



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

Appeal Number: AA/04237/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 January 2016**

**Determination Promulgated  
On 25 February 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**DB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hodson of Elder Rahimi Solicitors

For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.
2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds

against a decision taken on refusing to grant her further leave to remain and to remove her to the Democratic Republic of Congo (“DRC”).

### **Introduction**

3. The appellant is a citizen of the DRC born in 1948. She claims that she fears persecution by the authorities in the DRC because she was accused of preaching against the government. She was a member of UDPS. She had been arrested three times and ill-treated and was sent a summons in her absence. The government went to her home address in July 2014 and required her to report.
4. The appellant applied for a UK visit visa in March 2011 but that application was refused. Her subsequent appeal was allowed in October 2013 and she was issued with a 6 month family visit visa valid from February 2014 to August 2014. She arrived in the UK on 4 April 2014 and claimed asylum on 26 September 2014.
5. The respondent accepted nationality and identity but did not accept that the appellant was a member of UDPS or that she had been arrested or that the authorities had any adverse interest in her. Her asylum claim was therefore rejected and the respondent decided that there were no human rights grounds that justified a grant of leave to remain.

### **The Appeal**

6. The appellant appealed to the First-tier Tribunal and attended a hearing at Taylor House on 7 August 2015. The judge found that her account was vague and inconsistent and placed no weight on the documents submitted in support. The documents said to be issued by the authorities in Congo were found to have been fabricated to bolster a fabricated claim.

### **The Appeal to the Upper Tribunal**

7. The appellant sought permission to appeal on the basis that translations of the summons and arrest warrant were faxed to the Tribunal on the morning of the hearing but the judge refused to admit the translations and would not countenance any time being given to the parties to consider the translations. Very limited evidence could be adduced in relation to the documents as the appellant is illiterate nor was her legal representative able to make submissions. The judge failed to record the sequence of events in the decision despite extensive submissions. The judge erred in law by excluding such central evidence.
8. Permission to appeal was granted by First-tier Tribunal Judge Holmes on 14 October 2015 on the basis that it was arguable that the judge failed to properly engage with the application to introduce the translations into evidence. No reasons were recorded for rejecting the translations.
9. In a rule 24 response dated 29 October 2015, the respondent sought to uphold the judge’s decision on the basis that it was not clear how the

translations could have aided the appellant given the weakness of the appellant's account.

10. Thus, the appeal came before me.

### **Discussion**

11. Mr Hodson submitted that the fax containing the translations had been sent to Taylor House at 9.22am, before the hearing commenced and the parties were waiting for the fax to be brought into court. The decision to refuse to allow further time was made without sight of the translations. Little delay was required. There is no dispute that the translations should have been submitted earlier. It was not really possible to have examination in chief or cross-examination on the documents. An important area of evidence was compromised. The documents were quite brief but the appellant appears to have been wanted with someone else and that matter remains to be investigated. The judge cannot have applied Tanveer Ahmed principles as to content. It was prejudicial for the documents not to be considered. Paragraph 34 of the decision addresses a single translation. On the fax to the Tribunal, the translation was superimposed on a scanned copy of the original. There were no meaningful points about the credibility or reliability of the translations. The key issue was fairness; has the appellant been denied a fully fair hearing? The answer must be yes. A *de novo* hearing was required to correct the unfairness.
12. Ms Holmes conceded in reply that she was concerned by the events at the hearing. The reference to a second person in the documents was crucial. Ms Holmes conceded that she could not make *gung ho* submissions against Mr Hodson. Ms Holmes did not oppose a *de novo* hearing.
13. The decision is silent regarding the application for the hearing to be put back or the decision to refuse to admit the translations that had already been faxed to the court. The record of proceedings states that, "*Mr Hodson waiting for fax with missing translations from the bundle - say have been faxed today. Also says letter coming from UDPS party. CBS (the judge) will not accept the translations now - not before me at 10.25 - issue was raised at the asylum interview in February and index to bundle states that translations to follow - should have been filed before the start of the hearing*". I find that the judge refused to admit relevant evidence that had already been sent to the Tribunal at 9.22am.
14. The hearing that followed was obviously unfair - key evidence could not be referred to and the judge fell into further error at paragraph 34 of the decision in criticising the English translation of a single document without appreciating the manner in which the translation was created. The appellant was denied a reasonable opportunity to put forward relevant evidence. Although the appellant had not complied with directions the application was merely to put the appeal back in the list. No great inconvenience would have been caused. Fairness is paramount in those circumstances.

15. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

**Decision**

16. Both representatives invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

17. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judge.

Signed 

Date 18 February 2016

Judge Archer  
Deputy Judge of the Upper Tribunal