



Upper Tribunal

**(Immigration and Asylum Chamber)
PA/00807/2019 (P)**

Appeal number:

THE IMMIGRATION ACTS

**Heard Remotely at Manchester
CJC**

On 6 August 2020

**Decision & Reasons
Promulgated**

On 12 August 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

IS

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

For the appellant: Mr R O’Ryan

For the Respondent: Ms J Isherwood

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The primary documents that I was referred to are in a consolidated bundle of 58 pages, the contents of which I have noted and taken full account of. The order made is described at the end of these reasons. The appellant was also present during the remote hearing.

1. The appellant, who is a national of the Democratic Republic of the Congo (DRC) born on 15.4.97, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 23.1.20, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 14.1.19, to refuse his claim made on 16.8.15 for international protection on the basis of imputed political opinion.
2. On 1.4.20 the Upper Tribunal issued directions proposing that the error of law issue be determined without an oral hearing, providing for submissions on that issue. In the light of submissions subsequently received from the appellant's representatives seeking an oral hearing, on 6.7.20 the Upper Tribunal directed that the appeal should be listed for a remote hearing by Skype for Business and the matter was subsequently listed for 6.8.20.
3. I have carefully considered the decision of the First-tier Tribunal in the light of the various written and oral submissions before me, and the grounds of application for permission to appeal to the Upper Tribunal.
4. The appellant claimed that in 2006 soldiers came to his family home looking for his father. His sister was raped and later killed along with his mother and father. He went to live with an uncle until 2015 when soldiers came to the house looking for him, when he was out. There is some debate as to whether his father fled from the soldiers or whether he abandoned the property for other reasons. In any event, he allegedly left the appellant's belongings with a neighbour, together with the phone number of someone who subsequently gave the appellant \$8,500 and made introductions to an agent, with whose assistance the appellant managed to leave the DRC. The appellant had given an alternative account that he went to Europe with friends and then decided to come and live in the UK, paying €1,000 for a Belgian ID card in the name of [AM] to gain entry to the UK. He has alternatively stated that he came to the UK because he feared he would be killed, or that it was because coming to the UK was his aim and goal.
5. The appeal was dismissed in the First-tier Tribunal because the judge found the appellant's core factual account not credible and did not accept that the authorities had ever had any adverse interest in him, nor would they have any such interest on his return. Amongst the

findings, between [29] and [33] of the decision, the judge considered but rejected the appellant's claim to have used a false passport to fly from the DRC to Turkey.

6. The grounds of application for permission to appeal first asserted that the First-tier Tribunal misapprehended the appellant's evidence, resulting in an unfair adverse credibility finding. This related to the judge's finding that it was not credible that after living with the uncle for 9 years from 2015, the uncle would flee and yet not warn the appellant, who had a mobile phone, that soldiers had come to the house in looking for him. The grounds argue that there was nothing in the evidence to support the conclusion that it was the appellant's case that the uncle had any prior notice of the soldiers' visit to the property.
7. The second ground relates to the judge's rejection at [33] of the decision of the appellant's claim that he flew from the DRC to Turkey using a false passport, which was in turn relevant to the risk on return for having committed a criminal offence in the use of the false passport. It is submitted that this finding was not adequately reasoned and, further, that the judge proceeded unfairly in questioning why the agent had the appellant fly from the DRC to Turkey as opposed to a European country, and how his uncle could have afforded to finance the journey so that the appellant was handed a wad comprising \$8,500.
8. Permission to appeal was granted by First-tier Tribunal Judge Swaney on 24.2.20, finding no merit in the first ground but considering the second ground arguable, stating: *"The refusal letter did not dispute the appellant's evidence that he used a false passport to travel from the DRC to Turkey. It was therefore not identified as a matter the appellant ought to comment on. It was a matter that was relevant to the judge's consideration of risk on return pursuant to the guidance given in BM (false passport) DRC CG [2015] UKUT 00467 (IAC). The handwritten record of proceedings is not legible and it is unclear whether the appellant was asked any questions related to the passport he used to travel from the DRC to Turkey or why the agent facilitated travel to Turkey as opposed to any other country."*
9. It is evident that the grant of permission was made under something of a misapprehension. It was incorrect to suggest that the refusal letter (RFR) had not disputed the appellant's claim to have used a false passport to fly from the DRC to Turkey. Neither is it correct to suggest that this was something that should have been put to the appellant for comment at the appeal hearing. Judge Swaney also stated that as the Record of Proceedings was illegible, it was unclear whether the appellant was questioned about this in evidence. In fact, as summarised below, this evidence was given for the first time by the appellant in his examination in chief by Mr O'Ryan.

10. The refusal letter (RFR) notes the claim to have paid for a stolen Belgian ID card with which he was able to fly from Paris to London, but did not contain any reference to a claim that the appellant had used a false passport, in the exact same name, to travel from the DRC to Turkey. It is not mentioned in either the Screening Interview (SI) or the Asylum Interview Record (AIR). There were no questions or answers addressing this issue. The appellant mentioned in reply to Q43-44 about coming to the UK but there was no reference to a false passport. At Q151 onwards he explained about a neighbour telling him his uncle had left a number for him to call. The person he spoke to put him in touch with a woman. On meeting this woman she gave him an envelope containing \$8,500. She introduced him to someone else who introduced him to an agent, whom he paid with some of the money from the envelope, retaining some from which he paid another person in France to provide him with a Belgian ID card. There was no reference to a false passport.
11. Neither was there any reference to having left the DRC using a false passport in either of the appellant's witness statements of 26.2.19 or 16.7.19. As stated above, this claim was first made by the appellant during his oral evidence in chief at the First-tier Tribunal appeal hearing, a transcript of which has now been obtained. It appears from the transcript that Mr O'Ryan must have had instructions on the matter before the commencement of the hearing as he asked permission to ask further questions of the appellant in light of the new CPIN, and proceeded immediately to ask the appellant how he left the DRC and whether he had used a travel document. It was in that way that the evidence came about, not as the judge granting permission to appeal understood.
12. He was further questioned about leaving the DRC using a false passport in cross-examination. In relation to how he left the DRC, the appellant claimed in evidence that he used a false Congolese passport given to him by the agent in the name of [AM], explaining that [A] was his middle name and [M] was his grandmother's name. He accepted that he did not have right to use that passport, or any passport in that name, or have his own passport. In cross examination he said the passport was given to him by an agent on the day he left but that person had taken a photograph of him some two weeks earlier and the passport bore his photograph.
13. He was challenged in evidence about the coincidence of the name on the passport with the name of the stolen Belgian ID card he had used to enter the UK, which was also in the name of [AM]. He said he had been told that that ID card was 'valid,' but that it bore his own photograph. He said that the person who gave it to him took his photograph and then gave him the card. This was not the same agent who provided him with the passport in the DRC but another person who

was just someone who had approached him in Paris asking if he could help anyone cross the border to the UK. He claimed that it took a week for the card to be prepared and that he had asked for the name [AM] to be put on it.

14. There was some discussion at the hearing about the source of the information that the Belgian ID card had been stolen, as recorded at [71] of the refusal decision, as was being suggested that the card was stolen from someone called [AM]. The information was produced to Mr O’Ryan at the hearing by the presenting officer, apparently from Annex III at page A1-A3. Having seen that source material, Mr Ryan had no cross-examination for the appellant on that point, concluding the appellant’s oral evidence. Mr O’Ryan submitted at that appeal hearing that on the limited information provided it could not be established that the Belgian ID card had been stolen from [AM] but could equally have been from a batch of stolen blank Belgian ID cards and that the appellant had asked for that name to be put on it, and that his photograph must have been added.
15. Having carefully considered Mr O’Ryan’s detailed submissions and looked again at the decision, I am satisfied that there is no error of law in respect of the first ground of appeal. The judge was entitled to infer from the appellant’s answers in interview between Q106, Q107 and Q110, that the appellant’s uncle knew the authorities were coming, having left before they arrived, but had not bothered to warn the appellant who was fortuitously absent whilst helping a friend move house. He claims that he did not have a key, despite living there 9 years and that when he returned he found the house closed up. The appellant’s answer at Q107 is rather garbled but it was pointed out that at part of the answer the appellant appeared to suggest that the uncle had left the property to the neighbour. The only explanation the neighbour gave him was “my uncle said he has to leave because he has nothing to do with the problem that my family is having with the government,” and went on to tell him that his uncle had left the phone number of a friend to call. In oral evidence he said that the neighbour told him, ‘they’re not here anymore.’ At Q141 to 142, and at Q150 he said that he didn’t know if anyone was at the house but was told that the uncle was no longer there, “he had left.” He didn’t know if his uncle ever returned to his house after the visit by the soldiers. Evidently, the appellant and his uncle never spoke again, although he was given \$8,500 to finance his departure from the DRC.
16. Mr O’Ryan submitted to me that it did not necessarily follow that the uncle had advance notice of the arrival of the soldiers and may have fortuitously left without knowing that soldiers were coming. However, in assessing the credibility of this aspect of the claim, the judge took account of the fact that before leaving, the uncle was not only able to leave the appellant’s belongings with a neighbour but also left a

message with the neighbour with a phone number for the appellant to call, through which the appellant was provided with a large sum of money and introduced to an agent to assist him to leave the DRC. If this account is true, it must follow that after 9 years and without any advance notice or word of discussion with the appellant the uncle left his home suddenly and yet was able to have sufficient foresight to provide the means for the appellant to almost immediately flee the DRC. The message left through the neighbour, to the effect that the uncle didn't want anything to do with the problem the appellant had with the authorities, also supported the conclusion that the uncle was aware of the visit of soldiers or some other current adverse interest and activity. On that factual scenario, taking into account the adverse credibility findings as to the other aspects of the factual claim, the judge was entitled to draw what was the only sensible conclusion that could be drawn, that the uncle sudden departure was not a coincidence and that on that account he had advance knowledge of the soldiers' visit or managed to escape undetected when they arrived and yet never bothered to warn his nephew, even though he was generous and kind enough to leave him \$8,500. I am satisfied that the judge was entitled to draw the inference made at [25] of the decision, and did not err in concluding that this claim was a fabrication.

17. In relation to the second ground it is curious that, as the judge noted at [10] of the decision, the appellant's case at the appeal hearing was that he left the DRC by flying to Turkey using a false ID card in the name of [AM]. However, the appellant's case in interview was that it was in France that he obtained a stolen Belgian ID card in the name of [AM].
18. It was the appellant's claim that he would be at risk on return for, inter alia, having left using a false passport and the burden of discharging that fell on the appellant to the lower standard of proof. Independently of this aspect of the claim, the judge rejected entirely the claim to have been of any adverse interest to the authorities. As drafted, at [29] of the decision, by stating "Over and above that..." it is clear that the core of the claim had been rejected, whether or not he also left on a false passport.
19. The grounds aver that the judge's finding that the appellant did not use a false document to leave the DRC was made without any or any adequate reasoning. However, the submission is short-sighted and fails to take account of the other credibility findings, many of which have not been challenged in the grounds. Properly read, the statement at [33] of the decision, "I do not accept he facilitated the use of a false document to leave the DRC" is a summary and not to be characterised as a finding devoid of supporting reasoning. That reasoning is set out between [29] and [32] of the decision and, importantly, must be read in the light of the conclusion at [28] of the decision, rejecting as not

credible the events of 2015 claimed by the appellant. That conclusion regarding 2015 itself is supported by reasoning set out in the preceding paragraphs of the decision. The judge stated at the conclusion of [28], "I do not accept as credible that 9 years later the soldiers would be looking for him." It must follow that if the appellant's account of events justifying his flight from DRC in fear of his life is not made out, there was no valid reason for the appellant to leave the DRC, or to do so by flying to Turkey using a false passport costing a substantial amount of money.

20. As the judge observed at [32] of the decision, BM (false passport) held that the mere fact that an asylum claimant utilised a false passport or kindred document in departing the DRC will not without more engage the risk category specified at [119(iv)] of BM and others (Returnees: Criminal and Non-criminal) DRC CG [2015] 293 (IAC). However, the matter is fact and context sensitive so that the Tribunal must consider, inter alia, the likely state of knowledge of the DRC authorities. Such a person using a false passport will not be at risk on return unless likely to come to the attention of the DRC authorities. As stated above, at [33] of the decision, the judge found that the appellant had not used a false document to leave the DRC and, therefore, did not fall into this risk category. I accept the submission of Mr Jarvis, in his response to the grounds of appeal, that given the burden was on the appellant and having failed to establish the core reason to need to leave the DRC by using a false passport, the judge had no alternative but to find the burden of showing a reasonable likelihood of punishment by imprisonment for the use of a false passport not discharged. In any event, I am satisfied that the finding was adequately reasoned and justified in the context of the overall adverse credibility findings. As stated above, it is not the case that this issue was never put to the appellant, as the judge granting permission misapprehended.

21. Mr O'Ryan relied on his response to the respondent's submissions on the error of law and the endorsement of the Supreme Court in MA (Somalia) v SSHD [2010] UKSC 49, that a Tribunal must be very careful not to dismiss an appeal just because an appellant has told lies. "Even if very large parts of his story have been disbelieved it is still possible that the appellant has shown that he would be at risk on return." I bear this in mind, but as stated above, I am satisfied that the finding rejecting the claim to have flown from the DRC using a false passport was supported by cogent reasoning and the judge was also entitled to take into account the other adverse credibility findings, many of which have not been challenged. In any event, I cannot see from the evidence presented to the Tribunal that the appellant had managed to advance his case beyond the "mere fact that an asylum claimant utilised a false passport or kindred document in departing the DRC will

not without more engage the risk category...” Whilst the guidance depends on the fact sensitive context of the individual case, it must follow from the adverse earlier credibility findings that the appellant was not of adverse interest to the DRC authorities. In reality, the appellant’s claim on this head, advanced at the last moment in his oral evidence at the appeal hearing, would be insufficient to engage the risk category, so that any error of the First-tier Tribunal in this regard cannot be material to the outcome of the appeal.

22. Complaint is also made that the judge made unfair criticism of the appellant allegedly flying only to Turkey, to have to make his way across other European countries, and of the rejection of the claim that his uncle was in a position to leave him so much money to finance the flights and journey to the UK. The complaint is that these two matters were not put to the appellant for comment at the hearing. It is submitted that there may be a number of explanations why the agent facilitated his flight to Turkey, speculation of which some examples are set out at [10] of the grounds. I am not, in any event satisfied that it was incumbent on the judge to put these matters to the appellant. However, even if there was such a duty, these are subsidiary findings and not material to the conclusion reached that the appellant’s factual account of events in 2015 was not credible; they could have made no tangible difference to the outcome of the appeal.

23. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of law.

The appellant’s appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal must stand and the appeal is dismissed on all grounds.

I make no order for costs.

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 6 August 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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.”

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 6 August 2020