



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

Appeal Numbers: PA/10502/2018

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice Centre
On 18 January 2019**

**Decision & Reasons
Promulgated
On 12 February 2019**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**TD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sarwar, D & A Solicitors

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

DECISION AND REASONS (given extempore on 18 January 2019)

1. The respondent is a citizen of the Democratic Republic of Congo ('DRC'). He applied for asylum on 6 September 2016. That was refused by the Secretary of State for the Home Department ('SSHD') in a letter dated 15 August 2018. As I am anonymising the case I shall refer to the appellant before the First-tier Tribunal ('FtT') as TD. The appellant before me and the respondent before the FtT is the SSHD.

Background

2. The FtT allowed TD's appeal, finding against the SSHD that he was and is a citizen of the DRC and that he was subjected to serious harm for a political opinion imputed to him as claimed. The SSHD has appealed against that decision to the Upper Tribunal ('Ut') with permission having been granted by FtT Judge Kelly.

Summary of Asylum Claim

3. TD claimed to have been born in the DRC and to have had his own car repair business. He had contracts with the Kabila regime. He claims that there was a motorbike accident in 2011 and his business came under suspicion for having tampered with the motorbike used as part of the President's supporting vehicles. He claims that he was arrested in September 2011, taken to a military base and held for eight months during which time he was tortured but that he managed to escape to Angola in April 2012 where he resided with family friends. They assisted him to get fake identification documents in Angola and he lived there for some time. He claims that he was identified when in Angola and he was detained there, before being flown back to the DRC. He again managed to escape at around the end of August 2016 with the help of a Catholic priest and fled from the DRC to the UK using an Angolan passport.
4. The SSHD did not accept that TD is a DRC national and provided comprehensive reasons for that position at [28] to [34] of his decision letter. The SSHD did not accept that he was able to obtain the Angolan documents that he did without them being genuine and also noted that the account that he provided was implausible. The SSHD also addressed the claim that he was viewed adversely by the DRC regime. The SSHD specifically rejected the documents supporting TD's claim. These included letters from lawyers in the DRC, birth certificate related documents, and a letter from an organisation named the Angels of the Sky. The SSHD did not accept that these documents, which were said not to be original documents, should have weight attached to them. The SSHD also regarded TD's account to be implausible and provided reasons for that.
5. That decision was appealed by TD to the FtT. TD relied upon a number of supporting documents before the FtT. These included a witness statement from him, photographs, a statement from the Movement of Liberation of the Congo. That last document described there being searches for TD, who was said to be born in Kinshasa, because he had disappeared in 2011; that document is to be found at page 10 of the bundle before the FtT. There are also documents confirming TD's birth in the DRC. At page 15 of the bundle there is a document titled Application for Supplementary Judgment of Birth

Certificate. This describes TD as having been born in Kinshasa, gives his date of birth and gives details of his parents. Page 22 is a copy of a birth certificate, described as an integral copy of a birth certificate; that also refers to TD having been born in Kinshasa. TD obviously also relied upon the evidence that had already been considered by the SSHD including the Angels of the Sky letter dated 22 April 2015. This described TD as having been detained, summarised the circumstances of that detention in September 2011, and described the family as fearing that they could not find him and wished to visit him. In the lawyer's letter written by a Mr Kabangela Ilunga is dated 4 May 2015, the following is stated:

"I am consultancy lawyer appointed by the members of the family of Mr TD concerning his physical integrity. In fact since the course of the year 2011 and as a result of an accident caused by an engine failure of the presidential cortege where he previously repaired accident interpreted by the security service as an attack directed toward the head of state Mr TD is being searched for this reason. In order to avoid the extrajudicial sanctions Mr TD has fled to Angola from where he was expelled to his country the DRC. In fact being searched by the Congolese Intelligence Service so as to be arrested TD left the country clandestinely and returned to Luanda, the Angolan capital where he thought he was safe. According to the information known by his family Mr TD has been arrested by the police in Angola who in turn handed him over to the Intelligence Services of the Democratic Republic of Congo or he would be kept in secret in an unknown place here in Kinshasa and this since after April 2015 and according to them his family has not heard any news from him this being the reason why they have contacted me at my lawyer's office. This is the reason why I look for your competent advice so that light is shed upon the health condition and the state of the detainee. Hoping that nothing worse happens to him I would be grateful if you would accept Mr General Attorney the expression of my highest consideration".

The letter was addressed to the General Attorney at the Court of Appeal of Kinshasa.

6. The FtT heard evidence from TD with the assistance of a Lingala interpreter. The FtT found that TD was a DRC national and not as the SSHD claimed an Angolan national. In so finding the FtT noted that the SSHD had not undertaken any verification of the various nationality documents. The FtT also regarded it as significant that TD's children were accepted by the SSHD to be nationals of the DRC. The FtT noted the letter from the lawyer that I have quoted in full and was satisfied that weight could be placed on the letter having considered the profile of the author, as contained in the bundle before it. The FtT noted that TD's late wife was also accepted to be a national of the DRC. The FtT then said this:

"27. When I take all these matters together and also take into account the documents at pages 10, 15 and 22 of the appellant's bundle and at page 113 of the respondent's

bundle I am satisfied that despite the appellant having had an Angolan passport he has shown to the lower standard that he is a national of DRC.

28. I am also satisfied that the claims of the appellant are credible. Once again I take note of the letter from Mr Ilunga which confirms the claims that have been made. However I have also noted the various documentation contained in both the appellant's and the respondent's respective bundles and in particular the letter from the Angels of the Sky. I am satisfied that it cannot be simply dismissed as reproductions as the refusal letter does. Further, the refusal letter appears to concentrate on the plausibility of the appellant's claim rather than the appellant's credibility.
29. The appellant has also been largely consistent in his claims.
30. When I consider all these matters I am satisfied to the lower standard the appellant's claim is a credible one and he would be at real risk on his return to DRC because of his imputed political opinion. I am further satisfied that he has been able to escape from detention in DRC on two occasions and that because of this he would be known to the authorities on return ..."

Grounds of appeal to the UT

7. The SSHD drafted three grounds of appeal.

Ground 1 submits that the findings regarding TD's DRC citizenship and Angolan citizenship were not open to the FtT.

Ground 2 submits that the FtT made a material mistake of fact regarding the letter from the Angels of the Sky and misunderstood the SSHD's arguments.

Ground 3 contends that the FtT failed to engage with the reasons outlined in the SSHD's decision letter and failed to provide adequate reasons for its conclusion that TD provided credible evidence.

8. In a decision dated 25 October 2018 FtT Judge Kelly granted permission to appeal. He however observed that it was not arguable that the FtT gave inadequate reasons for its finding that TD was a citizen of DRC given the extensive reasoning contained at [20] to [27] of the decision and refused permission to appeal on this ground. He however observed that it is arguable that the FtT fundamentally misunderstood the SSHD's case concerning the Angels of the Sky document and gave inadequate reasons as to why it found that TD had substantiated the remainder of his narrative to the appropriate standard. The FtT therefore purported to give permission on grounds 2 and 3 but not ground 1.

Hearing Before UT

9. At the hearing before me Mr Bates argued that although the grant of permission purported to be limited, the FtT did not comply with the guidance contained in Safi & Ors (permission to appeal decisions) [2018] UKUT 00388 (IAC). This states that it is essential for a judge who is granting permission to appeal only on limited grounds to say so in the standard form of the document that contains the decision as opposed to the reasons for the decision. Mr Bates made it clear that because the FtT failed to make the decision clear in the correct part of the decision the SSHD was not given any proper procedural opportunity to make an application to renew that ground. Mr Bates therefore indicated his intention, relying upon Safi, to rely on all three grounds of appeal.
10. Mr Sarwar was given an opportunity to deal with that application and indicated that he was content to respond to all three grounds.
11. Mr Bates submitted that the FtT erred in law in its approach to TD's nationality for the reasons set out within ground 1. Mr Bates argued that the FtT failed to take into account that the children's nationality could not be determinative because they could have got that nationality through their mother who was a DRC national or their father, TD, might have been a dual national. As to ground 2, Mr Bates submitted that the FtT failed to deal with the reason explained within the decision letter why the Angels of the Sky letter should have little weight attached to it. In relation to ground 3, Mr Bates took me to the decision letter itself and invited me to find that the FtT provided inadequate reasons for rejecting the matters contained therein.
12. In response Mr Sarwar invited me to find that the grounds were not made out and that although the FtT's reasoning is brief it is adequate. He referred me to the decision in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) in which the then president Mr Justice McCloskey said this at [11]:

"The depth and extent of the duty to give reasons will inevitably vary from one case to another. The duty is contextually sensitive. Thus, as the Upper Tribunal observed in Shizad [2013] UKUT 35 (IAC), a Tribunal's reasons need not be extensive if its decision makes sense. See also R (Iran) v SSHD [2005] EWCA Civ 982".
13. Mr Sarwar submitted that the context in this particular case was such that three points were worthy of emphasis. The first is that the meat of the SSHD's decision was to the effect that he did not accept TD's claimed nationality, that is he did not accept that he was a citizen of the DRC or live there and as such his entire account, which was predicated on his employment and activities and detention in the DRC, could not be accepted. Secondly, the FtT accepted the lawyer's letter which I have quoted in full and that this confirmed the core of TD's case. That letter supported TD's claim to a very great extent. Thirdly, the FtT was well aware of the SSHD's concerns in the decision letter being focused upon the plausibility of the claim and was

entitled to give short shrift to this, bearing in mind the acceptance of the supporting evidence adduced by TD and the lower standard of proof.

14. In reply Mr Bates submitted that it was still unclear from the decision why the FtT was prepared to find TD credible. That meant that the reasoning was simply inadequate and there was therefore an error of law.

Error of Law Discussion

Ground 1

15. The FtT clearly addressed TD's claim to be a DRC citizen and made comprehensive findings in that regard. The FtT was entitled to observe at [22] and [23] that the SSHD had not undertaken any verification checks of TD's Angolan or DRC passport. In making that observation the FtT was factually correct. The FtT was entitled to note this. When the decision is read as a whole, the FtT did not necessarily place great weight on this failure, rather the failure is simply noted. I do not accept the submission that the FtT required the SSHD to establish TD's nationality and therefore inverted the burden of proof on nationality. The FtT was simply passing comment on the absence of any verification on the part of the SSHD.
16. Turning to the FtT's findings regarding TD's children, the FtT was entitled to note that it was significant that the children were named in his passport and that it was conceded that those children were nationals of the DRC. The FtT was well-aware that the children had a DRC citizen mother. The FtT went on at [25] to say that it placed weight on the lawyer's letter. The lawyer's letter does not state that TD is a citizen of the DRC but the way in which the letter is written certainly gives the impression that that was the case. The FtT also referred to documentation at pages 10, 15 and 22 of the bundle before it. I have summarised that evidence above. It all supported TD's claim that he was a citizen of the DRC, in particular the evidence relevant to his birth in the DRC. The FtT in these circumstances was entitled to take all of that evidence into account, consider it together in order to be satisfied that TD had displaced the burden upon him to establish that he is a national of the DRC. It follows that I do not find ground 1 to be made out.

Ground 2

17. Ground 2 submits that the FtT made a material mistake of fact in relation to the Angels of the Sky document. Ground 2 includes the following:

“The SSHD did not accept the letter submitted by the appellant which was purported to be from Angels of the Sky. This was on the basis that the address in the document did not match the documented address of the organisation on their website”.

The decision letter says something slightly different at [36]. This says that the Angels of the Sky letter has a different contact address from what is held on the organisation’s website and then a footnote is provided. That gives a website address. It cannot be said that the FtT did not engage with the point that was being made within the decision letter concerning the Angels of the Sky document because at [19] the FtT Judge records having asked the SSHD’s representative on what basis the submission at [36] of the decision letter had been made. The FtT says this at [19]:

“She referred me to the footnote. I indicated I had seen this but was unable to understand from where the author of the refusal letter had made the finding at paragraph 36. The appellant’s representative referred me to page 26 of the appellant’s bundle which was a copy of the website. This appears to give an address for www.societecivile.cd which would appear to be a hosting website for Angels of the Sky. The respondent’s representative said she was unable to help me further as she had no other evidence in this regard”.

What is clear is that the FtT sought clarification regarding the point that was made in the decision letter. The SSHD’s representative was unable to provide that clarification beyond repeating what was in the decision letter. Given the absence of any clarification, and in the light of the point that TD made in his witness statement that the letter did not provide a website address but rather provided contact addresses which were consistent, the FtT was entitled to accept the evidence from the Angels of the Sky.

18. Ground 2 is put on the basis that there has been a mistake of fact but as Mr Sarwar pointed out, that submission comes nowhere close to establishing the necessary ingredients for the mistake of fact to constitute an error of law. The SSHD has been unable to set out what the mistake as to the existing fact was. The SSHD has also been unable to categorise the fact or the evidence as established. It follows that ground 2 is not made out.

Ground 3

19. I turn to ground 3 which is perhaps the strongest of the grounds given the very brief way in which the FtT deals with the credibility of TD’s claim as to what happened when he was in the DRC. The FtT was satisfied that TD’s claims were credible and that he had been largely consistent. The FtT was aware of the plausibility concerns held by the SSHD because the FtT referred to these at [28]. The FtT was entitled to regard the SSHD’s credibility concerns as mainly being predicated upon apparent implausibility. That this is so is clear from a reading of

[35] to [43] of the decision letter, which focus upon the apparent plausibility of the account. Standing back from the accounts as I have summarised them to be, aspects are undoubtedly apparently implausible. It was apparently implausible that TD was able to escape twice and that he would be viewed so adversely for having been a mechanic or involved in the repair of the motorbike. However, the FtT made it clear that it was applying quite properly the lower standard of proof where apparently implausible events can nonetheless be reasonably likely.

20. In my judgment what is key in this case is that the FtT clearly accepted the supporting independent evidence adduced by TD. That included the letter from the lawyer which confirmed the basis of the claim, the letter from the Angels of the Sky which was consistent with what the lawyer had said, and the documents referred to pages 10, 15 and 22 of the bundle, the document at page 10 also being consistent with what the lawyer and the Angels of the Sky had said. Therefore, although there was apparent implausibility, the FtT was entitled to find that the account was nonetheless credible given TD's credibility and the wide array of independent evidence in support of his account, which the FtT regarded to be credible and cogent. It may well be that the FtT's approach to TD's credibility and the supporting documentary evidence might be described as generous, but it cannot be described as perverse, indeed the SSHD has not sought to do so.
21. Whilst I entirely accept that the FtT's reasoning and engagement with the SSHD's position could have been more comprehensive, in my judgment it was adequate. The SSHD should be able to discern why he was unsuccessful before the FtT. Contrary to the SSHD's submissions, the FtT accepted the supporting evidence from various sources to corroborate TD's nationality and his account of having been detained and ill-treated in the DRC. Notwithstanding the apparent implausibilities in TD's account, the FtT was prepared to accept it as credible when all the evidence was considered in the round. For these reasons ground 3 is not made out.

Notice of decision

22. The FtT decision does not contain an error of law and is not set aside.

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 his 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

UTJ Plimmer
Upper Tribunal Judge Plimmer

31 January 2019