



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00732/2016

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice, Belfast
On 16 May 2018

Decision & Reasons Promulgated
On 30 May 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

MBJ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Dougan, Nelson-Singleton

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

DECISION AND REASONS

1. The appellant, MBJ, was born in 1979 and is a citizen of the Democratic Republic of Congo (DRC). He claims to be at risk in DRC because he is a Christian pastor and that he had an association with Pastor Paul Joseph Mukungubila. The appellant claims that Pastor Mukungubila is the leader of the Church of the Lord Jesus Christ. He stood, unsuccessfully, in a presidential election in 2006. The appellant claims that Pastor Mukungubila has fled to South Africa following violent demonstrations in which a number of people were killed. An extradition application had been dismissed by the South African authorities in May 2015.

2. The appellant claims to have campaigned on behalf of Pastor Mukungubila in the 2006 election. He claims that he was detained in January 2014 for six months in consequence. He was accused by the DRC authorities in September 2014 of having been in communication with Pastor Mukungubila. He was arrested again in April 2015 and imprisoned. He was held for four months before an inspector in the prison arranged his release. The appellant lived at the home of a deacon until arrangements were made with an agent to remove him to the United Kingdom. The appellant's claim for international protection was refused by a decision of the respondent dated 20 January 2016. The Secretary of State did not accept that the appellant had supported Pastor Mukungubila as claimed.
3. The appellant appealed to the First-tier Tribunal (Judge Farrelly) which, in a decision promulgated on 20 April 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
4. The appellant asserts that the failure of the judge to make any firm finding as to whether or not the appellant had been detained as claimed had prevented a proper assessment of risk on return in accordance with *BM and Others (returnees – criminal and non-criminal) DRC CG [2015] UKUT 00293 (IAC)*. The Upper Tribunal had found the DRC authorities had an interest in certain types of convicted and suspected offenders, including those who had "unexecuted prison sentences". Upon return, those identified as such offenders, faced the real risk of imprisonment for lengthy periods which, in turn, would be likely to lead to treatment proscribed by Article 3, ECHR. The single ground of appeal asserts that the judge, by failing to make any finding as to the appellant's claim to have been imprisoned, prevented a proper assessment of risk on return.
5. The parties agree that the judge has misquoted the title of a case at [18]. It appears that he was seeking to refer to *AB and DM (DRC) CG [2005] UKAIT 00118*. What is clear, however, is that the judge has analysed in some detail the background material relating to Pastor Mukungubila. The judge can find no evidence to show that mere members of opposition political parties, as opposed to prominent figures or activists, would face risk in DRC. The judge could not find any reference to an attempted coup in 2013, such as that described by the appellant. Further, there was nothing in the country information referring to Pastor Mukungubila. In particular, there was no evidence to show the appellant had a profile in DRC as a political activist working on behalf of Pastor Mukungubila. Indeed, as the judge observes, there is "little evidence to show the pastor himself was active."
6. The judge's analysis is somewhat brief. However, it is clear at [16] that the judge found that there was insufficient evidence to link Pastor Mukungubila with the appellant. In other words, the judge found that the appellant had failed to prove that he had worked for Pastor Mukungubila as claimed and that he would be at risk on account of having carried out such work. The respondent submits that, given those findings, it was unnecessary for the judge to make findings about the appellant's claim to have been detained. That is because the claimed detentions only arose out of the appellant's claimed relationship with Pastor Mukungubila. I agree with that submission. It would have been helpful if the judge had made detailed findings on

all the various claims made by the appellant but, given that he has rejected the claimed relationship with Pastor Mukungubila, it must follow, as the Secretary of State submits, that the appellant was not detained as he asserts. Indeed, given the findings which the judge has made on the evidence, it may have been perverse for him to have found that the appellant had been arrested and detained. In the circumstances, the judge has not erred in law by failing to carry out an assessment of risk under the existing country guidance of *BM*.

Notice of Decision

7. This appeal is dismissed.

Direction 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 him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 29 MAY 2018

Upper Tribunal Judge Lane