



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

Appeal Number: AA/00380/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 9 February 2018**

**Decision & Reasons Promulgated  
On 17 April 2018**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**SN AND OTHERS  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Miss Khan, instructed by Parker Rhodes Hickmotts,  
Solicitors

For the Respondent: Mr Diwncyz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of Congo (Brazzaville). Their personal details (subject to the direction of anonymity) are as follows:

SN born 1961

BN (spouse) born 1961

GN (daughter) born 1990

BN (daughter) born 1995

MN (daughter) born 1996

MK (daughter) born 2000

NN (son) born 2005

YK (daughter) born 2011.

2. By a decision promulgated on 6 June 2017, I set aside the decision of the First-tier Tribunal and remade the decision allowing the appeals of SN, BN, MN, NN and YN. My decision was as follows:

“1. The appellant, SN, is a citizen of the Republic of Congo (Brazzaville) (hereafter referred to as the Congo). He was born in 1961. He entered the United Kingdom in April 2009 and has lived in this country with his wife and five children. He claimed asylum in September 2009 but his claim was refused by a decision dated 9 November 2009. Subsequent appeals were dismissed and the appellant became appeal rights exhausted by November 2011. He made further submissions to the respondent which were rejected and he subsequently initiated proceedings in the Administrative Court for judicial review and the Court of Appeal. Ultimately, the respondent accepted in January 2015 that the appellant’s fresh submissions should be considered and, on 19 January 2015, a decision was taken to refuse the application for asylum. The appellant appealed to the First-tier Tribunal (Judge Turnock) which, in a decision promulgated on 28 November 2016, dismissed the asylum/Article 3 ECHR appeals but allowed the appeal on Article 8 ECHR grounds. There are cross-appeals before the Upper Tribunal. I shall refer to SN as the appellant (as he was before the First-tier Tribunal) and to the Secretary of State as the respondent.

2. I shall deal first with the appellant’s appeal in respect of asylum/Article 3 ECHR. Summarising the grounds when granting permission in the Upper Tribunal, Upper Tribunal Judge Grubb stated:

“The grounds argue that the judge failed properly or at all to refer to the relevant background country information concerning the deteriorating human rights situation in the DRC and failed properly to consider the expert report.

The judge did refer to some of the background information at paras 18-20. It is not clear from the grounds what else precisely other documents would demonstrate. Nevertheless, the judge’s rejection of the clearly articulated opinions of the expert report supporting the risk to the appellant (rejecting some as speculative) arguably fails to give proper weight to and/or reasons for rejecting, the expert report.”

3. The grant of permission refers inaccurately to the appellant as a citizen of DRC (Democratic Republic of Congo); as I have noted above, he is a citizen of Congo Brazzaville, otherwise known as the Republic of Congo, having been born there in 1961.

4. As Judge Grubb accurately records, the challenge to Judge Turnock's decision concerns his treatment of background material and expert evidence. The appellant had two expert witnesses (Ticky Monekosso and Paul Melly). Having set out in considerable detail the contents of the expert reports and updated appendices, Judge Turnock wrote this:

"I find a number of the opinions expressed in the Report to be speculative, for example the reporting of cases which took place under the regime of President Lissouba in connection with the risk to the Appellant under the current regime.

99. The Appellant accepts that, as a civil servant, he was not a major figure in the opposition. However, he claims he was part of the 'intellectual elite' that was used by Professor Lissouba's power and the strategy of the power of Denis Sassou Nguesso to get some 'intellectuals nationals' of friendly regions to Pascal Lissouba and show that the power was not tribal. The Appellant claims that "having refused to play this game against nature" he had no alternative than to flee the country to save his life.

100. The Appellant left the Congo in 2009 and has not returned since that date. Whilst away from the country he has taken no part in any political activity nor has he expressed the intention or desire to take part in any political activity. I do not accept that he would be considered to be an active opponent of the regime nor being part of the Diaspora and de facto supporting the opposition movement in Congo. I find that there is no reason why he would be considered as subversive and a challenge to the official power structure.

101. As noted in the updated Expert Report a number of the former opposition have now been accommodated by the new regime and I am not satisfied that the Appellant, taking account of his limited previous activity, would still be of any interest to the Government.

102. I conclude that the Appellant would not be at risk on return to the Congo"

5. Earlier in the decision [47] the judge expressed his concern that it was "a little troubling" that Ms Monekosso had supported her opinions by referring to "my experience as a student at the Congolese University" noting that she had completed her studies as long ago as 1990. However, in the following paragraph, the judge was careful to state, "however although those matters gave me cause for concern, I do not dismiss the opinion of the experts to which I gave due weight". The care with which Judge Turnock had considered all the evidence is set out also at [46]. He noted that the experts had written (over the space of several paragraphs) first, "on the issue of the ownership of the newspaper Le Temps it will be difficult to prove that President Lissouba was the owner of that paper", only to state later, "[the appellant] was economics editor of the newspaper Le Temps in the mid 1990s. We have been able to confirm that this paper was owned by the then president of Congo, Pascal Lissouba". I consider that Judge Turnock was quite rightly concerned by this glaring inconsistency which, at the very least, indicated that the authors of the report had

not carefully proofread the document. That Judge Turnock should still give considerable weight to the report which contained such careless inaccuracies, is a clear indication of the even-handed way in which he considered the evidence in this appeal.

6. It was the task of the judge to weigh each of the items of evidence and then to consider all the evidence as a totality before reaching his findings of fact. Quite rightly, the judge has considered the expert evidence together with the appellant's own written and oral evidence. It was clear that Judge Turnock considered that the evidence base with which the experts sought to support their opinions as to risk did not fully justify those opinions. The judge gave proper weight to the opinions of experts (as he stated that he had done) but equally, he was right to express his concern that the opinions as to risk expressed were not supported by the evidence and were therefore (as Judge Turnock describes them) "speculative". Further, Congo Brazzaville is a country which is, even by the standards of that part of Africa, subject to instability and has a complex political landscape. The judge made findings as to the political profile of this appellant and he reached the conclusion that, notwithstanding the opinions of the experts, the evidence simply did not support the appellant's contention that, having a relatively low profile and having left Congo Brazzaville as long ago as 2009, he would not face persecution or ill-treatment either at the point of arrival in Congo or subsequently whilst living in his home area of that country. In particular, I find that the judge did not err in law in the statements which he has made (quoted above) in his decision at [98-102]. In consequence, the appellant's appeal against the dismissal of the asylum/Article 3 ECHR appeal is dismissed.

7. As regards the Secretary of State's appeal against the Article 8 ECHR decision, the grounds of appeal record that the appellant's oldest daughter (G) was 26 years old at the date of the hearing before Judge Turnock. The grounds of the Secretary of State comment, "it appears the parties for reasons entirely not clear accepted that joint decisions should be issued" in respect of the wife and minor children of the appellant but also in respect of the daughter, G. Judge Turnock refers to that "agreement" in his decision at [23]:

"In the further representations submitted on 26 January 2012 the Appellant's representatives stated: "Please be advised that simultaneously to this application we submit further representations on behalf of our client's eldest daughter, GN. GN is over the age of 18 years, and therefore is entitled to a claim for asylum in her own right. For the sake of completeness, a separate bundle of representations has been prepared in her name. However, it should be noted that GN'S claim relates largely to that of her father. We would request that our client and his daughter are issued with a joint decision on their respective matters."

8. I note that the spouse of the appellant was born in 1973 and that other children were born respectively in 1995, 1996, 2000, 2005 and 2011.

9. The judge quoted at length from the jurisprudence relating to Article 8 ECHR and also set out the provisions of Section 117 of the 2002 Act (as amended). Ms Khan, for the appellant, submitted that (perhaps unusually) the judge had then gone on to apply the relevant

case law to the facts as he found them in the appeal. Indeed, at [25], the judge sets out in detail the current circumstances of the all the children. At [127] the judge wrote this:

“The Appellant has been in the UK since 2009 and his immigration status has been precarious throughout that period. He speaks fluent English, is well-educated and would be in a position to find legitimate employment. His children have all been in the country for the past seven years and have built their lives here. The legislation recognises that such a lengthy period in the UK brings with it a status which equates, for this purpose, to British citizenship. The children have spent their time in the UK diligently and will be in a position where they can contribute to society.”

10. At [128], the judge concluded that it would be “unreasonable to expect the children of the appellant to leave the country and so it follows that the removal of the appellant would be disproportionate and accordingly in breach of the provisions of Article 8 of the ECHR”.

11. The decision on Article 8 grounds is not without its difficulties. For whatever reason (and the absence of any obvious reason appears to concern the author of the Secretary of State’s grounds) the Presenting Officer before Judge Turnock and the representative agreed that the eldest child (GN) should have her appeal dealt with with that of her father. More troubling, as Judge Page noted when granting permission to the respondent, two of the other children of the appellant (B, born in 1995 and M born in 1996) are also adults. Further, it is clear from the comments made by the judge at [23] (quoted above) that the oldest child GN had brought her own claim for asylum in her own name and that the judge was referring at this paragraph in effect to the consolidation of her claim/appeal with that of her father (that is with G as the father’s dependant in the appeal). But there is some force in the submissions of the respondent that the judge’s analysis at [125], where he sets out what each of the children are now doing, appears to ignore the fact that three of the children are adults. Equally, there is force in Ms Khan’s submission that the younger children have lived in the United Kingdom for more than seven years, a fact properly identified by Judge Turnock. However, this has led to the somewhat unsatisfactory outcome that the appeal of the appellant, his wife and the three youngest children (M, N and Y) have, in my opinion, been properly allowed by Judge Turnock on Article 8 ECHR grounds whilst the appeals of the three eldest children have not been properly differentiated from the law and circumstances applying to their parents and their younger siblings. In my view, at the end of a very lengthy and very detailed decision, Judge Turnock has perhaps understandably mistaken the effective consolidation of G’s asylum claim with that of her father as a reason for not applying the relevant legal provisions to each of the children; he has, in a sense, applied the law relevant to some of them to all of the children.

12. However, I do not consider it is a simple matter for me to allow the Secretary of State’s appeal in respect of Article 8 and to reverse that decision. The fact that three of the children are adults is, of course, irrelevant but, in appropriate circumstances, the claim to remain on Article 8 grounds may succeed even when made by an adult child. Therefore, I set aside the decision of Judge Turnock. I re-make

the decision dismissing the appellant's appeal on asylum/Articles 2/3 ECHR grounds. I re-make the decision in respect of Article 8 allowing the appeals of the appellant, his spouse and the three younger children (M, N and Y). The Tribunal will determine the appeals of the children GN, B and M at a resumed hearing on a date to be fixed at Bradford before Upper Tribunal Judge Clive Lane. Both parties have permission to file and serve new evidence in respect of Article 8 for those appellants provided they do so at least ten clear days before the date of the resumed hearing.

### **Notice of Decision**

13. I set aside the decision of Judge Turnock. I re-make the decision dismissing the appellant's appeal on asylum/Articles 2/3 ECHR grounds. I re-make the decision in respect of Article 8 allowing the appeals of the appellant, his spouse and the three younger children (M, N and Y). The Tribunal will determine the appeals of the children G, B and M at a resumed hearing on a date to be fixed at Bradford before Upper Tribunal Judge Clive Lane. Both parties have permission to file and serve new evidence in respect of Article 8 for those appellants provided they do so at least ten clear days before the date of the resumed hearing.

### **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."

3. The appeals of GN, BN and MN remain outstanding. Following a resumed hearing, I reserved my decision.
4. I shall deal first with the appeals of the children BN (born 1995) and MN (born 1996). Miss Khan, for the appellants, submitted that these appellants fell to be granted leave to remain in line with the principal appellant, SN (their father). She relied upon the Home Office's Asylum Policy Instruction (Dependants and Former Dependants) (Version 2.0: May 2014). Section 4.1 of the guidance provides as follows:

'4.1 Granting leave to dependants Dependants of an asylum applicant who have been included in the initial asylum claim will, if the principal applicant is granted Asylum, HP, Family or Private Life leave to remain (LTR) or Discretionary Leave, normally be granted leave of the same duration and status as the principal applicant. Paragraph 349 of the Immigration Rules states that if the principal applicant is granted asylum or HP and leave to enter or remain (LTE/R), any qualifying dependants will also be granted for the same duration. This applies whether the dependants arrived in the UK with the principal applicant or followed at a later date but were included in the application before the decision was made. Although it may not be appropriate to

recognise some dependants as refugees, for example if they specifically request not to be treated as a refugee or they are a different nationality to the principal applicant, they should still be granted LTE/R for the same duration as the principal applicant. Where the principal applicant has been granted leave under the Restricted Leave policy, any dependants should normally be granted leave of the same duration and conditions as the individual granted restricted leave. However, caseworkers must have regard to the need to safeguard and promote the welfare of children in the UK under section 55 so must consider the likely impact that imposing such conditions may have on dependant children and consider what is appropriate in the particular circumstances of the individual case. See section 1.4 for application of this instruction to children and the "Restricted Leave" guidance.'

5. Both the children were under 18 years at the time of the principal appellant's claim for asylum. They should, in accordance with the Secretary of State's policy, be granted leave to remain of the same duration and status as the principal appellant. Mr Diwnycz, for the Secretary of State, did not seek to disagree with that proposition. Accordingly I allow the appeals of BN and MN on Article 8 ECHR grounds.
6. The entire family, therefore, has been granted leave to remain in the United Kingdom with the exception of the daughter, GN. GN does not fall within the terms of the Home Office guidance because she was 19 years old when the family arrived in the United Kingdom and the principal appellant claimed asylum. In her submissions, Miss Khan first submitted that the Presenting Officer before the First-tier Tribunal (Mrs Fell) had submitted that the appeal of GN "stood and fell together" with the remainder of the family. Secondly, GN herself had specific reasons for seeking to remain in the United Kingdom on Article 8 grounds.
7. GN briefly gave evidence to the Upper Tribunal and was cross-examined. She relied upon her latest witness statement (made jointly with her sisters MN and SN and which is dated January 2018). It was apparent from the witness statement that, despite the restrictions on tertiary education, GN has made good use of her time in the United Kingdom achieving considerable academic success. She has acted as a volunteer and debt assessor at the Citizens Advice Bureau. The brother of these children, YN, is autistic. GN explained that her brother has particular trust in her and that only she can assist him when he awakes and becomes distressed. GN herself left Congo when she was only 8 years old she said she did not "know very much about it." She has no friends or relatives living in Congo. She explained in her evidence, that she had lived with her family in Cameroon before coming to the United Kingdom. I asked GN who would provide the special care which she provides at the present time for her brother when she goes to university. She told me that the family intend to relocate so that they will live within commuting distance of the university campus. GN would, therefore, be able to remain living at home while she is a student and would be able to care for her brother.

8. I am aware that GN is an adult. I am aware that she was an adult when she came to the United Kingdom with the rest of her family. However, I was very impressed by her evidence and accept, as all the family members say, that the family is close-knit and that GN is a vital and integral part of it. In terms of her private life, I find that this would be suffer disproportionate interference if she were to be removed to Congo. However, it is possible to go beyond that statement. I accept the evidence that GN offers special care for her autistic brother and that that care further strengthens what is already a very close-knit family life. I accept that GN left Congo when she was a young girl and that she has no ties with the country whatsoever. In the very particular circumstances of this case, and notwithstanding the fact that GN is an adult, I find that it would be a disproportionate breach of both her right to family and private life and the family life of her sisters, brother and parents if she were to be removed to Congo Brazzaville. I find that she should be granted human rights leave to remain in line with the other members of her family.

### **Notice of Decision**

The appeals of the appellant's GN, BN and MN are allowed on human rights grounds (Article 8 ECHR).

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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Signed

Date 13 APRIL 2018

Upper Tribunal Judge Lane

### **TO THE RESPONDENT FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 13 APRIL 2018

Upper Tribunal Judge Lane