



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11854/2018

Heard at Field House
On 3 January 2020

Decision & Reasons Promulgated
On 30 January 2020

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JKK
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Ijezie of Sky Solicitors

For the Respondent: Ms Bassi Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Behan promulgated on the 25 July 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of the Democratic Republic of Congo (DRC) born on 24 October 1997.

3. Having considered the evidence the Judge sets out findings of fact from [19] of the decision under challenge, those relevant to the issues at this stage being summarised in the following terms:

- i. It is accepted the appellant was involved in LUCHA to the extent he claims and that he was arbitrarily arrested and detained on three occasions in the DRC and that during all three occasions he was subjected to treatment that was degrading and inhuman in that he was beaten, held in very poor conditions and threatened with further violence and death [24].
- ii. It was not accepted there was a real likelihood legal proceedings had been commenced against the appellant or of his being summonsed or invited to a police station. It was not accepted there was a real likelihood of any of the documents produced being reliable [25].
- iii. It was not accepted the appellant left the DRC using a passport to which he was not entitled [26].
- iv. It was not accepted the appellant does not know where his parents are [27].
- v. The Judge was satisfied the appellant had been persecuted in the past on account of his political views which makes it more likely that he will be persecuted in the future, but the Judge did not consider the evidence showed there was a real risk that he is an individual specifically targeted by the authorities [44].
- vi. It was reasonable to suppose that the Kabila regime was motivated to suppress LUCHA because of its opposition to his Presidency demonstrated by calling for an election by drawing attention to the failures of the Kabila era.
- vii. At [50] the Judge writes: *“I have not been provided with evidence to show that similar harsh measures are being taken by the security forces at the behest of the current regime. The appellant said in his oral evidence that the UDPS share similar aims to LUCHA and so it is reasonable to suppose that the new President will not be as opposed to LUCHA as was Joseph Kabila. One would be naïve to think that the DRC since January become a country in which human rights including the right to protest are fully respected nonetheless the appellant’s case has been based on the events that took place under the Kabila presidency and the change of regime, is something that, it is reasonable to suppose has reduce the risk he faces if he continues LUCHA activities in the DRC.*

4. The appellant sought permission to appeal which was granted by another judge of the First-Tier Tribunal the operative part of which is in the following terms:

2. I am satisfied that there are arguable errors of law in the decision. In view of the Judge’s findings of fact it is arguable that the Judge should have found the Appellant to be a real risk on his return to DRC. It is arguable that at paragraph 45 the decision the Judge use the incorrect standard of proof. It follows from this that the Judge’s findings in relation to Articles 2 and 3 may be incorrect. I do note

however, that the Judge did not find the Appellant to be a member of a PSG as the Grounds assert at paragraph 4.5.

3. I am further satisfied that when considering Article 8 the Judge did not take account of the Appellants PTSD. However, this may not amount to a material error of law.

Error of law

5. In October 2019 it was known the Secretary of State was reviewing her position in relation to return to the DRC following the publishing of the “Unsafe Return III” report by Justice First in May 2019.
6. In the country guidance case of BM and Others (returnees –criminal and non-criminal) DRC CG [2015] 293 (IAC), heard in March and April 2015, the Home Office acknowledged, amongst other things, that, owing to the poor prison conditions, a period of detention of more than approximately one day would result in a breach of Article 3. The Upper Tribunal accepted this assessment as ‘clearly warranted by substantial and compelling evidence’ (paragraph 13). Conditions in detention centres and prisons continue to be very poor, with ill-treatment reportedly commonplace. It therefore remains the case that a person detained for more than a day, even for short period of time, is likely to face conditions that breach Article 3.
7. The Judge has found the appellant is a known opposition member or a person with an adverse profile who has been detained and ill-treated as a result of his political views in the past.
8. The issue of whether a person such as the appellant will be detained on arrival and ill-treated was considered at the core of the Unsafe Returns III report in which it is stated:

Returnees since 2012 have faced the following difficulties and barriers to integration.

- Destitution and hunger and homelessness if returnees have no family in Kinshasa. Returnees do not know who they can trust. People who have taken in returnees expect payment which puts a burden on families in the UK. Case Study 16 (Unsafe Return III P.33) met a human rights activist who described him in 2017 as ‘durty’ [sic] and crazy. He was sleeping on the streets. In 2012 the human rights group RENADHOC had stated to the UK Fact Finding Mission delegates that ‘Returnees without family in Kinshasa, they become mentally affected, with no one to care for them, no support, so become mentally ill, some just die.’
- Lack of ID (voters card) to present at checkpoints on the street will lead to risk of arrest. It is not possible to prove nationality.
- If unable to speak the local or national languages problems will arise. Speaking English puts returnees at risk of being identified as spies in communities where there are Secret Service/police informers. People in DRC believe Rwanda is infiltrating their country. Rwanda’s official language is English.
- Gaining employment has not proved possible for returnees.

- Even when returnees have been released from the airport or prison following payment, officers have gone to the address to re-arrest the returnee. The returnees have had to move on.
- Returnees have no support and no recourse for protection from United Nations Joint Human Rights Office, British Embassy or IOM as the returnees are not within their mandate.
- Money sent from UK families via Western Union cannot be accessed directly due to lack of ID. Intermediaries have to be used, putting the returnee at risk of exploitation. Returnees are threatened with exposure to the DRC authorities as a spy/combatant, if they do not hand over items/money sent from UK.
- Mental health problems exasperated by worries about their families in the UK and fears about personal safety.
- Phones and belongings have been stolen at N'djili airport and in prisons.

Communication with family by phone is difficult because phones cannot be charged, places of hiding are outside of network coverage and electricity cuts.

9. The respondent's current guidance in the November 2019 CPIN, at 2.4.26, states:

The onus will be on the person to demonstrate that they are of interest to the government because of profile and activities and are at risk of serious harm or persecution.

'The new cabinet in the Democratic Republic of Congo, announced on Monday morning 7 months after the inauguration of President Felix Tshisekendi, reflects the continued influence of former leader Joseph Kabila, reports the BBC's Gaius Kowane from the capital, Kinshasa'. Forty two of the 65 members of the Cabinet come from the FCC, his coalition which holds the majority in both Houses of Parliament. This leaves President Tshisekendi's side holding just one third of ministerial posts. Key ministries like defence, interior and finance have been split 50:50.

10. The Judge's belief that the elections in the DRC and the appointment of a new president represented a seed change in relation to human rights and the ability of individuals in the DRC to express opposition to the Kabila regime without facing adverse consequences, appears to be misplaced. No objective material has been provided suggesting this is so.
11. I find the Judge has erred in law for the reasons set out in the grant of permission to appeal such that the decision shall be set aside.
12. In light of the evidence regarding the real risk faced by the appellant on return, especially in light of the fact he has already come to the attention of the authorities as a result of his opposition views relating directly to the Kabila regime, and in light of the content of the Unsafe Returns III report, I find there is a real risk the appellant will be detained on return which will expose him to ill-treatment sufficient to engage his rights pursuant to article 3 ECHR in accordance with the country guidance case law.
13. I therefore substitute a decision to allow the appeal on human rights grounds pursuant to article 3 ECHR.

Decision

14. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed.**

Anonymity.

15. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 24 January 2020