



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00184/2017

THE IMMIGRATION ACTS

Heard at Field House
On 1st December 2017

Decision & Reasons Promulgated
On 17th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

P-B T-S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Ferguson, Counsel, instructed by Ansah Solicitors

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of the Democratic Republic of Congo (DRC) born on [] 1978. The Appellant first arrived in the UK in June 2005 when he was granted leave to enter as a student until 31st October 2005. He was then granted subsequent periods of leave to remain in the same capacity until 30th September 2009. Thereafter the Appellant applied for further leave to remain as a student and also as the dependant of an EEA resident, but these were refused. Having indicated that he

wished to make an Assisted Voluntary Return to the DRC in 2012, the Appellant was arrested on 22nd August 2015 as an overstayer. He applied for asylum on 25th June 2016. That application was refused for the reasons given in an Asylum Decision dated 20th December 2016. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Zahed (the Judge) sitting at Hatton Cross on 6th February 2017. He decided to dismiss the appeal on asylum and human rights grounds for the reasons given in his decision dated 5th May 2017. The Appellant sought leave to appeal that decision, and on 20th September 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the asylum appeal because he found the Appellant to be lacking in credibility and did not believe what the Appellant said about his reasons for seeking asylum. The Judge dismissed the Appellant's human rights appeal because he found that the Appellant had no family in the UK and had not given any evidence as to the Appellant having a private life in the UK.
4. At the hearing before me, Ms Ferguson submitted that the Judge had erred in law in coming to these conclusions. She referred to the grant of permission and argued that the Judge had relied too much upon the reasons for refusal given in the Respondent's Asylum Decision. The Judge had failed to give any proper consideration to what the Appellant had said during his asylum interview. However, Ms Ferguson accepted that the Appellant had returned to the DRC in 2008, 2009, and 2010. He had also inquired about the possibility of an Assisted Voluntary Return in 2012.
5. As regards the Appellant's human rights claim, Ms Ferguson argued that the Judge had given a wholly inadequate analysis at paragraph 21 of the Decision.
6. In response, Mr Kotas referred to the Rule 24 response and argued that there had been no such errors of law. The grounds of application for leave amounted to no more than a disagreement with the decision of the Judge and therefore an attempt to re-litigate the appeal. The Judge had made findings open to him on the evidence and had explained his reasons for his decision so that the Appellant knew why he had lost his appeal. The Appellant's own evidence summarised at paragraph 8 of the Decision was that the Appellant had no profile in the DRC.
7. As regards the delay in the Judge producing his Decision, Mr Kotas submitted that there must be a causal link between the delay and any error of law. In this case, any error was not material because the Appellant's appeal was bound to fail in any event.
8. I find an error of law in the decision of the Judge concerning the Appellant's asylum appeal. The decision of the Judge in this respect is based entirely upon his findings of fact and as to credibility. However, those findings are unsustainable and unreliable because of the delay in the Judge producing his written decision. He

heard the appeal on 6th February 2017, and his Decision is dated 5th May 2017, very nearly three months later.

9. However, I find such error not to be material. Owing to the fact that the Appellant returned to his own country three times between 2008 and 2010, and inquired about the possibility of an Assisted Voluntary Return in 2012, it must be the case that the Appellant's claim to have a fear of returning to the DRC is not credible. His asylum appeal therefore cannot succeed regardless of any error of law.
10. I also find an error of law in respect of the human rights decision. The Judge's consideration of this part of the matter is cursory in the extreme. It is not in dispute that the Appellant has no family in the UK, but it cannot be the case that he has no private life in that country bearing in mind that he has lived, studied, and worked there since June 2005. The Judge's decision that the Appellant has no private life in the UK which the Judge has not sufficiently explained amounts to an error of law.
11. I did not proceed to remake the decision in the appeal. There needs to be much further evidence of the Appellant's private life in the UK and therefore my decision is that the decision in the appeal will be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements.

Notice of Decision

12. The making of the decision of the First-tier Tribunal did involve the making of a material error on a point of law but only as regards the Judge's decision to dismiss the appeal on human rights grounds.
13. I set aside that decision.
14. The decision in the appeal will be remade in the First-tier Tribunal.

Anonymity

15. The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Tribunal.

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

Dated 15th January 2018

Deputy Upper Tribunal Judge Renton