



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00017/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10 July 2018

Decision & Reasons Promulgated
On 28 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

G E M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Dirie, Counsel for Sentinel Solicitors, London
For the Respondent: Mr Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Democratic Republic of the Congo (DRC) and was born on 22 December 1951. He appealed the respondent's decision of 14 December 2016 refusing to grant him asylum in the United Kingdom. His appeal was heard by Judge of the First-Tier Tribunal Bart-Stewart on 30 June 2017 and was dismissed in a decision promulgated on 19 July 2017.
2. An application for permission to appeal was lodged and permission was granted by Upper Tribunal Judge Allen on 25 April 2018. The permission states that in light of the country guidance in the case of *BM* [2015] UKUT 00293 (IAC) it is arguable that the Judge erred with regard to the assessment of risk on return, on account of the appellant's role with APERECO.

3. There is a Rule 24 response on file which states that the First-Tier Tribunal Judge did not accept the appellant's claim to be a member of APERECO and that, combined with the comprehensive findings against the appellant's credibility, is sufficient for her to reach the conclusion she did.

The Hearing

4. Counsel for the appellant submitted that the First-Tier Tribunal Judge did not approach the appellant's membership of APERECO properly. I was referred to paragraph 43 of the decision and she submitted that at paragraph 44 onwards the Judge deals with the appellant's evidence about him joining APERECO and being given the role of Secretary.
5. Counsel submitted that there is evidence of clear sur place activities which requires to be considered. She submitted that his membership of APERECO in the UK is clear and there is a considerable amount of evidence about this. She submitted that not to consider this evidence is an error of law as it was before the Judge.
6. I was referred to the appellant's witness statement and the video shown to the First-Tier Tribunal of the appellant at a demonstration. I was also referred to the letters from APERECO dated 2 November 2016 and 2 February 2017. Counsel submitted that these letters are key evidence that the appellant was and is a member of Apareco and she submitted that the Judge does not appear to have considered these. Although the Judge refers to APERECO she does not mention these letters. Counsel submitted that the Judge should have considered all the evidence before her. These letters are central to the claim and she submitted that this must be an error of law.
7. Counsel then referred me to the said case of *BM & Others (DRC)* [2015] and Counsel submitted that a national of the DRC who has a significant and visible profile in APERECO UK is, in the event of returning to his country of origin, at real risk of persecution for a Convention reason. He will be at risk of serious harm or treatment under Article 3 of ECHR as he will fall within one of the risk categories identified by the Upper Tribunal in *MM (DRC)* [2007] UKAIT 00023. She submitted that the appellant has a role with APERECO UK and is not a mere rank and file member. She submitted that the Judge did not engage with that evidence and this must be an error of law. She submitted that because of the adverse view the Judge has taken of the appellant in other respects the Judge has written off the appellant's activities for APERECO and has not properly considered his risk on return because of these activities. She submitted that there are no clear findings in the decision that the appellant is a member of APERICICO.
8. Counsel submitted that at paragraph 44 of the decision the Judge deals with the appellant's delay in joining APERECO and his involvement with "Save The Congo". The Judge states that the only evidence of this is a video which is not clear but she submitted the Judge has not looked at the APARECO letters and she should have taken into account the appellant's regular meetings with APERECO and the letters from APERECO signed by Mr N. She submitted that the respondent at no time

submitted that the APERECO letters are invalid and the Judge should have mentioned the letters. She submitted that the said case of **BM** and the objective evidence state that high ranking members of the organisation are at risk on return and she submitted that that evidence has not been dealt with and the Judge has made her findings in a vacuum. She submitted that original letters and not just copies were before the Judge of the First-Tier Tribunal.

9. The Presenting Officer made his submissions admitting that although the Judge made no findings about the letters, this is not material. The appellant had a witness from APARECO who attended the hearing, a Mr S AKA L M, who is the urban deputy representative of APARECO London. The Presenting Officer submitted that this witness's evidence reiterates the terms of the letters. He submitted that the witness has been found not to be credible.
10. He submitted that at paragraph 36 of the decision the Judge refers to the evidence given by Mr S about the role of the appellant in APARECO. At paragraph 37 she refers to the oral evidence of this witness and she notes that the witness does not know the appellant's background in DRC. It was pointed out to the witness that in his statement he said he had not been provided with details about this but he had heard that the appellant was a member of "Save The Congo". This is contradictory to his oral evidence which is that he was given full information but had not brought the papers with him.
11. The Presenting Officer submitted that no reason has been given as to why this appellant was appointed to the role of secretary so quickly. The appellant's explanation is that it is a strategic role and members have confidence in him. The Presenting Officer submitted that any error of law in the Judge's decision is not material and that at paragraph 46 of the decision the Judge deals with the appellant's credibility and the inconsistencies in his and his witness's evidence about the demonstrations the appellant attended. The judge states that the video of the local park is unlikely to attract attention or place the appellant at risk. He submitted that the credibility issues are enough to dispose of the APERECO evidence on file and that at paragraph 42 the Judge attaches no weight to the summons and warrant and gives proper reasons for this and at paragraph 43 she finds that the appellant's credibility is undermined by the You Tube video. The Judge points out that there is no evidence from anyone in APERECO regarding the appellant's involvement in "Save The Congo" and his supposed close affiliation with the Archbishop. The Judge finds that this undermines his credibility.
12. The Presenting Officer submitted that based on the Judge's findings of fact and the lack of credibility the case of **BM** does not require to be considered as the Judge found it not to be credible that the appellant is involved with APERECO in anything more than a rank and file role.
13. Counsel submitted that with regard to any inconsistencies between the appellant's and his witness's evidence, the Judge did not find that the appellant's witness lacked

credibility. I was asked to find that there will be a risk to this appellant on return to DRC and that there are material errors of law in the Judge's decision.

Decision and Reasons

14. Permission in this case has been granted based on whether the appellant will be at risk on return because of his role with APERECO. The permission states that this is based on the country guidance case of **BM**.
15. The Judge has made it perfectly clear in her decision that she does not find any of the evidence of the appellant to be credible. She also refers to inconsistencies between the appellant's and his witness's evidence about the demonstrations.
16. The Judge has given proper reasons for her credibility findings. She notes that the appellant joined APERECO UK in July 2016, just before he claimed asylum. The Judge notes that the appellant's evidence is that he is now the secretary of APERECO UK but again finds that there is a lack of credibility in the appellant's evidence.
17. The appellant was unable to say why he would be of interest to the authorities in DRC and why an arrest warrant and summons would be taken out against him 16 years after he left.
18. Other credibility findings relate to the fact that the appellant stated that he had never returned to Congo after leaving in 2000 but now states that he returned on a number of occasions to collect visas. He made numerous visa applications. Sometimes the visas were issued in Kinshasa two days after they were applied for. The appellant eventually admitted that he had gone to the Embassy to give his fingerprints and to collect the visas. The Judge also points out that the appellant was able to renew his passport although his evidence is that the authorities suspected him of treason. The Judge deals with inconsistencies in the summons and warrant at paragraph 42 and finds that the You Tube video is probably not genuine. She finds that the appellant's delay in joining APERECO undermines the credibility of his claim. At paragraph 44 she refers to the letters produced from Apeareco UK stating that they are self-serving to bolster the claim. She also deals with Section 8 of the 2004 Act and the delay in the appellant claiming asylum and finds that this goes against his credibility.
19. The Judge gives proper reasons for finding that the appellant does not have a profile as a member of APERECO and at paragraph 47 states that she believes the appellant has concocted false and manufactured evidence.
20. Due to the credibility findings, all of which have been properly explained in the decision and due to the fact that the Judge finds that if the appellant is a member of APERECO he is not the secretary, he is a rank and file member (this is by implication based on the terms of the decision), and due to the fact that she clearly has seen the APERECO letters (paragraph 44) I find that there are no errors of law in the decision and as the case of **BM** makes it clear that rank and file members of APARECO are not at risk on return I find there is no material error of law in the Judge's decision.

Notice of Decision

As there is no material error of law in the Judge's decision promulgated on 19 July 2017 the decision must stand. The appellant's appeal is dismissed.

Anonymity has been directed.

Signed

Date 17 August 2018

Deputy Upper Tribunal Judge I A M Murray

A handwritten signature in black ink, appearing to read 'I A M Murray', with a horizontal line underneath it.