



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

Appeal Number: PA/03649/2016

THE IMMIGRATION ACTS

**Heard at Newport (Columbus Decision & Reasons Promulgated House)
On 17th August 2017**

On 27th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**F M
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Williams

Instructed by: Fountain Solicitors

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

- 1. Order 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 them or any member of their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The Appellant is a Congolese national born in 1980, who appeals the decision of the First-tier Tribunal (Judge A D Troupe), sitting at Newport on 9th January 2017, dismissing his international protection appeal.
4. The Appellant arrived in the UK with entry clearance as a visitor, to see his niece, on 20th October 2015. He claimed asylum on 30th November 2015 asserting that following his arrival in the United Kingdom he had been told by his brother, on 23 October 2015, from the Congo, that he was wanted by the police as a result of his political work for the Union Pan-Africain pour la Democratie Sociale (UPADS) in the referendum campaign of October 2015. The Appellant asserted that on 28th October 2015 the authorities destroyed his home, setting it on fire, and had arrested and tortured to death his brother. His wife fled the property to her parents' home and then on to the Democratic Republic of Congo, and her whereabouts, along with those of his children, were unknown.
5. The Respondent rejected that claim finding that the documentation submitted in support namely a UPADS membership card, a newspaper report, a wanted notice, and a letter from the Appellant's wife, were unreliable, carrying difficulties on their face and being inconsistent with the Appellant's claim, which itself contained inconsistencies and contradictions.

The Decision of the First-tier Tribunal

6. The judge had the benefit of hearing and seeing the Appellant give his evidence but did not believe his account concluding at [60]

"Having considered the Appellant's evidence in detail and in the round, and in the context of the objective evidence of the political situation in Congo at the time, I find the Appellant's account to be less than realistically likely and indeed to have been fabricated in an effort to remain in the UK."

7. I briefly set out the main findings of the judge.
8. The judge noted the Appellant's explanation that his UPADS membership card, conceded not to give the full name of UPADS accurately and to misstate the number of the Appellant's children and have misspellings of his names, contained printing errors, and his argument that if he had wanted to falsify the membership card he would have ensured that the details within it were correct. The judge attached no adverse weight to the difficulties on the face of the card.
9. The judge noted the Appellant's explanation that the newspaper article incorrectly described him as a member of another party, rather than UPADS as a journalistic error. The judge did not find that the inaccuracy determinative.
10. The judge noted the claim that even if the newspaper article did not corroborate that the Appellant was a member of UPADS, because it named

the wrong party, it still reflected that he was known as an opposition activist, and was currently actively sought by the police for investigation.

11. The judge found that the content of the article was inconsistent with the Appellant's claim when it asserts that he had actively participated in demonstrations because the demonstrations took place after the Appellant had left the country. The judge found that it was also inconsistent with the Appellant's account because he had not claimed to have "mobilised activists for the last meeting of the opposition in Pointe Noire" as the article asserts. Further, the judge noted, the Appellant had not claimed at any time that he was involved with "violent exchanges with the police" as the article described. The judge concluded that the article added little to the Appellant's case.
12. Turning to the wife's letter the judge noted that it was dated 21st November and addressed from Pointe Noire and was expressed to be written from her parents' home and found the position was contrary to the Appellant's claim that she had fled to the DRC by that time. The noted that when this discrepancy was pointed out to the Appellant at the hearing he offered the explanation that he did not really know because had not phoned his in-laws to enquire after her, because he was worried that they would ask him for money. The judge rejected that explanation as:

"unsatisfactory and less than credible. I find that had the Appellant been concerned for his wife's safety he would have phoned his in-laws to have enquired after her, but in fact he chose not to do so as it is plain from her letter that she was residing with her parents and was not seeking refuge in the DRC or anywhere else as the Appellant now asserts."

13. In respect of the wanted notice the judge noted the document had been emailed to the Appellant on 2nd November 2015 but he was unable to explain how the document had come into the sender's possession, or who had sent it to him. The Appellant had been unable to offer the judge an explanation as to how, on 23 October 2015, days before its issue on 25th October and the authorities coming to the house in pursuance of it on 28th October, his brother had told him by telephone that he was wanted. The judge noted that the wanted notice contained no reference number in the space provided in the heading, and the Respondent's point [54] that it was odd that it was issued three days before the police visited the Appellant's home, when it would be supposed that the police would have attempted to seek him out before issuing a wanted notice. The judge noted the absence of any verification of the document [55].
14. The judge found that the Appellant's account of his being sought by the police, and in that context his brother being tortured to death and his house burnt down,

"to be wholly disproportionate in the context of the broader country evidence. It is clear from the objective evidence that up to eighteen demonstrators had been killed in the demonstrations of 20 and 21 October, and that opposition leaders had been arrested and detained, and Mr

Makaya, an opposition party leader, had been sentenced to two years' imprisonment. There is no objective report however that the police attacked the Appellant's house and his brother as he claims and, given the Appellant's low political profile, I find that it is less than realistically likely that the police would have sought him out, let alone acted in the manner which the Appellant now claims."

15. The judge at [57, 58 and 59] gives examples of further inconsistencies in the Appellant's account of the police interest in him, pointing out difficulties with the provenance of the claimed letter from his wife, the difficulty with the account in the letter asserting that the Appellant's wife was at home when the claimed arson attack occurred, when at paragraph 19 of his witness statement the Appellant said that his wife had left the home on 23rd October, the attack apparently happening on 28th October.

The Grounds of Appeal

16. The grounds of appeal assert that in assessing the credibility of the claim the judge failed to give weight to the death certificate produced in relation to the appellant's brother which indicated that he had died as a result of wounds inflicted through torture. At the hearing, Ms Williams for the appellant made no separate submission on this point. I deal with it briefly. It is wrong to say the judge gave it inadequate consideration, he refers to it specifically in terms of the documentary evidence before him, and further takes it into account at para 56 as part of the evidence available going to the account of the authorities razing the appellant's house to the ground, causing his wife to flee, and in that context torturing and killing his brother on 28 October 2015. The judge mentions the certificate at the very beginning of his consideration so that it is clear he had it in mind throughout the assessment that follows. The death certificate is not determinative of the position, and the judge gives many and cogent reasons for why he did not accept the account. The grounds do not significantly take issue with any of those adverse credibility findings. The judge did not need, as the grounds aver, to decide if the death certificate was a forgery.
17. The Appellant appeals the judge's decision on the basis that the judge has inadequately assessed the article of 17 November 2015 submitted in support. The article did not limit the description of the Appellant's activities to the demonstrations that occurred after he left, and there was evidence that there had been demonstrations before the Appellant left, so that in fact his activities as claimed were consistent with it. The judge could not find that it was inconsistent with his claim.
18. I find no merit in that ground because, as the judge rightly pointed out, it had never been part of the Appellant's case that he was involved in any violent clashes with the police. The grounds rely on isolating a part of the evidence to read it in a way which could make it encompass earlier clashes. It is a nit-picking forensic approach, in effect reaching for a case that could have been drawn out on that particular piece of evidence. It fails to consider the basis upon which the claim was put. Similarly, even

were there earlier demonstrations the Appellant had not claimed to attend or mobilise for them. The judge was entitled to deal with the claim as it was made.

19. It is submitted that the Appellant's account could at least be said to be consistent with one of the claims in the article, namely that he was "mobilising activists to attend the last meeting at Pointe Noire", i.e. the demonstration that took place after he left the country. Mr Mills for the Respondent conceded that the article could be read so that the reference to "the last meeting at Pointe Noire" was a reference to the demonstration which was held at Point Noire, and which took place after he had left the country, so that the wording was consistent with the Appellant having been encouraging people to go to the demonstration, even though he was not in the country when it took place. I agree. However, I find that it does not carry the significance argued for by the Appellant because it does not disturb the judge's finding that the low-level activists who were encouraging people to attend those demonstrations are not shown by the objective evidence to be of any interest to the authorities. As Judge Troupe noted on the Appellant's account he was known to the police before he left Congo in the context of his efforts to mobilise people and yet he was allowed to leave on 20 October 2015 on his own passport without any difficulty, and the judge was entitled to conclude, as he did, that he was not wanted on the basis of his activities at that time.
20. At its highest, as Ms Williams accepted, the photocopy of the newspaper article of November 2015, by describing the Appellant as a leading light at the Pointe Noire demonstration incorrectly gives the Appellant a greater role than he really had. The submission before me, extending the case for the Appellant, encompasses the argument that the mischaracterisation of the Appellant in the newspaper article would itself give rise to a risk on return. The submission is that this is a Robinson obvious point that required an express finding from the judge as to whether the article was in fact a forgery, so that the judge's Tanveer Ahmed assessment of the photocopied article adding little to the Appellant's case is inadequate. I find no merit in the point. Not least because counsel did not raise it before the judge. The suggestion made for the first time in these proceedings: that the authorities would be aware of and hold the article sufficient evidence to give rise to risk is highly speculative and without evidential foundation. The argument fails to recognise that the article is not reliable evidence, it purports to indicate a pre-existing risk resulting in the flight of the Appellant which is incoherent on the Appellant's account because of his evidence that he was known to the authorities and was able to leave. The article lacks any authority because it is grossly inaccurate in many respects, but additionally it adds nothing to the authority's knowledge because as his passport shows, and the authorities had permitted, he was out of the country and not at the Pointe Noire demonstration as the article states.
21. The judge correctly following the guidance in Tanveer Ahmed, he assessed the weight to be given to the article in the round, to the point that on the

Appellant's case the information contained in the newspaper article that applied to him was already known to the authorities i.e. he was a low-level activist who had been encouraging people to attend the Pointe Noire demonstration, but was out of the country at the time. The conclusion that that would not be enough to cause him difficulties is unassailable.

22. Accordingly, the Appellant's second ground that the judge failed to consider that the article revealed him as being prominent within the protest groups or would bring him to the attention of the authorities in any event, does not succeed.
23. The third ground challenges the judge's findings that the Appellant had failed to establish his account of the police interest in him. This is a discrete point from that of the article because the article is dated 17th November and so it cannot be said the claimed events of 28th October have arisen from it. The grounds complain that the judge's criticism of the Appellant for his inability to respond to the point at the hearing is unfounded because it fails to take account that in his interview he did give an answer: he said that his brother might have been aware of that position because the police had been arresting other activists in the neighbourhood. There is nothing in this point. As the judge notes, if they were looking for him they could have come to his house. It was not his evidence that in the days prior the police were going to neighbours searching for the Appellant's address, so that it was commonly known that he was being looked for. The suggestion that the answer can be read as implying that the brother would have been able to put two and two together and warn the Appellant that as the police were looking for people involved in the demonstrations he was being looked for misses the concern. As the judge noted the Appellant's case was that his brother told him the authorities were looking for him. He was unable to explain how his brother knew that the authorities were looking for him. It is not surprising given that the judge did not refer to the interview evidence. There is no evidence it was drawn to his attention as sufficient to fill the gap which had become apparent in response to examination, but in any event, it does not provide an answer because it is merely speculation offered by the Appellant. It leaves intact the judge's point that the Appellant was unable to say how his brother knew that the authorities were looking for him.
24. Additionally, the point does not disturb the judge's conclusion that in the context of the background evidence it was not realistic that the police would be looking for him at all, the difficulties with the wanted notice document itself, nor the lack of verification. The judge was entitled to conclude that any weight to be placed on the wanted document depended on the overall credibility of the Appellant. The judge has given numerous and cogent reasons for finding that the Appellant lacked credibility. I remark for completeness that many of those credibility findings, including the entirety of the difficulties of the Appellant's account in respect of his wife being present during the claimed attack on his property, are not challenged. The decision reveals no material error. The judge was entitled

to find on the evidence at its highest that the Appellant's account was of a low-level activism encouraging people to attend demonstrations which were due to be held after he left the country, and his claim that as a result of his political profile his house was ransacked, his brother tortured to death, and the house burnt to the ground with his wife being forced to flee first to her parents, and then to the DRC, are discredited embellishments, expedient to obtaining an immigration benefit.

Decision

25. The decision of the First-tier Tribunal is not flawed by any material error and the decision dismissing the Appellant's international protection appeal stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge