



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07955/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 27 October 2017**

**Decision & Reasons  
Promulgated  
On 12 December 2017**

**Before**

**DR H H STOREY,  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**BS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Emezie, Solicitor, Roli Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a national of DRC. On 10 April 2017 he was sent the decision of Judge Wylie of the First-tier Tribunal dismissing his appeal against the decision of the respondent made on 18 July 2016 refusing him leave to remain following a rejection of his asylum claim.
2. The appellant's asylum claim was presented before the judge as having two bases. First of all he maintained, as he had in his asylum interview (which took place in January 2016) that after helping start a group in his

neighbourhood called Congo Pour le Changement and participating in an opposition rally in January 2015, the police visited him at his home and beat him. He was then kept in Makala Prison for 19 days before a business partner arranged his release with one of the guards and he thereafter fled the country. Second, he maintained that after his arrival in the UK in June 2015 on a visit visa he had become a member of APARECO (Alliance of Patriots for Rebuilding of the Congo) in January 2016 and became its treasurer.

3. I heard submissions from the parties after which I stated that whilst I would not hand down my decision at the hearing I was satisfied that the judge materially erred in law. The judge's error is a simple but highly material one. Despite recording the appellant's account of his sur place involvement in APARECO at para 16 and noting Mr Emezie's submission that since coming to the UK the appellant had become "active in opposition politics" and that "APARECO were outlawed in the Congo and those involved in the group were at risk" (para 22), the judge wholly failed to make any assessment of this aspect of the appellant's claim. The judge simply focused on the credibility of the appellant's account of his adverse experiences in the Congo.
4. The judge's error was compounded by the fact that the appellant had produced not only a witness statement in which he described himself as "an active member of APARECO" but a letter from that organisation vouchsafing the same. The judge also heard evidence from a Mr Livingstone whose evidence was to similar effect. Not to engage with the evidence relating to sur place activities in any respect was a plain error.
5. Given especially that the appellant's evidence was that he had become a political oppositionist in the Congo, it was incumbent on the judge to consider whether, pursuant to Articles 4 and 5 of the Qualification Directive, his sur place activities were undertaken simply to bolster his claim or were a continuation of political activities in his country of origin. It was also necessary to assess whether, whatever the appellant's motives for being involved with APARECO (if that claim were accepted) his level of involvement was sufficiently "significant and visible" to bring him within the risk category identified in **BM and Others (returnees - criminal and non-criminal) DRC CG [2015] 293 (IAC)** at para (iii) of the headnote.
6. For the above reasons I set aside the judge's decision for material error of law in that he has failed to address or make findings a key part of the appellant's claim.
7. The judge's error is such that none of his findings of fact can be preserved. I am not persuaded by Mr Melvin's submission that the judge's adverse credibility finding on the appellant's experiences in the DRC can be retained. Assessment of credibility needed to be based on the appellant's claim considered as a whole, taking into account both his account of his experiences in the DRC and in the UK. I cannot exclude that if a favourable assessment had been made of the appellant's sur place


activities, the evidence about his past opposition experiences in the DRC might have been different. Accordingly, it is appropriate, pursuant to the Senior President's Practice Statement, for the case to be remitted to the FtT to be heard by a judge other than Judge Wylie.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 11 December 2017

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected.

Dr H H Storey  
Judge of the Upper Tribunal