Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13107/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Determination Promulgated**
On 21st September 2018	**On 25th September 2018**
Prepared on 21 September 2018	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

J. K.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: in person
For the Respondent: Mr Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of the DRC, entered the United Kingdom lawfully on 12 September 1998 as a student.

He did not claim asylum until 7 June 2017, when he relied upon his ethnicity as a member of the majority Bakongo, and, the fact that his siblings had been granted refugee status in the UK and France. The Respondent refused that claim on 28 November 2017.

2. An appeal against this decision to refuse a protection claim was heard and dismissed by First Tier Tribunal Judge Cope in a Decision promulgated on 20 April 2018. In the course of that decision the Judge concluded that the Appellant had not told him the truth. He rejected the claim that an individual who was perceived to be a member of the Bakongo was at risk in the DRC on that basis alone. He noted that the Appellant had never been politically active, and had no desire to become so. He noted that none of the Appellant's siblings had offered any evidence in support of his claim, and he rejected as untrue the Appellant's denial of knowledge of the basis upon which they had successfully claimed asylum.
3. Permission to appeal was granted against the decision of Judge Cope by First Tier Tribunal Judge Boyes on 15 June 2018 on grounds that the Appellant accepts were professionally drafted, although no firm was by then on the Tribunal record as acting for him.
4. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
5. Thus the matter came before me.

The hearing

6. When the appeal was called on for hearing the Appellant accepted that he had not drafted the grounds of the application for permission to appeal, and that he did not understand their content. He was content to rely upon them, and not to say anything in addition, although he drew to my attention that he had now lived in the UK for more than 20 years.
7. The Respondent's stance was that despite the grant of permission, the grounds disclosed no material error of law.

The grounds

8. The grounds make no complaint over the Judge's dismissal of the Article 8 appeal. That was a decision that was plainly open to him on the evidence, and it was adequately reasoned. Accordingly it is not open to me to entertain any challenge to it, even if with the passage of time the Appellant has now accrued 20 years life in the UK (albeit the vast majority unlawfully). If the Appellant

considers that this milestone means that he is in a position to make another application for leave to remain then it is open to him to do so.

9. The first ground complains that the Judge erred in his approach to the indisputably significant period of time spent in the UK, and the number of applications made by the Appellant to the Respondent seeking a grant of leave to remain, before he made any claim to asylum. The Judge characterised that behaviour as delay, and in my judgement he was right to do so; indeed the grounds do not suggest otherwise. Instead the grounds complain that the Judge could only lawfully consider delay in the context of paragraph 339L of the Immigration Rules, rather than s8 of the 2004 Act, relying upon the Respondent's own API v9 of January 2015 "Assessing Credibility".
10. The short answer to this is that it is a complaint of no substance whatsoever. Paragraph 339L(iv) refers to the need to make a claim at the earliest possible time, unless a good reason can be demonstrated for not doing so, in the context of considering whether corroboration should be expected of an applicant. As the Judge pointed out there was no good reason at all for this delay, if the Appellant's account were true. Moreover, there was no reason that could be identified as to why the Appellant's siblings would not corroborate his account, if it were true – if they had indeed acquired refugee status in France and the UK in reliance upon a similar basis to that advanced by the Appellant. Thus the adverse credibility findings that were made were well open to the Judge on the evidence, for the reasons that he gave.
11. The second ground complains that the Judge erred in his approach to whether the Appellant had an objectively well founded, and subjectively genuine fear of persecution. There is no substance to this complaint either. The Judge rejected, giving adequate reasons for doing so, the claim that the Appellant had any genuine fear of harm in the DRC for the reasons given. The Judge went on to note that there was also no objective basis for the fear of harm that he had relied upon. Those findings were also well open to him on the evidence, and were adequately reasoned.
12. It follows that I dismiss the appeal.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 20 April 2018 contained no error of law in the

dismissal of the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

> Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 21 September 2018