



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

Appeal Number: PA/05325/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 February 2018**

**Decision & Reasons  
Promulgated  
On 26 March 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**N K E  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The decision under challenge in this appeal is that of Judge C Burns of the First-tier Tribunal posted on 19 July 2017 dismissing the appeal of the appellant, a national of Democratic Republic of Congo (DRC), against a decision made by the respondent on 14 May 2017 refusing her international protection claim. Judge Burns found that the appellant had not given a credible account of having been an active member of the UDPS who would be at risk of persecution on return.

2. At the hearing before me there was no appearance by the appellant. There was a letter from Howe & Co dated 20 February stating that having unsuccessfully attempted to contact the appellant on numerous occasions and after several missed appointments, they were without instructions. There was nothing from the appellant explaining her absence notwithstanding that notice of the hearing had been sent to her last known address. In such circumstances I decided to proceed with the appeal in the absence of one of the parties. I heard brief submissions from Mr Nath.
3. The grounds effectively raised five arguments stating that the judge had materially erred in law in (i) failing to give clear, reasonable and cogent reasons why the appellant was found not to be credible; (ii) erroneously discounting the evidence from the leader of the UDPS in the UK; (iii) seeking to reject credibility on the basis of discrepancies which did not alter the centrepiece or the main thread of her claim; (iv) in placing reliance on a ten year old country guidance case; and (v) in making findings on s. 8 of the 2004 Act before assessing credibility generally. I am not persuaded that any of the grounds discloses a material error of law.
4. It is convenient to deal first with point (v) which was extracted from the written argument by Judge Chalkley of the Upper Tribunal. I see no error in the judge dealing with s. 8 considerations first in order. By statute this provision requires judges to identify if there are any relevant matters damaging to credibility, one being whether a claimant could have claimed asylum on arrival but did not. At paragraph 37 the judge properly identified that the appellant did not claim asylum on arrival but delayed six days. I do not consider either that the judge put the s. 8 cart before the general credibility horse. In paragraph 38 the judge did say she had “separately considered the credibility of the appellant”, but phrasing matters that way only serves to reinforce the fact that she clearly understood s. 8 considerations could not be determinative; and, indeed, with reference to paragraph 339L of the Immigration Rules, she went on to note the relevance, among other factors, of the claimant claiming asylum later than her earliest opportunity.
5. Reverting to normal ordering, I see nothing in point (i). The judge’s decision sets out clear and intelligible reasons based squarely on the evidence for rejecting the appellant’s credibility. It is true that at paragraph 53 the judge accepted that the appellant was an ordinary member of the UDPS. That was consistent with what the appellant herself had said at her screening interview. Elsewhere the appellant had claimed to have an active role, but it was open to the judge to reject the latter claim as it was not what she first claimed and was also at odds with the background country evidence.
6. As regards (ii), the judge gave sound reasons for placing limited weight on the letter from the UDPS leader in the UK, noting that its contents were at variance with the appellant’s own account (unlike the UDPS leader’s

account, the appellant never claimed to have been threatened with arrest).

7. I reject the contention that the judge relied on minor or peripheral discrepancies. The appellant's claim to be an active UDPS member was at the heart of her claim and not only was her own evidence on this matter inconsistent, but the UDPS letter asserting that she was an active member made a claim that was in conflict with her own account that she had never been threatened with arrest.
8. There is no arguable merit in the contention that the judge erred in relying on a ten year old country guidance case. Upper Tribunal Practice Directions (I paraphrase) allow a judge to rely on existing country guidance unless there is fresh evidence, casting a different light. It is clear from the judge's decision that she properly focussed on the issue of whether ordinary members of the UDPS were at risk on return. The country guidance case of **MM [2007] UKAIT 00023** held that they were not at risk. In citing this case the judge properly focused on whether there was fresh evidence indicating that the situation had changed for UDPS members. At paragraph 33 the judge correctly observed that "[t]he appellant has not put satisfactory evidence before me that the political situation has deteriorated to such an extent that I should depart from **MM**". There was no legal error here.

### **Notice of Decision**

9. For the above reasons I conclude that the appellant's challenge to the judge's decision fails to disclose an error of law. Accordingly the judge's decision to dismiss the appellant's appeal must stand.

### **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 her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 22 March 2018



Dr H H Storey  
Judge of the Upper Tribunal