



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

Appeal Number: DA/00652/2012

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 11th January, 2016**

**Decision & Reasons Promulgated
On 18th July 2016**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**JONATHAN BOSSINGA MOPO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

*For the Appellant: Mr Tom Wilding, a Senior Home Office Presenting Officer
For the Respondent: Mr P Lewis of Counsel instructed by Birnberg Peirce*

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department, to whom I shall refer as being, "the claimant". The respondent is a national of the Democratic Republic of Congo, born on 24th August, 1989.

2. The respondent came to the United Kingdom on 20th June, 1994, when he was aged 5 years, accompanied by his mother and his sister. His mother's application for asylum was subsequently refused but he, his mother and his sister were granted exceptional leave to remain until 10th March, 2004. On 3rd April, 2004, all three were granted indefinite leave to remain in the United Kingdom.

Appellant's Criminal Activities

3. The appellant first appeared before Haringey Juvenile Court on 8th September, 2004, in relation to an alleged offence of attempted robbery. He was subsequently arrested for being in possession of Class A drugs, for possession of an offensive weapon and possession of cannabis. He was sentenced to twelve months supervision order by Thames Juvenile Court in August, 2006. He pleaded guilty at Inner London Crown Court on 18th July 2006, to handling stolen goods and on the same day he also pleaded guilty to robbery and handling stolen goods and was remanded in custody. On 8th August, 2006, he received a twelve month supervision order and a three month curfew with electronic tagging. On 23rd August, 2006, just some two weeks after his appearance at Inner London Crown Court, the appellant was convicted of possession of an offensive weapon and possession of Class A drugs.
4. On 11th August, 2009, the appellant was convicted at Blackfriars Crown Court of violent disorder and sentenced to an immediate sentence. The Court of Appeal subsequently varied the sentence to two years' imprisonment on 15th July 2010. On 18th February, 2009, the appellant was convicted of possession of Class A cocaine, two offences, and possession of cannabis. He was sentenced to six months in a young offenders' institution.
5. The appellant was subsequently served with a notice of liability for deportation on 22nd January, 2010. This was re-sent to the appellant in February 2012.

Appellant's First Tier Tribunal appeal.

6. The appellant appealed to the First-tier Tribunal and his appeal was heard by First-tier Tribunal Judges Canavan and Cockrill at Kingston Crown Court on 2nd July, 2014. In allowing his appeal the Tribunal noted the decision of the Administrative Court in *R (on the application of P (DRC)) v Secretary of State for the Home Department* [2013] EWHC 3879 (Admin) and the relevant country guidance case of *BK (failed asylum seekers) DRC CG* [2007] UKAIT 00098. The Tribunal examined the country policy bulletin of February, 2014 and concluded that given the serious conditions and consequences of detention in the DRC they were satisfied on the evidence, taken as a whole, that there were substantial grounds for believing that a person who is identified as a criminal deportee, specially one who had

committed a serious crime, was likely to be at risk of ill-treatment amounting to a breach of Article 3 if returned to the DRC at the current time. They allowed his appeal under Article 3 of the European Convention.

7. The Secretary of State, dissatisfied with that decision, sought and was granted permission to appeal to the Upper Tribunal. The two substantive paragraphs set out in the grounds of application are as follows:-

“It is respectfully submitted that the Tribunal has erred in law. Since the judgment in the case of *P & R v Secretary of State for the Home Department* the UK Government has sourced further information regarding the safety of returning foreign nationals to the Democratic Republic of Congo, which it considers shows that the findings in that judgment does not accurately reflect the current situation in the Democratic Republic of Congo. This includes confirmation from the Directeur Central de la Chancellerie at the Direction Generale de Migration that they have no interest in return to foreign national offenders (or failed asylum seekers) unless there are criminal matters outstanding in the Democratic Republic of Congo.

(2) The Home Office has now published a Country Policy Bulletin (a copy of which was a section relating to foreign national offenders as being attached) which updates the policy on returns to the Democratic Republic of Congo in the light of the judgments in the case of *P & R* based on further information obtained. While the UK Government has agreed with the claimant in *P* to withdraw its appeal to the Court of Appeal in the case of *P*, we are confident that the new information confirms our view that foreign national offenders (or failed asylum seekers) do not on the basis of their conviction in the UK, face any risk of their Article 3 rights being breached if returned. It is also submitted that the Tribunal failed to provide adequate reasons why the appellant will be identified as a foreign national offender upon return. It is submitted that there is no reason to believe that the authorities in the Democratic Republic of Congo would be aware of his offences or suspect him of being a foreign national offender on return.”

Hearing before me

8. Appearing before me, Mr Wilding on behalf of the claimant, pointed out that the determination dealt with the Article 3 risk points at paragraphs 127 to 146 of the determination. The panel found that there was a risk that the appellant would be detained on arrival and identified. The Secretary of State relied on the Country of Information Bulletin, but the Tribunal did not accept that the evidence could take them beyond the situation in *P*. The determination is inadequately reasoned. We now know from the decision in *BM and Others (returnees - criminal and non-criminal) DRC CG [2015] 293 (IAC)* that the situation in the Democratic Republic of Congo is not as was found in *P*. The Tribunal treated *P* as a starting point and erred in doing so. They should have assessed all the evidence in the round.
9. Mr Lewis submitted that there was nothing irrational or perverse in the public law sense in the determination. The conclusion was one which on the evidence before them was open to them to make. They were entitled to treat the decision in *P* as being highly persuasive. Their assessment of the available evidence did not extend to the evidence which was before the Tribunal in *BA*. He invited me to uphold the determination.
10. Mr Wilding had no further comment to make.

Decision and reasons

11. I carefully read the determination. The appellant asserted that three factors were likely to place him at risk. Firstly, he relied on *P* relating to the potential risk posed to criminal deportees, secondly, he asserted that his mother's past detention and political activities may give rise to suspicion that he is not position activist and thirdly, he relied on the fact that he had attended several demonstrations in the United Kingdom.
12. The panel did start by considering *BK (failed asylum seekers) DRC CG [2007] UKAIT 00098* which concluded that failed asylum seekers were not, per se, at risk of treatment amounting to persecution or a breach of Article 3, unless he or she had a particular political or military profile. They went on to consider *P* and I agree, that decision by Mr Justice Phillips was very persuasive.
13. But the Tribunal did not stop there. They looked at a letter to Mary Glindon MP from the DRC Ambassador and considered the UKBA fact-finding mission to Kinshasa. They noted the Country Policy Bulletin and the meeting held between the Foreign Commonwealth Office with the Directeur Central de la Chancellerie at the Direction Generale de Migration on 15th January, 2015. They also considered the evidence that was before the Administrative Court in *P* and noted that having considered all the evidence in the round, they did not believe that it was sufficient to persuade them to come to a different conclusion to Mr Justice Phillips.
14. It has to be borne in mind that the First Tier Tribunal did not see all the evidence that the Upper Tribunal saw in *BA*. However, having carefully examined the evidence placed before them, including the summary of the evidence given by the Directeur Central de la Chancellerie at the Direction Generale de Migration, they found that they could only give the Directeur's evidence limited weight, because it came directly from an official working for the department that would interview and check returnees at the airport. They believed that the background evidence showed that State security forces continued to act with impunity and commit many serious human rights abuses. In the light of that evidence it seemed to the Tribunal highly unlikely that a senior official would admit to serious abuses if they did occur.
15. I believe that the Tribunal was entitled to conclude as it did at paragraph 43, that the evidence placed before it was not sufficient to persuade them to come to a different conclusion to that of Phillips J in *P*. I believe that the Tribunal were entirely correct to take a cautious view, given the very serious conditions and consequences of detention in DRC found by Phillips J.
16. The Tribunal pointed out that the appellant would easily be identified as a criminal deportee and articles naming the appellant in relation to the attempted robbery do, apparently, reveal themselves on a basic internet search.

17. I believe that the Tribunal have properly and adequately reasoned their findings and also properly and adequately reasoned why they believe that the appellant would be identified as a criminal deportee. The Tribunal did not have the benefit of all the evidence placed before the Tribunal in *BK*. On the evidence before it however, the Tribunal was, I believe, entitled to reach the conclusion that it did.
18. The panel of the Tribunal did not make any error on a point of law in making the previous decision. I order that the decision shall stand. No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley
18 July 2016

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley
18 July 2016