



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

Appeal Number: DA/01604/2014

THE IMMIGRATION ACTS

Heard at Field House

On 22 June 2015

Determination

Promulgated

On 25 June 2015

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

Between

**RODNEY MANDA ILLUNGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohamed, instructed by Duncan Lewis & Co Solicitors.

For the Respondent: Mr Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a determination of Designated Judge of the First-tier Tribunal Coates promulgated on 23 March 2015, which dismissed the appellant's appeal against deportation.
2. The appellant is a citizen of the Democratic Republic of Congo born on 12 November 1991. The appellant was issued with an Indefinite Leave

to Enter the UK visa on 13 April 2004 on the basis of family reunion with his father. The exact date of his arrival in the UK is unknown, although the appellant claims it was sometime in 2004.

3. The appellant was convicted of Possessing an Offensive Weapon in a Public Place on 23 April 2010 and sentenced to a Community Order. On 29 April 2011 he was convicted of possession of a controlled drug for which he was fined. On 18 July 2011 he was again convicted of possession of a controlled drug and sentenced to detention for one day. On 25 October 2011 the appellant was convicted on two counts of possessing a class A drug with intent to supply and was sentenced to 45 months imprisonment. In light of the latter conviction the respondent made a Deportation Order on 3 December 2012 and an automatic deportation decision served on the appellant. The appellant did not appeal this decision.
4. On 29 April 2014 the appellant made an asylum claim. The respondent refused that claim, together with the appellant's application to revoke the Deportation Order, on 5 August 2014. The asylum claim was certified under Section 72 of the Nationality, Asylum and Immigration Act 2002. The appellant appealed those decisions on 8 August 2014.
5. The ground of appeal before us was limited to the ground that the Tribunal failed to make findings on risk as a criminal deportee, to properly apply the decision in P (DRC) R (on the application of) v SSHD [2013] EWHC 3879 and to assess the objective evidence on return for criminal deportees.
6. Subsequent to the grant of permission to appeal on 21 April 2015 the Upper Tribunal promulgated the country guidance case of BM and others (returnees - criminal and non-criminal) DRC CG [2015] 00293 (IAC). The Presidential panel stated, at paragraphs 1 and 2 of the headnote:
 - '1. A national of the Democratic Republic of Congo ('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.
 2. A national of the DRC whose attempts to acquire refugee status in the United Kingdom have been unsuccessful is not, without more, exposed to a real risk of persecution or serious harm or proscribed treatment contrary to Article 3 ECHR in the event of enforced return to DRC.'
7. Mr Mohammed conceded that BM caused the appellant difficulties but submitted that a decision with different facts, postdating the decision of Designated Judge Coates, could not be a complete answer to the issues raised in the grant of permission to appeal.

8. However we were of the view that there was merit in the argument that Designated Judge Coates was entitled to give the limited weight that he did in paragraph 44 of the Decision and Reasons to the effects of the decision in P which the judge had already noted, in paragraph 38 of the decision, related to the position of criminal deportees. The judge expressly stated at paragraph 44 that he did not accept the submission of the appellant's representative concerning the effects of the decision in P. It seemed to us that it was implicit therefore that his findings at paragraph 44 related to the position of criminal deportees.
9. In any event, notwithstanding our findings at paragraph 8, the alleged error of law cannot be material such that the decision of the First-tier Tribunal should be set aside, given that the Country Guidance case of BM shows that the claim has to fail.

Decision:

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

Signed:

Date: 24 June 2015

Deputy Upper Tribunal Judge Hutchinson