



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

Appeal Number: AA/02805/2014

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

**Decision and Reasons
Promulgated**

On 25th February 2015

On 11th March 2015

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CN

(ANONYMITY DIRECTION MAINTAINED)

Respondent

Representation:

For the Appellant: Mr Irwin Richards, Home Office Presenting Officer

For the Respondent: Mr Halim, Counsel (instructed by Wilsons Solicitors LLP)

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-Tier Tribunal. Neither party invited me to rescind the order and I continue it pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. I will refer to the parties in the style by which they were referred to before the First-Tier Tribunal.

3. The appellant is a male citizen of the Democratic Republic of Congo (DRC), born 26 May 1986.
4. The appellant arrived in the United Kingdom in August 2008. He was in possession of entry clearance. The respondent had contended that this had been obtained by deception. On his day of entry he claimed asylum based upon fear of mistreatment in the DRC due to, *inter alia*, his race and his political opinion. His claim was rejected.
5. The appellant appealed against that decision and his appeal came before Judge of the First-Tier Tribunal Walker sitting at Newport on 15 September 2014. In a determination dated 23 September, Judge Walker noted that it had been accepted that the appellant had been granted asylum in Burundi. The appellant was in possession of a Burundian Passport, which he said was a forgery. The respondent contended that the Burundian Passport was genuine, but that stamps contained within that passport were forged.
6. Judge Walker concluded that the appellant would be at serious risk if returned to Burundi and at paragraph 86 of the determination, found that the appellant's claim for asylum "succeeds" and she then went onto allow the appeal at paragraph 88.
7. The respondent then sought leave to appeal based upon an allegation that the judge had made a material misdirection of law in reaching her conclusions. The grounds, in summary, contended that the findings of Judge Walker at paragraphs 83 to 85 (which were not challenged) should have resulted in the appellant succeeding under Article 3 ECHR, rather than being granted asylum. In short the appellant's fears in respect of a return to Burundi were based on non-asylum convention reasons.
8. On 6 November 2014, Judge of the First-Tier Tribunal Parkes granted permission to appeal, merely finding that the grounds were "arguable".
9. Thus the matter came before me sitting in the Upper Tribunal.
10. It is a very brief submission Mr Richards confirmed my understanding of the issue. The appeal should have been allowed, but under Article 3 and not in respect of asylum.
11. Mr Halim in his equally brief submission indicated that Judge Walker's eventual conclusion was correct. Reference was made to the Qualification Directive. The appellant was outside his country of origin. That country is the DRC. It has been accepted that he was a refugee from that country; hence he cannot return there and is entitled to refugee status.

12. At the conclusion of the hearing I reserved my determination which I now give with reasons.
13. This is a very unusual and complicated situation, although the issues before me are fairly straightforward and discreet.
14. The appellant's claim (as set out in paragraph 3 of Judge Walker's determination) is based upon a fear of mistreatment in the DRC for a convention reason. Paragraph 47 begins "at the outset of the hearing it was confirmed by the respondent that the respondent accepts that the appellant is from the DRC". The respondent's position before Judge Walker was that because of dual nationality the appellant could safely go back to Burundi.
15. The evidence before Judge Walker from the appellant was that he could not return to Burundi. He was in possession of false documentation. Judge Walker drew upon the contents of expert reports on the documentation and concluded at paragraph 85 that the appellant's documentation "does not entitle him to citizenship in Burundi and he could not be returned there because he would face prosecution, and as a result it would be likely that he will be at real risk of suffering serious harm".
16. To summarise the findings of Judge Walker, the appellant faced persecution for a convention reason in DRC. He could not be returned to Burundi because he faced a real risk of suffering serious harm (i.e. Article 3 - Protection). The appellant had discharged the burden imposed upon him.
17. Paragraphs 85 and 86 of the determination explained the decision of Judge Walker.
18. Clearly the appellant's country of origin (as accepted by the respondent) is the DRC. He cannot return for a convention reason and he is entitled to asylum status. Whilst Judge Walker's determination is silent with regard to the Qualification Directive, the judge reached a conclusion based upon the evidence and her findings from that evidence whilst the appellant's fear is not based upon a convention reason in respect of Burundi; it is based upon his fear as a recognised refugee from DRC.
19. Judge Walker's determination contained no material error of law and her decision must stand.
20. The respondent's appeal dismissed.

Signed

Date

Upper Tribunal Judge Poole