant's appeal on 13<sup>th</sup> December, 2012. In a determination promulgated on 2<sup>nd</sup> January, 2013, they concluded that the appellant's removal would not breach the Refugee Convention and they dismissed his human rights appeal.
10. I granted permission to appeal to the Upper Tribunal on 22<sup>nd</sup> March, 2013. There were three challenges to the panel's determination. The first alleging an error in the treatment of proportionality. The second erring in the assessment of proportionality in relation to the lack of care the appellant would have in the DRC and the last challenge was effectively a repeat of the first.
11. At the hearing today, Counsel addressed me suggesting, amongst other things, that in assessing proportionality and particularly bearing in mind the support the Tribunal had noted that the appellant receives from Ms Lavine, the Tribunal failed at paragraph 28 of their determination to consider that on return to the DRC the appellant would have no one to assist him with his daily care. That she suggested was an error of law.
12. Responding Mr Dewison sought to persuade me that there was no error, but indicated that in view of the fact that the Tribunal had concluded that

they were not going to allow the appeal, they must by implication have considered the lack of care available to the appellant in the DRC.

13. I indicated that I was satisfied that the grounds do disclose an error. I indicated to the representatives that I was minded to remit the appeal for hearing afresh before a new panel of the First-tier Tribunal in exercise of my powers under Section 12(2)(B2) of the 2007 Act. Both representatives agreed that that was an appropriate course.
14. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President's Practice Statement, given the length of time the parties would have to wait for the matter to be relisted before me in North Shields or at Field House and that it could, conversely, be heard relatively speedily by the First-tier Tribunal and in view of the overriding objective in forming the onward conduct in this appeal I have decided that the appeal should be remitted to the First-tier Tribunal for hearing afresh before a First-tier Tribunal Judge other than Immigration Judge David Trotter. Whether or not the judge sits with a lay member will be a matter for the First-tier Tribunal.



**Upper Tribunal Judge Chalkley**