



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

Appeal Number: DA/01092/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 27th January 2014**

**Determination
Promulgated
On 6th February 2014**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**B C N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel, instructed by Fadiga & Co Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a citizen of the Democratic Republic of Congo (DRC) born on 9th February 1974. The Appellant has a long immigration history. He claims to have arrived in the UK on 12th June 2002 in possession of a false passport when he claimed asylum. That application was refused on 31st

July 2002, and ultimately the Appellant's appeal against that decision was dismissed. On that occasion the Appellant's claim for asylum was based upon his relationship with his brother-in-law. The appeal was dismissed following an adverse credibility finding. Leave to appeal to the then IAT was refused in August 2003. The Appellant did not leave the UK but made a fresh claim for asylum on the basis of his brother's political activities in March 2008. That application was not refused until April 2013. In the meantime and in December 2009, the Appellant pleaded guilty to an offence of possessing a false identity document and was sentenced to a term of imprisonment of twelve months. A recommendation was made for deportation. On 10th May 2013 the Respondent decided that the Appellant was subject to the provisions of Section 32(5) of the UK Borders Act 2007 and made a deportation order against him.

2. The Appellant appealed both the deportation order and the refusal of asylum. His appeal was heard by a Panel chaired by Judge of the First-tier Tribunal levins (the Panel) sitting at Taylor House on 17th October 2013. The Panel allowed the appeal on asylum grounds for the reasons given in its Determination dated 14th November 2013. The Respondent sought leave to appeal that decision and on 5th December 2013 such permission was granted.

Error of Law

3. I must first decide if the Panel made an error on a point of law so that its decision should be set aside.
4. The Panel allowed the appeal because it found the evidence of the Appellant and his witness KN to be credible and accepted that the Appellant had been active within an organisation situate in the UK known as the Congo Support Group (CSG) which was opposed to the regime of President Kabila. The Appellant had attended demonstrations in Downing Street in 2011 and 2013. The Panel considered the objective evidence and the current country guidance case of **BK (Democratic Republic of Congo) v SSHD [2008] EWCA Civ 1322** and concluded that the Appellant would be at a real risk if he returned to the DRC. The authorities in the DRC maintained an active interest in its citizens involved in anti-regime activities abroad, particularly in the UK which was seen as a centre of anti-Kabila opposition. The Appellant would therefore return to the DRC as a failed asylum seeker and as a low-level opposition political activist. Agents of the regime active in the UK kept a close surveillance on the Congolese community and fed back to the authorities in the DRC information of interest. Therefore despite the Appellant's modest profile as an opposition political activist, this would be known to the authorities in the DRC and therefore there was a real risk that on return the Appellant would be identified, detained, and persecuted.
5. At the hearing, Mr Tufan referred to the grounds of application and argued that the Panel had erred in law in coming to this conclusion. In particular, the Panel had failed to give adequate reasons for its finding that the

account upon which the Appellant based his present claim for asylum was credible, bearing in mind the previous finding that the Appellant was not credible. There was a significant discrepancy in the Appellant's evidence, and insufficient evidence of his involvement with the CSG. Further, and even if the Appellant's account was credible, the Panel had erred in law in interpreting the background evidence to indicate that someone politically active to only an extremely limited degree would be at risk on return to the DRC.

6. In response, Mr Bellara argued that there had been no error of law. The Panel had taken account of the previous finding of a lack of credibility and had distinguished that from the present claim. The Panel had carefully assessed the evidence, including that of the witness and the documents contained in the Appellant's bundle and had made detailed reasoned findings. Further, the Panel had carefully considered the objective evidence and fully explained its decision that the Appellant was at risk on return.
7. I find myself in agreement with the submissions of Mr Bellara and I find no error of law in the decision of the Panel which I do not set aside. The Panel carried out a careful analysis of the relevant evidence and came to a conclusion that the Appellant was credible which was a conclusion open to it on the evidence before it and which it fully explained. The Panel found no reason to doubt the corroborative evidence of the Appellant's witness KN and decided that the CSG was a group which did exist and was active in the UK opposing the present regime in the DRC. The Panel had doubts concerning the motivation of the Appellant in associating with that group, but was satisfied from photographic evidence that the Appellant had attended two demonstrations. The Panel took account of the previous finding of a lack of credibility against the Appellant, but the Panel followed the decision in **Devaseelan** and considered the subsequent evidence which put the Appellant's claim for asylum on an entirely different basis being his sur place activities in the UK. The Panel dealt with the discrepancy as to when the Appellant joined the CSG in paragraph 53 of the Determination.
8. Having found that the Appellant was a low-level political activist in the UK, I find no error of law in the Panel's subsequent decision that such activities placed the Appellant at risk on return to the DRC. The Panel carefully analysed the objective evidence at paragraphs 54 to 58 inclusive of the Determination. That objective evidence, including the UKBA Policy Bulletin 1 of 2012, supports the Panel's findings that agents of the DRC regime operating in the UK take an interest in even low-level political activists in the UK and report those activities to the authorities in the DRC. This decision is in accordance with the current country guidance case of **BK**.

Decision

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

10. I do not set aside that decision.

Anonymity

11. The First-tier Tribunal made an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Upper Tribunal Judge Renton