



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

Appeal Number: DA/01366/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 14th July 2015**

**Determination issued
On 20th July 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

YOANY ABDELK NZINGA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A J Bradley, of Paton Farrell, Solicitors, Glasgow
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Angola, born on 3rd July 1981. The respondent on 20th August 2001 refused his asylum claim (against which he did not appeal) but granted exceptional leave to remain in the UK, which later became indefinite leave.
2. The appellant was convicted on 19th April 2013 at Glasgow Sheriff Court on a charge of possession of a controlled drug with intent to supply and sentenced to 396 days (15 months, reduced by 10% for a plea of guilty at the trial).

3. The respondent on 29th April 2013 invited the appellant to raise any reasons why he might fall within any of the exceptions to deportation. In a statement in response the appellant said that he feared political persecution in Angola, being a former beneficiary of refugee protection who was still afraid to return, and added, "My views are in opposition to the current Government".
4. In a letter of 14th June 2013 the respondent said she was aware that the appellant had been in the UK since at least 2001, and asked for details of any *sur place* activities since then.
5. The respondent made a deportation order dated 2nd and issued a notice to the appellant dated 3rd July 2013. This decision says that the appellant was granted exceptional leave due to UNHCR concerns at a time when males aged between 15 and 25 might be press-ganged by both sides in the civil war. However, on 4th April 2002 the Government and UNITA formalised a ceasefire, and elections were held in September 2008 which were accepted by UNITA and most other opposition parties:

The Secretary of State has therefore concluded that the circumstances whereby you were granted exceptional leave ... no longer exist ... We wrote to you seeking clarification of how your circumstances had changed since your asylum claim was refused to see if you had been engaged in any *sur place* activities ... You have failed to respond to that letter.

At page 5 the respondent says:

You claim that you are still afraid to return ... Your expression of fear of return was dealt with during your asylum claim in 2001 ... In addition the situation in Angola has altered drastically since you left in 2000 ... You claim that your views are different to the Government but have failed to expand on this despite being given the opportunity to do so.

The Secretary of State quotes information about generally peaceful elections in Angola and finds no reason to believe that deportation would breach the UK's obligations.

6. In his grounds of appeal to the First-tier Tribunal the appellant said:

The respondent states that the situation in Angola has improved since ... April 2001. This I do not accept because the political party in power in 2001 remains in charge now. The reality is that there is no democracy in Angola.

7. A Panel of the First-tier Tribunal comprising Designated Judge Murray and Mrs S Singer dismissed the appellant's appeal by determination promulgated on 10th September 2013 on all available grounds. He appeals to the Upper Tribunal only on the asylum aspect, on these grounds:

HJ (Iran) [2010] UKSC 31 ... confirmed the principle that if one was to require to conceal certain aspects of character, or to live discreetly in order to avoid persecution, this in itself can be deemed persecutory.

The appellant had confirmed as had two witnesses that he was afraid that he would be required to live discreetly regarding political views in order to avoid persecution in Angola.

The FtT confirmed at paragraph 52 that they did not consider that he was entitled to refugee protection as he “has not been engaged in any *sur place* activities in the UK”. The FtT failed to consider whether the appellant, who had lived in a functioning democracy in a society which strives to uphold many values which are not observed in Angola, would indeed wish to express political views if returned to Angola. In his witness statement and in supporting witness statements it had been confirmed that Mr Nzinga ... had political views ... likely to raise themselves given, for example, the level of corruption in Angola. It was incumbent upon the FtT to consider such evidence and to consider the risk to him on return. By focussing solely on whether he engaged in *sur place* activities the FtT neglected to consider evidence which may well have had a material bearing on the outcome ...

The FtT errs at paragraph 61. It has indicated there that there is “no evidence” that the appellant would be likely to speak out against the Government if returned to Angola. On the contrary the appellant has confirmed so in his witness statement (paragraph 41). Mario De Barros confirmed this (paragraphs 11 and 20) as had United De Barros (paragraphs 5 and 6) ...

8. Mr Bradley submitted that in the light of the evidence from the appellant and those two witnesses the FtT had clearly fallen into material error. The FtT failed to consider whether there was a reasonable likelihood of the appellant voicing political opinions about the regime and thereby running a risk of persecution. Whether he had spoken out when in Angola in the past was not relevant, long ago when he was a child. The FtT was wrong to say that there was “no evidence”. The errors were material because on further and proper consideration there might have been a different outcome. Mr Bradley asked for the determination to be set aside but said he was unable to ask for the appeal to be allowed outright on the evidence which had been before the First-tier Tribunal, and that the case should be remitted to the First-tier Tribunal for an entirely fresh hearing.
9. Mrs O’Brien in response said that in essence the grounds challenged the Tribunal’s clear finding that the evidence for the appellant did not discharge the burden upon him. At paragraph 51 the Tribunal said it had considered all the evidence, written and oral, and the submissions. At paragraph 52 the Tribunal noted that in his original claim the appellant had been unable to show a well-founded fear of persecution over and above the risk to life and liberty inherent in a civil war situation and had been unable to describe any single event of persecution directed towards him by the Angolan authorities or UNITA. There had been a ceasefire in 2002 and in 2008 legislative elections which were accepted by UNITA. He had not engaged in any *sur place* activities in the UK. The panel was entitled to find no evidence of a real risk on return for a Convention reason. The evidence before the panel showed that everything said at paragraphs 50 to 52 was correct. The question of “speaking out” in Angola had been mentioned but was not a prominent part of the claim put to the First-tier Tribunal. The Tribunal set out the oral evidence of United De Barros at paragraphs 22 to 24. He mentioned inability to speak one’s mind in Angola, but did not appear to have been asked how that might affect the appellant. The Tribunal had been entitled to find that there was no evidence that the appellant held any strong political opinion or was likely to incur the risk of persecution. The Tribunal had found as it was entitled to do that the appellant had not proved any case of persecution for reasons of political opinion.

10. Mr Bradley in response said that the respondent and the Tribunal misrepresented the appellant's original evidence in suggesting that he had no problems in Angola. At his original interview he described such significant matters as the killing of his father (said to have been a UNITA supporter), the loss of other relatives and having to live as a street child. At the time of that interview he was aged only 20. His character and attitudes could not be assumed to be unchanged after fourteen years of living in a country and culture where opinions can be freely expressed. An analysis of how he had changed and was likely to express opinions was lacking, and required to be undertaken.
11. I reserved my determination.
12. In the statement which he provided in the First-tier Tribunal the appellant says that in Angola he favoured the democrats not the communists and that some fighting still goes on in Angola; he prefers living in Scotland, where all parties are committed to democracy and he feels no need to be politically active; and in Angola human rights are abused. At paragraph 41 he says:

I would find it very difficult to bite my tongue in Angola. I would want to become active in opposition to the Government. People get killed there or tortured. I would be scared to get involved though. I am not sure if I would be able to. I feel strongly about this. My expectations of life and the way things should be have changed in the thirteen years I have been here.

I come from a political background. My father was an active member ... killed because he was supporting ... UNITA ... If I do take action I will probably end up like my father. The only thing that would stop me would be fear of the Government and what they would do.
13. In examination-in-chief and in cross-examination the appellant does not appear to have said anything further about whether he might become involved in politics if returned to Angola and if not, why not.
14. The witness Mario Alberto De Barros described in his statement how angry he was to see conditions in Angola when he visited there in 2011. He goes on:
 18. I don't see how Yoany would become even more angry than me if he was there. It would be awful for him. He doesn't have any family there as far as I know. He wouldn't know what to do with himself ...
 19. He has no-one to fall back on as far as I know. He may be recognised by someone who has done something bad to his family ...
 20. He doesn't understand how the country works. I think he would be too scared to get involved in politics.
15. It appears that in oral evidence the witness was asked what might happen to the appellant on return, but not about how he might behave, and on that point he did not add to the above.
16. The statement of the witness United De Barros, another friend of the appellant, includes the following:

The appellant often talks about the political situation in Angola ...

He has told me he doesn't support the Government. He always gets involved in political arguments and supports the opposition. I don't think he would be able to stop himself getting involved in politics if he is returned ...

17. Paragraphs 23 and 24 record the witness as saying that in Angola you cannot speak your mind and if you do not agree with the Government you are made to disappear. It does not appear that he was asked specifically about how the appellant might behave in Angola.
18. There was before the First-tier Tribunal the US State Department report for 2012. It is not recorded which side provided it (perhaps more likely to have been the appellant). Its opening summary describes generally peaceful and well organised elections, but includes limits on freedom of speech among the most important human rights abuses. There were reports during the year "that political party supporters and security forces arbitrarily killed at least eight persons during the year". Section 2 a of the report, "Freedom of Speech and Press", says:

Individuals reported practicing self-censorship but generally were able to criticize the government without fear of direct reprisals. The government engaged in subtle repression Multiple sources reported that citizens often curtailed their support of an opposition political party because they would suffer reprisals from MPLA supporters.
19. The Tribunal records the submissions for the appellant at paragraphs 38 to 49, including (at 47 and 48) submissions that he might well speak out against the Government, that he has political views, and that "being forced not to speak out is persecution in itself".
20. The above was the essential state of the evidence and submissions before the First-tier Tribunal on the aspect of the case which remains live, the risk of persecution for reasons of political opinion.
21. While the First-tier Tribunal had to bear in mind that a claim is not defeated because fear of persecution will prevent the expression of political opinion, it was for the appellant to prove his case, both as a subjective fear and as an objective risk. He had to show that he was likely to give voice to political opinions of such a nature and in such a way as might attract adverse attention, or that he would refrain only for fear of the consequences, and that such consequences might amount to persecution.
22. On the case before it, did the First-tier Tribunal's determination involve the making of any error on a point of law, or of any such error as might require the determination to be set aside?
23. The respondent had stated her view to the First-tier Tribunal of the situation in Angola, and cited specific changes. The appellant and his two witnesses generally denied any material improvement. The appellant made no specific reference to any background materials about risk to those who speak out openly against the government or against the MPLA.

Although the US State Department report (generally agreed to be a good guide) was before the First-tier Tribunal, nothing in it was cited by either side. The appellant's grounds and submissions to the Upper Tribunal do not suggest that he made any case on objective risk, other than by his own evidence and that of his two friends. No doubt they had knowledge of and opinions about their country, but they were not expert witnesses.

24. The past conduct of the appellant (not only before but since he left Angola) must have some relevance to his likely future conduct. There is little on which to base such judgments apart from past conduct and statements of future intent, which are easily made. Such political opinions as the appellant expresses are very general. They show no deep consideration of ideology or of the politics of Angola. It is clear that he and his witnesses are all repelled by the general circumstances in Angola, but that is a different matter. What he may do in Angola is of course a different question from what he has done in the United Kingdom, but the Tribunal had to decide on the evidence it had. Apart from some conversations with friends the appellant has expressed no political opinions and certainly not in a public or confrontational context.
25. The appellant based his case on an implicit presumption that "to speak out" in the way he vaguely describes would attract persecutory consequences. He did not produce or refer to evidence adequate to back that up. The case he had to meet was that the situation in Angola had significantly changed and that elections have been held, the result of which was accepted by parties including UNITA. Angola is far from an ideal state but it is no longer in a condition of civil war. The undisputed background is that UNITA gave up its armed struggle in 2002. Although a deep political difference remains between it and the MPLA it remains openly active in Angola, stands in elections and has seats in the legislature. I recognise that the US State Department report is qualified, but the general statement that citizens "generally were able to criticize the government without fear of direct reprisals" is against the appellant's case. It was accepted on his behalf that even if some error were to be found it was not one which could be remedied in his favour on the evidence which had been before the First-tier Tribunal.
26. The First-tier Tribunal rejected the submission that the appellant was likely to speak out against the government as he had political views. The evidence of likely motivation to become involved in any political activity which would give rise to any risk, and of refraining for fear of the consequences, was weak. The Tribunal should have said that there was no sufficient or adequate evidence, rather than "no evidence", but its conclusion was open to it. In any event, the appellant had failed to show that he was likely to be motivated to express himself in any way which would carry an objective risk. He has not shown any error by the Tribunal which on the evidence before it might have led to a different result.
27. The determination of the First-tier Tribunal shall stand.
28. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial "H".

Upper Tribunal Judge Macleman

17 July 2015