



IAC-FH-NL-V1

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

Appeal Number: DA/01377/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 July 2015**

**Determination and Reasons Promulgated
On 6 August 2015**

Before

**UPPER TRIBUNAL JUDGE ESHUN
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

Between

**MR ISHIABA KASONGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Smyth, Solicitor

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has been granted permission to appeal the determination of First-tier Tribunal Judge Herlihy promulgated on 7 April 2015 dismissing his appeal against the decision of the respondent dated 8 July 2014 to refuse to revoke a deportation order against him dated 4 January 2008, pursuant to paragraphs 390 and 391 of the Immigration Rules.

2. The respondent's decision to make the deportation order was based on the appellant's conviction at Harrow Crown Court of theft on 9 December 2005. The appellant was sentenced to 42 months' imprisonment and the court recommended him for deportation on 23 December 2005. He was served with a notice of liability to deportation on 13 February 2007. His custodial sentence ended on 22 February 2007 and he was detained under immigration powers. Having exhausted all his appeal rights on 8 November 2007, the respondent signed a deportation order against him on 4 January 2008.
3. On 18 November 2008 the appellant submitted an application to revoke the deportation order which was refused on 20 October 2009. The decision attracted an in country right of appeal. He lodged an appeal against the refusal to revoke the deportation order on 2 November 2009. The appeal was dismissed on 27 April 2010. As a result of the dismissal of two onward appeals to the Tribunal, the appellant again became appeal rights exhausted on 30 September 2010.
4. He failed to report on a number of occasions and was listed as an absconder on 24 May 2012.
5. On 1 July 2013 the appellant was arrested at St. Pancras Eurostar whilst attempting to leave the UK on a false passport and false documents. On 2 July 2013 he was arrested for fraud and wanted on warrant (deportation). He was convicted at Westminster Magistrates' Court of non-payment of a confiscation order of £24,884.75 imposed on him on 31 May 2006 and accrued arrears. He was sentenced to 456 days' imprisonment.
6. At the hearing before the First-tier Judge the appellant claimed that his conviction in 2005 generated widespread media coverage. He submitted that his criminal past is not something that he will be able to keep hidden from the authorities in the DRC. He also submitted that the First-tier Tribunal who heard his asylum claim accepted that he was either a member of or a supporter of the UDPS. He claimed that if he returned to the DRC the authorities there will be aware of his criminal conviction and his past involvement with the UDPS and he will be detained and ill-treated as a consequence.
7. The judge rejected his argument. The judge relied on the Country Policy Bulletin to find that the authorities in the DRC had no interest in criminal convictions in countries outside the DRC only in outstanding criminal offences committed within the DRC and that there is no substantiated evidence that foreign national returnees from the UK have been subject to ill treatment on return to the DRC. The appellant was granted permission to appeal this finding. However Mr Smyth did not pursue the challenge in the light of the Upper Tribunal's decision in **BM & Others (returnees - criminal and non-criminal) CG [2015] UKUT 293 (IAC)**. The Upper Tribunal held that a national of the DRC who has acquired the status of foreign national offender in the United Kingdom is not, simply by virtue of such status, exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR in the event of enforced return to the DRC.

8. There was therefore one remaining ground on which Mr Smyth relied and it was this; that the judge made no findings as to the significance of the respondent's disclosure to the DRC Embassy of the appellant's relationship to his mother. This ground is based on paragraph 37 of the determination where the judge held as follows:
- "37. ... I did not find the appellant's claim that his mother's status as a refugee would also put him at risk on return. I heard no evidence from his mother and it is clear from the determination of her asylum appeal that she was accused of supporting rebels and the events which she related happened over six years after the appellant had left the DRC."
9. Mr Smyth relied on paragraph 4 of his skeleton argument where he had recited the findings made by Mrs Wynberg, Adjudicator, who had found the appellant's mother, Marie Louise Tshianda credible as to the account of events that occurred to her in the DRC. The appellant's mother was granted asylum in the UK on 22 April 2002 following the success of her appeal. Mrs Wynberg found as follows:
- (1) She (Ms Tshianda) belonged to an organisation called Salongo, which was a woman's organisation which supported President Mobutu and was banned by President Kabila;
 - (2) In 1997 she joined the RFC (Rassemblement des Femmes Congolaise), which did virtually the same as Salongo except that instead of supporting Mobutu it supported Kabila. If you wanted to survive you had to be a member of the party;
 - (3) Her problems started after the death of President Kabila. In May 2001 soldiers and security people entered and searched her house and discovered a telephone, as well as letters from the appellant who by this time had been granted exceptional leave to remain in the UK. The soldiers told Ms Tshianda that she was being arrested because they had been told that she had communication equipment and was in contact with the rebels;
 - (4) She was detained at Tsapri Camp for about one and a half months where she, along with other women, was beaten with belts;
 - (5) She was then sent to a woman's prison Shaba, which was known to be particularly harsh;
 - (6) Her sister travelled to visit her and bribed a guard to secure her escape. On release she went to stay with a friend in Kinshasa. Her business no longer existed because there had been no one to look after it following her arrest.
10. The skeleton argument further states that Mrs Wynberg recorded that "Ms Tshianda said that what made it worse was not just her telephone because other people had telephones but it was the letters from her son. The soldiers had said to her that as her son was in England it meant that he must have been against Kabila (he had come to the United Kingdom in 1997) and she must have been involved in politics too."

11. The judge noted that since arriving in the UK the appellant has returned to the DRC on two occasions, the last of which was in 2004. He did not face any problems on either occasion.
12. Mr Smyth submitted that the judge placed significant weight on events relied on by the mother six years after the appellant left the DRC. The point he wished to make was that the appellant's mother was found credible. Her home had been raided in May 2001 by soldiers who found a telephone and letters from her son. The fact that the appellant's mother escaped from the prison camp as a result of the payment of a bribe is significant. The appellant's asylum appeal failed because he was released but the mother escaped after the payment of a bribe.
13. Mr Smyth drew our attention to **BM**, paragraph 12, wherein in a trilogy of decisions, the Upper Tribunal considered the question of the risk pertaining to members of the UDPS, a group which is opposed to President Kabila's regime and identified three risk categories. Mr Smyth in particular relied on paragraph 12(c) which those having or being perceived to have a military or political profile in a position to the government as being at risk. He submitted that the appellant's mother, having been detained under the Kabila regime, has a political profile. The profile is that she is perceived to be an opponent of the Kabila regime. The significance of this evidence is that the mother is still of interest to the DRC authorities. Although she is now a British national, she is not somebody who can be said to be of no interest to the DRC authorities.
14. Mr Smyth accepted that the appellant travelled back to the DRC on two occasions, the latest in 2004. He said however that in November 2013 the respondent wrote to the DRC enclosing a travel document application at page 47 of the appellant's bundle and asking the Embassy to issue a travel document to the appellant. Mr Smyth submitted that the details given on the travel document application included at section 4 the details of the appellant's parents. The application gave the details of his mother; her maiden name, married name and district of origin. At page 55 of the appellant's bundle was the appellant's birth certificate which also gave his mother's name. Mr Smyth submitted that as a result of the documents submitted with the travel document application, the respondent has revealed to the DRC authorities that the appellant is her son. He argued that the judge failed to materially confront adequately or at all this risk to the appellant. The only outcome is that this appeal should be allowed.
15. Ms Everett submitted that the judge's decision does not disclose an error of law. She acknowledged that the judge may have dealt rather briskly with this aspect of the appellant's claim but there was force in the submission that the appellant has been back to the DRC on two occasions since his mother was granted asylum. There was no evidence to support a claim that family members are likely to be at risk. She questioned why the authorities would impute to the appellant an opposition to the current government due to the passage of time. Even if we were to accept that the mother was seen as being in opposition to the government, it is clear from **BM** that the government in the DRC is looking for genuine opponents. She submitted that at paragraph 87 of **BM** the Upper Tribunal addressed the discreet question of risk to

those who are considered to be opponents of the Kabila regime by reason of their *sur place* activities in the United Kingdom. Ms Everett submitted that we have no evidence that either the appellant or his mother has engaged in *sur place* activities which have brought them to the attention of the authorities in the DRC.

16. Ms Everett submitted that although the judge did not grapple with the issue at length, her findings on the issue did not disclose a material error.

Findings and Decision

17. We find that the judge did not err in law in her decision at paragraph 37. The terse manner in which she dealt with the issue does not materially undermine her decision.
18. We find that the Secretary of State did not reveal information to the DRC Embassy that was not already known to them. The appellant's birth certificate was issued by the DRC authorities. The travel document application contained the same information that appeared on the appellant's birth certificate. To say that the information contained in the appellant's birth certificate and the travel document about his parentage would alert the authorities to the events that occurred to the mother in the DRC in 2001 is a step too far. The appellant's mother did not give evidence. Therefore there is no evidence as to whether his mother, since 2001 and her escape from prison through the payment of a bribe, is still being sought by the authorities in the DRC. She may have had a perceived political profile in opposition to the government in 2001 but there was no evidence from her that with the passage of time she continues to be perceived as having a political profile in opposition to the government.
19. In any event the appellant returned to the DRC after his mother's arrival in the UK. His most recent visit was in 2004. There was no evidence that he encountered any difficulties whilst he was in the DRC.
20. Furthermore, there was no evidence that either the appellant or his mother has engaged in *sur place* activities since his arrival in the United Kingdom which have brought him to the attention of the Kabila Government.
21. We also find that there was no evidence that family members of those perceived to have a political profile are persecuted on return to the DRC.
22. On the evidence that was before the judge, we find that her decision is sustainable and discloses no error of law.

Notice of Decision

23. The judge's decision dismissing the appellant's appeal shall stand.
24. No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Eshun