



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00831/2014

THE IMMIGRATION ACTS

Heard at Field House
On 29th March, 2016

Decision & Reasons Promulgated
On 18th July 2016

Before

Upper Tribunal Judge Chalkley

Between

WAVE YAGIEN
(PREVIOUSLY WRONGLY RECORDED AS YAGIEN WAVE)
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Richard Bartram, Solicitor of Migrant Law Partnership

For the Respondent:

Mr S Whitwell, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of the Democratic Republic of Congo (DRC), who was born on 3rd March, 1960.

2. On 6th May, 2014 the respondent refused to revoke a deportation order earlier made against the appellant on 28th November, 2005. The appellant appealed that decision to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judge Callow sitting at Taylor House on 24th November, 2014.

Immigration history

3. The appellant's immigration history is uncontested.
 - (a) He first arrived in the United Kingdom using the name Kaimgombe Yagi on 22nd July, 1990. Thereafter, on a date which has not been disclosed, he left the United Kingdom, subsequently to return on 24th March, 1991. On 12th April, 1991, the appellant claimed asylum in the name of Yagi Kaimgombe stating that his date of birth was 15th June, 1959. Five days later, on 17th April, 1991 the appellant made another claim for asylum in the same name, but gave his date of birth as 3rd March, 1960. The latter application lapsed because the appellant apparently left the United Kingdom again during 1991. On 22nd July 1992 the appellant was served with illegal entry papers and on 18th August, 1992 his initial asylum application was refused on non-compliance grounds.
 - (b) On 30th January, 1993, the appellant was detected departing the United Kingdom for Belgium using a French passport in the name of another person. It is assumed that the appellant must have left the United Kingdom, because he was subsequently encountered on 22nd July, 1993 attempting to re-enter the United Kingdom, using a forged French passport. Thereafter, he was refused leave to enter and returned to Belgium. It is believed that he must have been returned by the Belgian authorities to the United Kingdom because, on 20th October, 1997 the appellant was convicted at Haringey Magistrates' Court of two counts of handling stolen goods and sentenced to a fine of £50 on each count. At Manchester Crown Court on 22nd September, 1999 the appellant was convicted of two counts of obtaining property by deception and sentenced to two years' imprisonment.
 - (c) It is assumed that the appellant must have again left the United Kingdom because on 9th June, 2002, he was again encountered attempting to re-enter the United Kingdom using a counterfeit Belgian 1951 United Nations travel document in the name of another person. On 11th June, 2002, the appellant again claimed asylum. Subsequently, having been refused, he lodged an appeal, but this was abandoned on 28th January, 2003. Thereafter the appellant was refused permission to appeal to the Immigration Appeal Tribunal.
 - (d) On 12th May, 2003, the appellant was convicted at Bolton Crown Court of conspiracy to defraud and sentenced to six years imprisonment on 24th October, 2003. A recommendation was made by the judge that he be deported. The respondent issued a deportation order which was the subject of an appeal

which was dismissed on 20th October, 2005. An application for review was refused on 3rd September, 2005. Thereafter, between 2006 and 2007, the appellant made further representations which were refused for want of new evidence to consider as a fresh claim.

- (e) On 30th October, 2007, the appellant was convicted of fraud and sentenced by Glasgow Sherriff's Court to two years' imprisonment. Thereafter further representations were made to the Secretary of State and on 14th February, 2011 the appellant made a further claim for asylum.
- (f) On 21st February, 2011, the appellant was convicted at Birmingham Crown Court of two counts of conspiracy to defraud and sentenced to an effective period of imprisonment of 38 months. The appellant was subsequently released on licence on 13th December, 2011, subject to licence conditions. Between 2011 and 2013, the appellant and respondent exchanged correspondence until on 9th April, 2013, the respondent refused to revoke the appellant's deportation order made on 28th November, 2005, and which the appellant appealed. The appeal was dismissed by Immigration Judge Afako on 15th October, 2013 (DA/00761/2013). His appeal was dismissed on asylum grounds, on human rights grounds and on grounds funded under the European Economic Area Regulations.
 - (i) Briefly, the appellant's asylum claim was based on his claimed membership of APERECO (UK), an organisation opposed to the rule of President Kabila in the DRC. The appellant claimed to have organised protest marches against President Kabila in London and claimed that he would be of adverse interest to the authorities in the DRC should he be returned to his home country. In dismissing the appellant's appeal, the Tribunal was not satisfied that the appellant was a member of APERECO (UK) or that he organised or participated in any demonstrations. It concluded, relying on current country guidance, that the appellant would not be at any risk of ill-treatment or persecution on his return to the DRC.
 - (ii) Despite the appellant's claimed family relationships and lengths of times spent in the United Kingdom, his conduct and propensity to reoffend were considered by the respondent to constitute a serious threat to society. The judge concluded that the Secretary of State's conclusion was in accordance with the law and constituted a proportional response to the appellant's conduct and circumstances.
 - (iii) On 9th December, 2013 permission to appeal to the Upper Tribunal was refused.
- (g) In letters dated 18 December, 2013, 30th January and 4th March, 2014, the appellant made further submissions relying on the provisions of paragraph 343 of Statement of Changes in Immigration Rules, HC 395 (as amended) ("the

Immigration Rules”) as to a well-founded fear of persecution should he be returned to the DRC, that his situation ought to be considered due to the findings made in the case of *R (on the application of P (DRC); R (on the application of R (DRC) [2013] EWHC 3879 (Admin)*; and that he suffers from depression and is at risk of suicide should he be returned to his home country.

The Basis for The Appellant's Claim to Asylum

4. Before Judge Callow, it was the appellant's claim that subsequent to his release from prison he continued to attend APERECO (UK) meetings, but that he was now no longer a member. Instead, he had joined the Congolese Support Group (“CSG”) which was also opposed to the Kabila regime in power in the DRC. Subsequent to the refusal of 6th May, 2014, the appellant attended a demonstration outside the DRC Embassy and number 10 Downing Street protesting against the Kabila regime and imploring the government not to deport Congolese asylum seekers. Photographs of the demonstration, including those of the appellant, had, apparently, been posted on the Congolese Support Group website. A medical report from Colindale Medical Centre dated 14th March, 2003 prepared by Dr Lamba asserted that the appellant suffers from raised blood pressure and anxiety with depression. It records the details of prescribed for the appellant. In her report of 1st December, 2013, Dr Georgina Costa, a psychologist advised that the appellant suffers from depression.
5. Judge Callow made adverse findings of credibility and concluded that the appellant was a low level member of the Congolese Support Group with no political profile in his home country. The judge found that he would not be at risk on return. The appellant's asylum and Article 3 claims were dismissed. The judge concluded that there had been no material change of circumstances such that the deportation order made on 28 November 2005 must be revoked. The appellant challenged the determination of Judge Callow and permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Simpson on 2nd September, 2015.
6. At a hearing before Upper Tribunal Judge O’Connor on 7th December, 2015, he found that Judge Callow had erred in law and ordered that the determination of the First-tier Tribunal be set aside. The hearing was adjourned in order that the Upper Tribunal should undertake the remaking of the decision. A copy of Upper Tribunal Judge O’Connor’s Decision and Reasons are set in the appendix to this determination.
7. Upper Tribunal Judge O’Connor concluded that the findings of primary fact made by the First-tier Tribunal are to remain standing.
8. At the hearing before me Mr Bartram told me that the basis of the appellant's asylum and Article 3 claim is that he has now joined APERECO (UK) and is now no longer a member of the Congo Support Group. He claims that he is still at risk as a result of his previous activities on behalf of Congo Support Group.

9. Mr Bartram told me that he would be adducing any evidence in respect of the appellant's previous activities on behalf of Congo Support Group.
10. He also told me that no evidence would be adduced as to the appellant's Article 8 private and family life claim and that Mr Bartram would not be making any submissions on it. He told me that an anonymity order earlier made was no longer required and could be discharged.
11. Mr Bartram confirmed that the appellant's immigration history was not contested and told me that the only issue in respect of the appellant's asylum claim was his *sur place* activities in the United Kingdom.

Appellant's oral testimony

Evidence in Chief

12. I then heard evidence from the appellant who told me that his forename and his last name had been interchanged and, instead of being Yagien Wawe, he should be Wawe Yagien. He confirmed his address, date of birth and nationality.
13. The appellant said that he last entered the United Kingdom in 1991. During his time in the United Kingdom he has been a member of two organisations. From the beginning of 2007 he became a member of APERECO (UK) which he described as being "an alliance of patriots who wished to reform the Congo". When asked what his role was he simply replied, "I was in charge of mobilisation". He said that in 2014 he joined a group called Congo Support Group. When he was asked what Congo Support Group was he replied, "According to the group, they are talking about the situation in the country; the problems that people are facing in my country and in the UK". He went on to say that they discussed political difficulties in the DRC with Congolese people in the United Kingdom and if anyone has any problems in terms of asylum they can seek help from the group. That is why they called it, "Congo Support Group".
14. The appellant said that he wanted to show his involvement in terms of fighting injustice which was happening in the DRC and that is why he joined Congo Support Group. The appellant told me,

"As the leader of Congo Support Group saw my good intention to help get others involved, I became involved in encouraging other people to come together to fight for democracy and then they chose me to go for leadership training".

15. The appellant was asked by his solicitor if he could describe his role within CSG. He replied:

"To make other people aware of the lack of democracy or injustice happening in Congo. The worst problems that we are facing in Congo. That is why although we live outside the country it is important to know how the country is run and what are the problems. Because so many people do not watch the news, so many Congolese people are not informed and are not reading enough. In our culture sometimes people tend to forget about the situation in their country because they are living here as foreigners."

16. Mr Bartram then asked the appellant if he could describe the role of Congo Support Group. He said,

“One of our aims was to fight against wrongdoing in the country. In my country everything in terms of running the country is not working. They are mobilising other people to tell them what is happening so that they can put pressure on the government in DRC”.

17. I explained that I was having some difficulty in understanding the role of Congo Support Group and his role within it and he told me, “UK invest a lot of money in DRC to support the population but in the population they are not benefiting from the investment.” He went on,

“My country has a lot of resources like diamonds, gold, and uranium. People are not able to exploit these resources themselves which is why western countries have been trying to help the government. The British government send money to support the police and protect the country.”

18. I explained to the appellant that I still had some difficulty in understanding what it was that he actually did on behalf of the organisation, to which he replied,

“I was mobilising Congolese people in the UK. I did it by going to meet people in hair salons, Congolese shops, cafés and restaurants.”

19. In answer to further questions put by his solicitor he explained that it was difficult to get Congolese people together because of their work commitments and so Congo Support Group also tried to organise demonstrations to show the United Kingdom and other governments, “the wrong management within the DRC government”.

20. The Congo Support Group organised and planned a demonstration outside the Congolese Embassy and also went to number 10 Downing Street to present a memorandum to explain why Congo Support Group were putting pressure on the government of Congo. This took place in June 2014 and, the appellant insisted, he attended. I was referred to page 58 of the appellant's bundle which contained two photographs which appeared to me to have been taken outside the Ministry of Defence building in Whitehall. The appellant told me that he was in both pictures and that the demonstration had taken place outside the Ministry of Defence building in Whitehall, because the police would not allow the demonstrators to go into Downing Street. The appellant appeared to be standing behind a banner, the top line of which said, “Congolese Oppose UK Policy”. The rest of the banner was not visible. The second line called for Kabila to step down and the bottom line said, “UK must stop” but the rest of what was written was not visible. I was then referred to two photographs on page 60, and he said that one of them showed him with leaders of the Congo Support Group.

21. The appellant told me that he was no longer a member of the Congo Support Group, because sometimes he understood that,

“they became more involved in politics than in putting pressure on the government.”

22. I asked the appellant if he could explain what he meant. He said that Congo Support Group wanted to have a role in the government in DRC and during the meetings they started to discuss the elections, but in the meantime the country is under occupation. He told me that he left the CSG at the end of 2015. He later corrected this and told me that he ceased his activities in December 2014.
23. I indicated to Mr Bartram that I had experienced great difficulty in understanding the appellant's role or the work of Congo Support Group.
24. Mr Bartram endeavoured to clarify the evidence with the appellant. The appellant said that when he stopped going to Congo Support Group he decided to go back to APERECO (UK), “where I started”. He told me,

“They inform people that the country is still under occupation. There is no point in trying to organise the elections.”

In answer to further questions from Mr Bartram the appellant said,

“When I joined, my role was to counsel other Congolese in the UK and then in April 2015 I was chosen. I joined APERECO (UK) in April 2015. I was then chosen to be one of the advisors to prepare forthcoming meetings. In October 2015 I was promoted as whole UK advisor in APERECO (UK) in terms of mobilisation and strategy.”

25. The appellant added, “We are a group of resistance.” He was asked what the group’s strategies were and he said, “Being in a resistance group our strategies are confidential.” He was asked to explain what the strategies were that he claimed his role was involved with strategies and replied,

“We want people who are mistreating our population to be removed from the government because they are not of Congolese origin. One important strategy is to show and to convince the Congolese population based on evidence that we have that our country is still under occupation. Our strategies are not long. It is to let the people to get ready to remove the current government and not to accept a foreigner to run the country. The authorities in Congo don’t like our group because the message that we are telling people about the country cannot be under occupation and run by foreigners.”

26. The appellant was then referred to page 26 of the bundle and said that this also showed him in both photographs attending a committee meeting in London. The photographs on pages 12 and 13 also show him at meetings with the new United Kingdom Labour Party leader.
27. The document which starts at page 33 – 36 was a copy of a presentation on a TV channel called “BEN”. The said that he was interviewed on behalf of the TV channel which subsequently broadcast the interview.
28. At page 28 of the appellant’s bundle is a photograph of APERECO (UK) demonstrators in a report. The report was written in French, but one line of the banner in the photograph said “Say ‘No’ for Kikay as ambassador in the UK” and “‘No’ for any

deportation of Congolese to the DRC Congo.” The appellant told me that he and others were protesting because the DRC government wanted to return the former ambassador to the United Kingdom and the group did not want him back in the United Kingdom, because he is a government supporter.

29. The appellant was referred to page 7 of the bundle and he said that there appeared photocopies of his APERECO (UK) business cards, describing him as “Territory counsellor”. He told me that he gave them to Congolese people when he goes to shops, salons, restaurants and cafes.
30. The appellant told me that he had been appointed as a territory counsellor, because he is an old member of APERECO (UK) and they looked at his involvement and saw that he was a patriot. He said that as a patriot he is someone who is always ready for his country. He told me that when he hands out his cards he speaks to people and asks them not to support the government in place in Congo and to tell their family members back in Congo not to support the government and not to take part in the elections, because the country is still under occupation.
31. The appellant explained that APERECO (UK) does not support the government and that is why they encourage the population not to take part in the elections and would like to see the national president of APERECO (UK) as President of the Congo. The appellant told me he did not know where the national president was. The words “territory counsellor” means that he is a counsellor for the whole of the United Kingdom, but mainly for London and Wales.

Cross examination

32. Cross-examined by the Presenting Officer on behalf of the respondent, the appellant told me that the president of APERECO (UK) in the United Kingdom is Mr Ernest Likiyo. He chairs the group in the United Kingdom and is in charge of other areas. The appellant explained that APERECO (UK) had territory counsellors in Yorkshire, West Midlands, Glasgow, London, Manchester and that there are seven in total. He reports direct to Mr Ernest Likiyo. He was asked by Mr Whitwell the aims of APERECO (UK) and replied, “We are fighting for a country under occupation”. The appellant was then referred to page 24 of the bundle which was a letter from Mr Ernest Likiyo dated 20 April 2015 written on “APERECO (UK) Youth” notepaper. He told me that the president was the president of the Youth wing and had been using the same headed notepaper. Originally the appellant joined APERECO (UK) in April 2014. He was then referred to what had been recorded by Judge Callow in his determination where he said that it was the appellant's case that subsequent to his release from prison the appellant continued to attend APERECO (UK) meetings, but that he was now no longer a member. The appellant then said that he had never left completely and that his activities started with his membership of APERECO (UK) in 2007. He had always been in favour of its aims and denied the suggestion made to him that he had, “Jumped from one group to another”.

Questions put by me in order to clarify the appellant's evidence.

33. I explained that I had difficulty in understanding some of the appellant's evidence and asked if he could clarify several points for me. He told me that he originally joined APERECO (UK) in 2007 but left APERECO (UK) for a short while in 2014. I referred him to a photograph at page 9 of the bundle where one of the demonstrators was shown in a photograph holding up a placard saying "Labour Party must stop supporting Kagane and atrocities in the DRC". I asked if he could explain. He said that APERECO (UK) members went to Chatham House to present an APERECO (UK) memo because Kagane came to the United Kingdom. The demonstration was to tell the UK government not to welcome the current member of the DRC government. He confirmed that the reference to "Labour Party" was a reference to the United Kingdom Labour Party.
34. APERECO (UK) does have posters and leaflets, but they are produced for specific events, he told me.
35. The appellant explained that he had left Congo Support Group in December 2014, because most of the time they were telling people to go to the elections and were encouraging people to vote. In his opinion, he could not support a group where people were ignoring the fact that the country was being occupied.

Oral evidence of Mr Ernest Likiyo

Evidence in chief

36. The witness confirmed his name, date of birth, address and that he was a British subject. He confirmed also that he wrote letters at pages 15 and 24 of the appellant's bundle in support of the appellant. The witness said that he was president of APERECO (UK) United Kingdom and that the appellant had been appointed a member in 2015 and was promoted in October that year. This was based on his demonstrated commitment and the way he showed that he was what the group needed. His role is to advise the Congolese people about resistance. APERECO (UK) does everything it can to help Congo have freedom. The witness told me that,

"We tell people what is going on back home and about atrocities and about the occupations. I find out from relatives of mine and from the media. Most Congolese people here can't read. We make petitions and take part in demonstrations. I am a leader and have two vice presidents, a treasurer and a secretary. They lead the whole of the United Kingdom."

37. The witness confirmed that the appellant was a 'territory advisor'. He said that there were seventeen members who are the leaders and who hold office with him and that five others do the same job as the appellant as 'territory advisors'. He confirmed that the appellant was based in London. The national president and vice national presidents and the general secretary of APERECO are above the witness in terms of organisation, but the witness is president of APERECO (UK) in the United Kingdom.

38. The witness told me that the appellant was well known within APERECO (UK). He invites people to meetings and tells them about APERECO (UK) and amongst the Congolese population in the United Kingdom he is known as an APERECO (UK) member.

Cross examination

39. Cross-examined by Mr Whitwell, the witness confirmed that the appellant had been a member of APERECO (UK) UK since 2007. The witness said he had known him since then. He was then shown page 24 of the bundle which appeared to have been written on Youth Wing notepaper. He explained that he had been promoted from the leader of the Youth Wing in July 2015 and the appellant was appointed territory counsellor in October 2015. He was asked how many territory counsellors there were and he said that there were five. It was pointed out to him that the appellant had said that there were seven.
40. The witness then said that there were other people who had been previously appointed territory counsellors. He said that there may be three or four of them. They remain members of APERECO (UK) as far as he is concerned and he considers them to be members although they are no longer members.
41. I did not believe that the witness was telling me the truth. He appeared to be making up his evidence as he gave it.
42. When asked about APERECO (UK) the witness said, "We don't look for power. The appellant helps me with resistance. Congo Support Group used to do their work as we do but then their president went home to become involved with the elections."

Questions put by me in order to clarify the witness's evidence.

43. I asked the witness if he could clarify part of his evidence for me. I referred him to his letter of 20th April, 2015 and page 24 of the bundle and to the last paragraph which said:-

"I can certify that several of our supporters and members who have been deported to the DRC are all tortured and killed; that is why I believe that [WY] will be in danger of death."

44. I asked the witness if he had given details of the members of AMPERECO (UK) who had been returned from the United Kingdom to the DRC and been tortured and killed on return, to the Home Office. He told me that he had not and said that this was because he had previously written to the Home Office who do not reply to his letters. He claimed to have sent details to the Commissioner for the Metropolitan Police.
45. In answer to further questions put to him by Mr Bartram the witness told me that the appellant's role is to look out into the community.

Submissions

46. Mr Whitwell told me that he relied on the Reasons for Refusal Letter and reminded me that pages 8 to 13 and 25 to 27 were written in the French language. He asked me to ignore them. According to the uncontested immigration history the appellant appears to have unlawfully entered the United Kingdom on at least three occasions. He had an immigration appeal before Immigration Judge Beg in 2005 but did not raise any political concerns at that stage. He has several convictions for offences involving deceptions and, Mr Whitwell submitted, has attempted to practice deception today. He claimed to have remained an APERECO (UK) member whilst also belonging to the Congo Support Group until it was pointed out to him that he had previously told First-tier Tribunal Judge Callow in November 2014 that he was no longer a member of APERECO (UK). Today giving evidence he claimed that he was one of seven advisors but giving evidence the national president contradicted the appellant.
47. So far as country guidance is concerned, *BM and Others (Returnees – criminal and non-criminal)* DRC CG [2015] UKUT 00293 (IAC) at paragraph 88 summarises the guidance given by the Presidential panel of the Upper Tribunal. In respect of DRC nationals returning from the United Kingdom he reminded me that only those who have, “a significant and visible profile within APARECO UK” are at real risk of persecution and on the evidence we have heard today the appellant does not belong to and could not be perceived to be a leader, office bearer or spokesperson and he invited me to dismiss the appeal.
48. Finally, he drew my attention to the transcript of the broadcast during which the appellant had been interviewed and asked me to note that the appellant says very little more about his role. He was not a board member and would not be at any risk on return.
49. Finally, Mr Whitwell reminded me that this was the only ground being pursued by the appellant.
50. Mr Bartram told me that he would be brief. He implored me to follow the country guidance case of *BM and Others* and suggested that the appellant was an office holder of APERECO (UK). He reminded me that the appellant had appeared in a TV programme broadcast in Africa on Ben TV and offers advice to the leadership of APERECO (UK) in the United Kingdom. He suggested that the appeal should be allowed.

Consideration of the Appellant's Claim – Scope of the Claim

51. This appeal is quite exceptional in that during the appellant's time in the United Kingdom he has made various claims, most of which have not been pursued in the appeal before me:

- (a) I received no medical evidence in relation to the claim which he made in his 2005 appeal, mainly that he had HIV. Indeed, while there are medical reports in the file which have been relied on previously, Mr Bartram has simply not addressed me on them;
- (b) First-tier Tribunal Judge Callow pointed out that there was medical evidence relied upon in the Article 3 appeal before that judge when it was claimed that the appellant would be at risk of Article 3 breach, because there was a risk of suicide. There was no up-to-date medical evidence before me to suggest that the appellant had undergone any treatment for his previously claimed depression, neither was there any current medical evidence to suggest that he was still suffering from depression or that there was a risk that on removal he would commit suicide;
- (c) The sole basis on which the appellant's appeal was presented was his sur place activities in the United Kingdom and his fear of ill-treatment as a result of his activities on behalf of Congo Support Group and APARECO United Kingdom;
- (d) Mr Bartram even told me that he was not going to adduce evidence or make submission in respect of the appellant's Article 8 rights;
- (e) When the appellant appeared before Immigration Judge Beg he claimed to have a family in the United Kingdom and yet I heard no evidence about this family at all.

Background country evidence

- 52. In order to place the appellant's claim into context I first considered the background evidence.
- 53. Within the file was a copy of the Country Policy Bulletin published on 18th February, 2014 which had been submitted by previous solicitors. Although Mr Bartram had not address me on it, I considered it at some length.
- 54. I noted that there had for a number of years been various reports of allegations of ill-treatment of returnees to the DRC, which had been investigated by the Home Office working with the FCO and that no evidence had been found to substantiate the claims (paragraph 2.1). The bulletin referred to the country guidance case of *BK (Failed asylum seekers) DRC* (Rev 1) CG [2007] UKAIT 00098 and to the Operational Guidance Note of May 2012, which recognised that there were specific categories of DRC nationals who may be able to demonstrate a risk on return to DRC. I noted the reports on *R v Secretary of State for the Home Department ex parte P (DRC)* and *R v Secretary of State for the Home Department ex parte R (DRC)* and also noted the Fact Finding Mission Report. I read the policy bulletin in relation to *Justice First: Unsafe*

Return Repress and the conclusion that there was no substantive evidence that conditions had changed since the country guidance case of *BK*.

55. I also read the whole of Sections 6 and 7 and, although I have not been addressed on it, the Refugee Action Group letter of 26 July 2013. I noticed that the appellant had been a full member of the Refugee Action Group since 2006 and had been involved with the charity work as a youth worker since his release from prison.
56. I also read the Congo Support Group letter of 11th June, 2014, which referred to the appellant and to his wife. I am aware from having read the background material referred to in *BM and Others* (paragraphs 6, 7, 8, 9 and 12 in particular) that there are in excess of 200 African ethnic groups within the population and notwithstanding its vast natural resources and mineral wealth it is one of the poorest countries in the world. Corruption is considered to be rampant and following independent and three decades of dictatorship under Colonel Mobutu President Laurent Kabila seized power in 1997. Following his death, his son assumed the office of presidency. During a civil war which involved Rwanda and Uganda more than 3,000,000 people have been killed and despite a peace agreement having been negotiated, hostilities with the FDLR militia group continued until a joint DRC UN military operation in 2009. The country continues to suffer from the activities of militias and its official army. Widespread violence continued and there were grave human rights violations by armed groups and members of the National Security Forces. The last sentence of paragraph 10 of *BM* reads:-

“In short, the DRC is a state in which the rule of law is both fragile and fickle.”

57. At paragraphs 24 to 28 of *BM and Others* the Tribunal deal with the Amnesty International Report of February 2015, which describes the arbitrary arrest and detention of percussive regime opponents, perceived critics of the security forces and those percussive as connected to criminal activity.
58. I have also read the comments of the Presidential panel at paragraphs 29 in dealing with the Human Rights Watch evidence, paragraph 30 dealing with the Observer newspaper report of 15 February 2014, Paragraph 31 dealing with the Freedom From Torture Report, paragraphs 32, 33 and 34 dealing with the UK Border Agency country of origin information report of March 2012 and paragraphs 35 to 42 dealing with further UK Border Agency Operational Guidance Note and Bulletins. I have also read paragraph 43 which deals with the evidence of the British Ambassador in Kinshasa and I have noted the evidence of the expert at paragraphs 44 to 49 of the report. In particular I note that Dr Kennes expresses certain opinions as to the APERECO (UK) organisation and movement and suggests that it is perceived as being a “serious threat” to the president. He opines that APERECO (UK) members and militants who are returned to the DRC as failed asylum seekers:-

“... Ranked among the category of people who run the highest level of risk for detention, arrest and cruel, inhumane and degrading treatment during interrogations.”

59. I also read paragraphs 50 to 58 dealing with further evidence of APERECO (UK).
60. I bear in mind of course that Apareco UK is only one of several APERECO groups operating outside the DRC.
61. At paragraph 51 the Presidential Tribunal received evidence that the witness *JM* was President of the north west region. The evidence I heard from the appellant and from the President made no mention of the fact that APARECO UK was divided into regions. At paragraph 55 the Tribunal heard evidence that one of appellant it was dealing with was secretary of the Midlands branch of APERECO (UK). Neither witness appearing before me referred to APERECO (UK) having any branches or regional offices. Indeed the appellant claimed to be responsible for England and Wales.
62. At paragraph 87 the Tribunal makes specific findings in relation to APERECO (UK) and I note in particular that the monitoring of Apareco UK is likely to be undertaken by and on behalf of the DRC Embassy in London.

Country Guidance

63. I have paid particular attention to the decision in *BM and Others* and it is clear to me that if the appellant is found to have a significant and visible profile within APARECO (UK), he is likely to be a serious risk of harm on return to the DRC.
64. In the light to my consideration of the background evidence I considered the oral evidence I have heard and made my findings of fact. Before doing so, however, I reminded myself of the burden and standard of proof.

The Law

65. In asylum appeals the burden of proof is on the appellant to show that returning him to the DRC will expose him to a real risk of persecution for one of the five grounds recognised in the 1951 Refugee Convention or to breach of his protected human rights. the question of whether a person has a well-founded fear of persecution for a Convention reason has to be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the appeal. In human rights appeals, if it is established that there will be an interference what the appellant's human rights and the relevant Article permits, then it is for the respondent to establish that the interference is justified.
66. The standard of proof in asylum appeals as regards to both the likelihood of persecution and the establishment of past and future risks is a real risk in *Takaj v Secretary of State for the Home Department* (01/TH/00634*) it was held by the former Immigration Appeal Tribunal that the standard of proof in human rights appeals is the same as that in asylum appeals.

Findings of Fact

67. The appellant has the most appalling immigration history.

Credibility

68. He also has a history of deception.

69. On his arrival in 1990 he used a false name. On claiming asylum in 1991 he used a false name and a false date of birth. Again in 1991 he made a claim for asylum using a false name and in January 1993 he was detected leaving the United Kingdom for Belgium in possession of a false passport belonging to somebody else. He appears to have left the United Kingdom because on 22nd July, 1993 he attempted to re-enter the United Kingdom using a forged passport. In September 1999 he was convicted at Manchester Crown Court of two counts of obtaining properly by deception and sentenced to two years' imprisonment. It appears he must have left the United Kingdom again because on 9th June, 2002 he was again detected attempting to re-enter the United Kingdom using a Belgian 1951 United Nations travel document in the name of another person. That document was a counterfeit. He then claimed asylum but having lodged an appeal he abandoned it. In May 2003 he was convicted at Bolton Crown Court of conspiracy to defraud and sentenced to six years' imprisonment on 24th October, 2003. On 30th October, 2007 he was convicted of fraud and sentenced to two years' imprisonment by Glasgow Sheriffs Court and on 21st February, 2011 he was convicted and sentenced at Birmingham Crown Court of two counts of conspiracy to defraud.

70. As I have indicated, in the appeal before Immigration Judge Beg in 2000 the appellant claimed to be HIV positive. He has made no such claim before me.

71. In giving evidence to me the appellant told me that he last entered the United Kingdom in 1991. That is blatantly not true. He was caught in July 1993 attempting to enter the United Kingdom and returned to Belgium. He subsequently entered the United Kingdom because on 20th October, 1997 he was convicted at Haringey Magistrates Court. However, on 9 July 2002, he was again caught attempting to use a counterfeit Belgian 1951 United Nations travel document in the name of another person.

72. Even before me the appellant refused to tell me the truth about the date he last entered the United Kingdom.

73. In giving evidence to me he said that he was one of seven territory counsellors but according to the president of APARECO UK the appellant was only one of five territory counsellors.

74. In giving evidence to me the appellant said he joined APARECO UK in 2007 and in 2014 he joined a group called Congo Support Group. He claimed that he ceased

activities for them in December 2014 and decided to go back to APERECO (UK). However, he told Judge Callow in November that he was no longer a member of APERRECO (UK).

75. The appellant's witness said that the appellant has been a member of APARECO (UK) since 2007 and, "has attended all the events and meetings organised by our political organisation since his enrolment on 10/1/2007 as a member of APARECO (UK)." However, according to the appellant when he gave evidence to Judge Callow, the appellant had ceased to be a member and when he gave evidence to me, during 2014 he was actively involved with Congo Support Group. I concluded that I could not believe anything the appellant had said. There were even discrepancies in those parts of the appellant's evidence which were supposed to be corroborated by his witness.
76. Throughout his evidence the appellant appeared to me to be making it up as he went along. He struck me as being someone who was politically naïve. He was unable, despite being pressed by Mr Bartram, and subsequently by me, to explain exactly what it was he did within APERECO (UK), or what it was that APARECO UK did. He told me that it was not a political party but a party of resistance. He told me that it sought to persuade Congolese people in the United Kingdom to advise their relatives in the Congo not to take part in the general elections. There was no suggestion that it raised funds in the United Kingdom to support terrorist activity in the Congo and I had very great difficulty in understanding from him or from Mr Likiyo what it did apart from offering support to Congo asylum seekers and, apparently, holding demonstrations against the return of failed asylum seekers to the DRC.
77. Given the ease with which the appellant appears to change identity, the fact that he claimed to be HIV positive in 2005, but since then and despite two further asylum appeals, has not relied on that diagnosis, his convictions for offences involving deceit, his willingness to rely on false documentation and documentation which does not relate to him in order to attempt to leave and enter the United Kingdom, I believe that this appellant is someone who will say and do anything to get what he wants. I do not believe that I can rely on the appellant's word. I believe that he is a complete stranger to the truth.
78. The Secretary of State's reasons for refusal to revoke a deportation order letter dated 19th April, 2013 contain the sentencing remarks of the judge. On 21st February 2011 at Birmingham Crown Court the judge stated:-

"For the fourth time in twelve years you have come before a court charged with conspiracy arising out of benefit fraud. On previous occasions you were sentenced in 1999 to two years and in 2003 to six years and then in 2007 to two years and I am told that you were released from custody into immigration remand status on 20th February, 2009. So far as this conspiracy is concerned, you have commenced involvement very soon after release. The use of the false name, Kingombe, in your case, commenced on 15th September, 2009 and lasted through to 7th May and in that false name alone you obtained just over £16,500.

The method that you were using on this occasion is the same as previously. Someone inside the postal service intercepts giros and also bank cards. The giros are manipulated by fairly sophisticated means so that the names are changed. The code for the identity of the post office which is to be used to cash giros is altered and where appropriate bank cards, the names are altered to match stolen bank cards so that if identification is required for the manipulation cheque the bank card can be used. Cheques are then either presented to a bank, as happened in your case, or in other cases they are presented to the post office and cash obtained with the support of false documentation, as I have mentioned.

It goes without saying that this conspiracy is professional. It is fraud from the outset. It involves other crimes, the theft of material through the post office and it causes distress and inconvenience to those who should have obtained these cheques in the normal course. In your case, the main bulk of your offending involved this false identity of Kingham led to paying in cheques into a false account, a false account which in itself had been obtained by the use of a false French passport. So, as it is accepted, you are not simply a presenter of cheques with a false bank account, bearing in mind all that one knows about you and what other items were found at your address, it is plain that you are close to others involved in this conspiracy, as I say, not simply you were the sole trader within the conspiracy. Where you stand entirely in the conspiracy is not necessarily completely clear.

Again it is accepted that I should look at you as someone who is therefore committing a fraud within the range of £20,000 to £100,000 precisely where not known. But the false address that you were using, I add, has other false cheques also sent to that address and it is your own address. You had further cheques which were yet to be manipulated. You had some equipment with which manipulation could occur, albeit you do not accept that you were using it for them. And I stress simply earlier on in the case in your presence, it seemed to me that bearing in mind the amounts here I cannot say that this is as serious as the case of Bolton but bearing in mind this is now your fourth conviction of a similar nature, it seems to me your case was worse than your first conviction and worse than your last offence and however I find myself looking at the case, it seems to me that had you been tried before me and convicted on this basis, bearing in mind your previous convictions, I would have found you liable to a sentence after trial of, let us say, four years, the middleish range and the starting point for a person of good character, but then add into your previous convictions, the range would have been of the level of four years.”

79. In his asylum appeal before First-tier Tribunal Judge Afako the appellant relied on his claimed involvement with APERECO (UK) since 2009, claiming to have been involved actively in organising marches in London, but was not in any position to provide any other form of evidence such as photographs, videos or other testimony from fellow marches to confirm that a march took place. The Tribunal were not satisfied therefore that the appellant was genuinely a member of APERECO (UK). If he had any connection at all with that organisation, they considered it to be purely opportunistic.
80. I see no reason at all to disagree with that finding, indeed I make the same finding. The appellant was unable to explain to me his role within the organisation or, indeed, what the organisation actually does. Neither was the President, Mr Likiyo and I was left with the impression that whatever it had been at the time the Tribunal were hearing evidence in *BM and Others*, the United Kingdom branch of the organisation is now very little more than a support group for Congolese Asylum seekers.

Credibility of Mr Likiyo

81. The letter from Mr Ernest Likiyo of 20th April, 2015 is not helpful either. It said:-

“I Ernest Likoyo President of APARECO/London (Patriarchal Alliance for the Rebuilding of Congo) would like to confirm that [the appellant] date of birth 3/3/1960 in AKETI/DRC is an active member of APARECO (UK).

Mr WY is in charge of counselling members about upcoming meetings of APARECO (UK).

I would like to inform that the regime of Kabila is really risky and huge threat for all members of APARECO (UK). The actual regime of Kabila in the DRC has published different photographs of members of APARECO (UK) in order to be killed. His safety is in danger should you decide to deport her to the DRC, which means he will not be secured by the actual government of Kabila, because of political approach and speech of APARECO (UK) which do not agree with the actual regime of Mr Kabila and his political system of governing the DRC.

APARECO (UK) is a political organisation which believes that its members are at serious menace if deported to the DRC, because of Kabila’s perspective which is against APARECO (UK).

I can certify that several of our supporters and members who have been deported to the DRC are all tortured and killed; that is why I believe that Mr W Y will be in danger of death.”

82. I thought it undermined the witness’s credibility that he told me that he had credible evidence that supporters and members of APARECO (UK) from the United Kingdom have been returned to the DRC and suffered torture and been killed, and yet he had not provided that credible evidence to the Home Office. I pointed out to him that if he did have credible evidence of the killing and torture of people returned to the DRC by the British government, and sent it to the Home Office, he would certainly have ended all returns of people to the DRC from the United Kingdom and probably from the whole of Europe. Instead he told me that he had written on previous occasions to the Home Secretary and, not having received a reply, had decided not to write to her. That is simply not believable.
83. In giving evidence to me, Mr Likoyo told me that APARECO (UK) was not a political organisation and yet according to his letter it is political. He also described it as being a resistance organisation, but could not point to any ways in which APARECO (UK) or its members actually resisted the DRC government.
84. The appellant took part in the interview with BEN TV. The only reference to APARECO (UK) is where the interviewer introduces the appellant. The extract is as follows:-

“**Interviewer:** I think you are following that interview, now we are going to meet with the territorial adviser of APARECO (UK) in UK.

W: Thank you for wanting to know the opinion of APARECO (UK) in UK on this stage. APARECO (UK), Alliance Des Patriotes Pour La Refondation Du Congo. Let me first introduced myself. My name is YW. I am the territorial advisor of APARECO (UK) in UK. I am in charge of mobilisation and strategy and I also supervise London and the Wales. We here in England are mourning the loss our assistant treasurer Bokulu Botsua. He was a really great activist in our community of combatants. I thank again our national leader for his message in which he revealed the foreigners who have invaded our country; our country which is now under foreign occupation. I want to think the Congolese people who are receiving this message today, who are standing for our country which is now under foreign occupation. Now concerning these two slogans of Be Warned and Stay Longer, for Stay Longer; there are those people who are supporting those who are occupying our country and as for Be Warned, we find it meaningless since our country is under

occupation. I am calling on all the Congolese people to unite around our leader Mr Honore Ngbanda. Yes! Yes!”

85. There was no other reference to APARECO UK in that interview in which the appellant describes himself as being the territorial adviser.
86. The appellant claims to have been on demonstrations and while I am satisfied that the appellant has lied to me in giving his evidence, I am satisfied that he is shown as being a participant in a demonstration which took place, he claims in 2014, in Whitehall opposite Downing Street.
87. My conclusion in relation to APARECO UK is now very little more than a support group for Congolese Asylum seekers. It provides support and assistance (including advice on the law) to Congolese asylum seekers and takes part in activity aimed at demonstrating against the United Kingdom’s policy of deporting failed asylum seekers to the DRC. I accept also that as part of its demonstrations it calls for the removal of the Kabila regime.

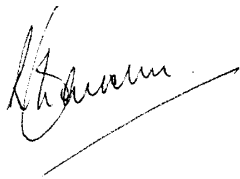
Conclusion

88. I do not believe that the appellant’s having taken part in a demonstration will necessarily lead to him being identified as an APERECO activist on return to DRC, but given that the appellant has taken part in a television programme which was broadcast on African TV by the Skye network, in which he is described as being a “territorial advisor to APERECO (UK)” and being “in charge of mobilisation and strategy”, I am forced to conclude that there is a reasonable likelihood that on return to the DRC this appellant will be questioned as to his activities on behalf of APERECO (UK). I appreciate that APERECO has branches elsewhere other than in the United Kingdom and that the activities of APERECO elsewhere in the world may very well cause the DRC government to have a strong interest in it, such that the appellant’s involvement with APERECO (UK) is likely to cause him to be at risk of persecution and serious ill-treatment.
89. Whilst I find the appellant to be a man whose word cannot be trusted and who has deliberately used deceit throughout his time in the United Kingdom, I cannot ignore the fact that there is a real danger that he will be at risk on his return, albeit that he has deliberately manufactured such risk with the intention of securing asylum in the United Kingdom.

Decision

90. The appellant is entitled to be recognised as a refugee and **I allow his asylum appeal**. It follows that **I allow his appeal against the refusal of the Secretary of State to revoke the deportation order**.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'Chalkley', with a long horizontal flourish extending to the right.

Upper Tribunal Judge Chalkley