



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/09127/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Manchester**

**Decision & Reasons  
Promulgated**

**On: 31<sup>st</sup> January 2018**

**On: 5<sup>th</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**SMB**

**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Mr Madubuike, Broudie Jackson and Canter Solicitors  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of the Democratic Republic of Congo born in 1991. He appeals with permission<sup>1</sup> against the decision of the First-tier Tribunal (Judge Alis) to dismiss his appeal on protection grounds.

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<sup>1</sup> Permission was refused by First-tier Tribunal Judge EB Grant on the 9<sup>th</sup> October 2017 but was granted upon renewed application by Upper Tribunal Judge Plimmer on the 28<sup>th</sup> November 2017.

## **Anonymity**

2. This case concerns a claim for international protection. I have had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders and I consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

## **Background and Matters in Issue**

3. The substance of the Appellant’s claim for protection was that he had a well-founded fear of persecution in the DRC for reasons of his imputed political opinion. Whilst he had no problems whilst living in the DRC he had come into conflict with his own government when he moved to Algeria to take up a student scholarship as part of a scheme sponsored by the Congolese Foreign Office. He had joined the leadership of a student organisation (‘CESRDCA’) and had come under pressure to actively support the ruling party in Kinshasa, the PPRD. The Appellant had been elected president of CESRDCA in November 2013 and after approximately one year had been subject to a verbal warning by a PPRD loyalist. He was told that his scholarship may be cancelled and that he would be removed to the DRC. In December 2014 CESRDCA refused to take part in a census and after this the Congolese embassy refused to look after the members; the Appellant was informed that his behaviour was “anti-government”. He received warnings from contacts that he knew in the Foreign Office that he had been identified as someone who was inciting students against the government. In January 2015 he was informed by a contact that he had been “blacklisted”. The Appellant became afraid for his safety in Algeria, travelled to the UK and claimed asylum within 48 hours of his arrival.
4. The Respondent, whose ‘reasons for refusal’ letter is dated 12<sup>th</sup> June 2015, accepted that the Appellant is a Congolese national. She further accepted that he was a member of the CESRDCA group whilst studying in Algeria between 2010 and 2015. She did not however accept that these activities had brought him to the adverse attention of his own government. The warnings that the Appellant claimed to have received were all verbal and therefore could not be regarded as “reliable”, and his fears of arrest, imprisonment and execution were regarded as speculative. Protection was therefore refused.

5. Having heard the Appellant's evidence the First-tier Tribunal made a number of positive findings of fact. It is accepted that:
  - i) The Appellant is a DRC national formerly resident in Algeria;
  - ii) Between 2010 and 2015 he was involved with the Congolese student organisation CESRDCA in Algeria;
  - iii) He was President of a group connected with CESRDCA which was protesting for better rights for students.
  
6. The Tribunal was not however satisfied that the Appellant faced a real risk of persecution arising from these facts. The determination makes reference to the country guidance given in AB & DM (DRC) CG [2005] UKIAT 00118, MK (DRC) CG [2006] UKAIT 0001 and BM & Others (returnees – criminal and non-criminal) DRC CG [2015] 00293 (IAC), and to Lokombe (DRC – FNO's – Airport Monitoring). Whilst these cases agree that a person with a perceived political profile in opposition to the government would be reasonably likely to be persecuted, they also demonstrate that no risk arises simply from being a failed asylum seeker. In order to establish such a risk claimants need to show that their activities would have come to the adverse attention of the Congolese security forces. The Tribunal considered that in this case the facts do not bear out such a conclusion. Particular reliance is placed on the Appellant's evidence that his family in the DRC have not been visited or asked about him; he may have "upset people" in the embassy in Algiers but this does not mean that his profile was such that he would face difficulties in the DRC. The appeal was thereby dismissed.
  
7. In this appeal the Appellant argues that the First-tier Tribunal erred in its approach to the country guidance and background information. It is submitted that this material demonstrates that a person with the Appellant's profile would be at risk. It is further submitted that the First-tier Tribunal has not taken all material evidence into account, in particular the nature of the threats and interventions faced by the Appellant in Algeria.

### **Discussion and Findings**

8. My starting point for determination of this appeal, the parties were in agreement, was the wholly positive credibility assessment made of the Appellant by the First-tier Tribunal. The Tribunal was not prepared to accept that the Appellant had any profile as an APARECO UK activist, but then again the Appellant hardly claimed to have one,

stating that he had only recently attended a couple of meetings of this group. Other than that, the determination contains no negative findings about the Appellant's evidence.

9. The *ratio* of the decision is that notwithstanding the Appellant's student activism in Algeria the authorities in the DRC have no interest in him. The Tribunal deduced that conclusion from the following propositions:

- i) In the country guidance the only risk category into which the Appellant might fall would be a "person having or perceived to have a military or political profile in opposition to the government";
- ii) The Home Office guidance stated that those who were considered to pose a political risk or who were "high level activists" would be targeted. Also at risk would be persons on the 'blacklist' of the Direction Generale de Migration (DGM), identified as persons wanted by the police in Congo, those believed to have plotted coups against the government, and persons believed to have been involved in attacks against Congolese activities whilst overseas;
- iii) The Home Office accept that those who have aggressively opposed the regime, who have a significant and visible profile for so doing, are likely to face a real risk of persecution;
- iv) The Appellant acknowledges that his family in the DRC have experienced no difficulties (ie no visits from police etc);
- v) Whilst he may have upset people in the embassy in Algiers, and campus police in Algeria may have searched for him, that does not demonstrate that any such interest would extend to the DRC;
- vi) He has not suffered any problems himself in the DRC;
- vii) The sum of (iv), (v) and (vi) is that the Appellant cannot be considered by the Congolese authorities to fall into any of the risk categories discussed at (i)-(iii).

10. Mr Madubuike acknowledges that the Appellant's family have not suffered as a result of his activities: that was the Appellant's own evidence. Further it is clear that the Appellant himself has not encountered problems in the DRC. Whilst those were findings of fact open to the Tribunal on the evidence, it is submitted that neither justifies the leap that the determination then takes to concluding that

the Appellant would not today be at risk. Mr Madubuike submits that the logic of the determination falls down at three hurdles.

11. First of all there was no country background material before the First-tier Tribunal indicating that family members of student dissidents are likely to encounter problems; if there was Mr Madubuike has been unable to find it and the determination certainly does not identify it. Mr Diwnycz was not able to point to any passage to provide evidential support for the Tribunal's conclusion that the Appellant's family would have suffered if he actually faced a risk.
12. Second, the fact that the Appellant had not encountered any problems in the DRC was neither here nor there, given that he had not been back to that country for many years.
13. Thirdly, and perhaps most importantly, the risk analysis presented in the determination fails to take into account the Appellant's own evidence about what actually happened in Algeria. Mr Madubuike submits that had the Tribunal considered the totality of the Appellant's evidence about the threat he faced there, it could have done nothing else but to accept that he had a political profile to the extent that he would face a risk, as per the country guidance cases. In particular;
  - i) The Appellant was elected President of CESRDCA;
  - ii) He led protests about the living conditions of Congolese students which led him into conflict with students who were actively connected to the regime, for instance the children of regime officials;
  - iii) In response to the Appellant's activities the Congolese embassy proactively tried to prevent further attacks on the regime by attempting to co-opt the Appellant and create an alternative student grouping: the Appellant and other students rebuffed these attempts and refused to co-operate, in particular refusing to join the PPRD as they had been instructed by the embassy;
  - iv) Because of tensions with embassy staff CESRDCA thereafter addressed their concerns directly to Kinshasa, writing letters of protest to the Minister of Foreign Affairs, Minister of Education and the offices of the President and Prime Minister;
  - v) When the embassy in Algiers discovered this they responded by reporting back to Kinshasa that the students were anti-regime and that CESRDCA were influencing students to rebel against the government. Someone that the Appellant knows in Kinshasa informed

him that the security forces were looking for ways to recall the leaders back to Congo so that they could be arrested;

- vi) In further protests outside the embassy in Algiers the Congolese authorities called the Algerian police in to break up the demonstration;
- vii) Six separate individuals connected with the regime, and known personally to the Appellant, have warned him that he would be arrested upon return to Kinshasa. In two cases the information came to the Appellant by way of a threat from officials within the embassy in Algiers. In the third it was from a family friend working in the Foreign Office in Kinshasa (the full details of all the informants mentioned, including the full name, connection to the Appellant and position, are supplied in the Appellant's statement and asylum interview but I do not include them here for obvious reasons) who had heard a lot of "negative talk" about the Appellant and his activities. These rumours were confirmed to the Appellant by another civil servant of his acquaintance, working in a separate department and whose spouse works in foreign affairs. They were of the strong opinion that there was a clear risk to the Appellant should he come home. Finally another family friend in a position in a government department contacted him in January 2015 to tell him that his name had been placed on the 'blacklist' and that he should do all he could to avoid returning to the DRC. It was this final telephone call which led the Appellant to come to the UK and seek asylum, a decision galvanised by the fact that embassy staff had called in the Algerian police to search for the Appellant.

14. I accept that it is hard to see from the findings of fact in the determination that the totality of that evidence was weighed in the balance. One omission that is particularly striking is in paragraph 57 where the determination refers to country background evidence about the DGM 'blacklist'; it would appear that the Tribunal then weighed that material in favour of there being no risk to the Appellant without actually considering his express evidence that his name was in fact on such a list. Given the acceptance that the Appellant is a credible witness, it is hard to see why not. Reading the detailed and careful determination as a whole the answer appears to be an accidental, but nevertheless material, omission. I am satisfied that the Appellant's detailed and credible evidence, summarised above, was relevant to the question of risk.

15. In his submissions Mr Madubuike placed reliance on the Secretary

of State for the Home Department's own guidance, the Home Office Country Policy and Information note 'Opposition to the Government in the DRC' published in November 2016. This refers to the decision in BM & Ors and states "although the findings in BM refer to APARECO, they can be taken to be equally applicable to other diaspora groups who aggressively oppose the regime" [at 2.2.9]. Mr Diwnycz for the Respondent submitted that looking at that guidance the key to this appeal was whether the Appellant's behaviour would be considered by the Congolese authorities to be "aggressive".

16. I find that the evidence speaks for itself. If no fewer than six persons connected to the regime were of the view that the Appellant had a) been identified as an active political opponent of the government and b) that he faced imminent risk on return as a result, that would strongly suggest that he would be perceived as a threat. If the Appellant was elected president of a student body who openly campaigned against the Congolese government, repeatedly protesting outside of the embassy and indeed writing directly to ministers, that would strongly suggest that he could be considered to be 'high' profile. If the Appellant has been told, by a credible source, that his name has been placed on the 'blacklist' such that he would be arrested, that would strongly suggest that he did in fact face such a risk. The only 'evidence' pointing the other way was the absence of interest in the Appellant's family members within the DRC. As Mr Madubiike points out, without any evidential foundation in the country background material that inference was not strongly suggestive of anything. Applying the lower standard of proof I am satisfied that the Appellant has made out his claim and the appeal is allowed on protection grounds.

### **Decisions and Directions**

17. The decision of the First-tier Tribunal contains a error of law such that the decision must be set aside. The error of law is a failure to consider all matters relevant to risk assessment.
18. The decision is remade as follows: "the appeal is allowed on protection grounds".
19. There is an order for anonymity.

Upper Tribunal Judge Bruce  
1<sup>st</sup> February 2018