



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001841
First-tier Tribunal No: HU/02860/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 March 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

CKM	Appellant
(ANONYMITY ORDER MADE)	
The Secretary of State for the Home Department	Respondent

Representation:

For the Appellant: Ms S Samarakoon of David Benson Solicitors.
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 22 February 2023

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. The parties at liberty to apply to discharge this order, with reasons.

I make this order because this is a protection claim.

Decision

1. The appellant, a national of the Democratic Republic of the Congo (DRC) born on 31 December 1982, appeals against a decision of Judge of the First-tier Tribunal K. R. Moore (hereafter the “judge”) who, in a decision promulgated on 17 May 2022 following a hearing on 6 May 2022, dismissed his appeal against the respondent's decision dated 26 May 2021 which refused his protection and human rights claims following the making of a deportation order on 25 May 2021 by virtue of section 32(5) of the UK Borders Act 2007
2. The grounds of appeal include a ground that there was procedural unfairness, in that, the appellant did not have a fair hearing before the judge. In summary, it is contended, firstly, that the appellant was deprived of a fair hearing by reason of the fact that he and his partner gave evidence over a telephone and not at a face-to-face hearing or by video on CVP (the “first procedural ground”); secondly, that the telephone connection was poor as a consequence of which Counsel for the appellant (Ms K Tobin) had difficulties in hearing the appellant and his partner give evidence as did the appellant in following the proceedings (the “second procedural ground”); and, thirdly, that the appellant was unable to give his evidence fully (the “third procedural ground”).
3. This case was listed for a case management review hearing today when the Upper Tribunal made available four audio recordings of the proceedings before the judge.
4. Ms Tobin submitted a witness statement and exhibited her notes of the hearing before the judge. However, it was not necessary for me to consider the witness statement or her notes because I had the benefit of listening to the audio files for myself.
5. Ms Tobin made herself available to give evidence. This was helpful because she was able to explain the circumstances by which the appellant and his partner came to give evidence via telephone instead of at a face-to-face hearing or via CVP.
6. Ms Tobin told me that the appeal was initially listed for a face-to-face hearing. However, the day before the hearing, the First-tier Tribunal converted the hearing to a CVP hearing. On the hearing day, Ms Tobin, the judge and the Presenting Officer logged onto the CVP system but there was no appearance on the CVP system by the appellant and his partner (who were in separate locations). They had difficulty logging on to the CVP system. Ms Tobin spoke to the appellant on the telephone and he confirmed that he had not been able to log on to the CVP system. Ms Tobin was then given a telephone number to give to the appellant and his partner which would enable them to dial in to the hearing by telephone. They did so and therefore they were connected to the hearing by telephone only. Ms Tobin informed me that she raised her concern with the judge that it was procedurally unfair for the appellant and his partner to give evidence by telephone.
7. Mr Walker agreed that the first procedural ground was established. I agree. This is a case in which credibility was in issue. It concerned a protection claim. When it became clear that technical problems prevented the appellant and his partner from giving evidence via CVP, the hearing should have been adjourned. The fact that the

hearing proceeded with the appellant giving evidence by telephone was procedurally unfair given that the credibility of his account of the basis of his asylum claim was in issue and material to the outcome.

8. The unfairness was compounded by the fact that, in relation to his human rights, claim his partner was also questioned about matters which went to the credibility of his evidence concerning his contact with his children.
9. The procedural unfairness that has arisen as a consequence of the appellant and his partner giving evidence by telephone in the circumstances of this case is fatal to the judge's decision, irrespective of the remaining procedural grounds or the remaining grounds.
10. I therefore set aside the decision of the judge in its entirety.
11. As the appellant had not had a fair hearing, this case falls within para 7.2(a) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal.
12. This appeal is therefore remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal K R Moore.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This appeal is remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal K R Moore.

Signed: Upper Tribunal Judge Gill

Date: 22 February 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent’ is that appearing on the covering letter or covering email