



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08151/2016

THE IMMIGRATION ACTS

Heard at Field House
On 7 June 2018

Decision & Reasons Promulgated
On 14 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR P K
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr I Palmer, Counsel, instructed by Barnes Harrild & Dyer
Solicitors

DECISION AND REASONS

1. The respondent (hereafter the claimant) is a national of the DRC. In a decision sent on 14 December 2017 Judge Ferguson of the First-tier Tribunal allowed his appeal against the decision made by the appellant (hereafter the Secretary of State or SSHD) on 10 November 2016 maintaining a decision to deport the claimant from the UK, refuse his human rights claim and refuse to grant asylum. The SSHD had also issued a Section 72 certificate under the NIAA 2002. The decision to deport and the Section 72 certificate were made in light of the claimant's convictions, most recently his conviction on 22 April 2014 of conspiracy to commit robbery for which he was sentenced to four years' imprisonment. The judge decided that the claimant had rebutted the presumption that a person who has been convicted of a particularly serious crime constituted a danger to the community, essentially because of the

evidence that he had not re-offended, had shown remorse and had moved away from former associates.

2. Turning to consider the claimant's asylum claim, the judge noted that the respondent accepted that the claimant had been trafficked to UK at the age of 7. His key findings regarding risk on return were set out at paragraphs 24-30. At paragraph 25 the judge referred to the report of the "journalist and human rights activist" Mvano Chrispin, finding that "the report bears the weight of the core submission made about it which is that much of the optimism about how he might be treated on return is prefaced by his comment that ... he will 'need family and friends'". At paragraphs 28-30 the judge stated:

"28. There is no evidence that he has had any contact with any family member in DRC since he left in 1992 and it was not suggested on behalf of the respondent that he would have any family network who could provide any support to him. For many 32 year old adults in many countries this would pose an inconvenience but not a risk. The report of Mr Chrispin confirms that in those circumstances for Mr P K there may be a risk. Other background reports confirm this risk is real. The US State Department Report confirms that DRC is '*source, destination and transit country for men, women and children subjected to forced labour and sex trafficking*'. The report continued (page 17 of bundle): '*The government did not provide any protection services to trafficking victims...Lack of an anti-trafficking framework, capacity, funding and political will to address the crime as well as widespread corruption continued to hinder efforts to combat all forms of human trafficking throughout the country*'.

29. It is also not in doubt that Mr P K will present as a 'westernised' man. He may retain some residual knowledge of the French language but there is no evidence to establish he is fluent. English has been his primary language for the last 25 years. This means that he will be obvious as an 'outsider' and more vulnerable as a result.

30. Without any family or other support network the risk of being re-trafficked into forced labour is real and the state in DRC would not be able to protect him. This amounts to persecution as a member of a particular social group of formerly trafficked persons, and is a breach of his Article 3 right not to be subjected to inhuman treatment. The appeal against the deportation order must therefore be allowed because Mr P K is a refugee and to deport him to DRC will breach his Article 3 rights".

3. The SSHD's grounds of appeal make several points which I shall address each in turn.
4. The first, wisely not pursued by Mr Bramble, contended that the judge failed to identify any Refugee Convention reasons. That simply ignores paragraph 30.
5. The second point appears to submit that the judge failed to apply the country guidance case of **BM and Others (returnees - criminal and non-criminal) DRC CG**

[2015] 293 (IAC), which held that those who have been convicted of crimes in the UK are not at risk of persecution in the DRC. However, the judge did not allow the claimant's asylum appeal for any reason related to his criminal convictions.

6. The third point takes issue with the judge's treatment of the report by Chrispin Mvano. It is said he should not have attached significant weight to this report as it did not comply with the Senior President's Practice Directions and that to make the statement that "In Congo everyone is at real risk of re-trafficking murder or abduction" was "not objective and amounts to advocacy". In seeking to defend the judge's reliance on this report Mr Palmer baulked at the SSHD's reference to the judge attaching "significant weight" to it, but it seems to me that that is what the judge did. At the same time, I agree with the points made by Mr Palmer in the claimant's Rule 24 response that failure to comply with the Senior President's Practice Directions does not in itself negate the value of an expert report as evidence. Further, it is clear to me that the judge took a carefully rounded view, properly noting its shortcomings but concluding that it still made valid points. As regards the statement in the report specifically criticised in the grounds, the judge took this into account and gave sound reasons for not considering it undermined what was said in the report about the claimant's particular circumstances, stating at paragraph 27:

"27. The next sentence has to be read in that context to be meaningful: '*In Congo everyone is at real risk of re-trafficking murder or abduction*'. Clearly only those who have been trafficked are at real risk of being re-trafficked, and the evidence does not support the contention that literally everyone in DRC has this risk. The risk is associated with the fact that Mr P K has already been trafficked and dependant on whether or not he has family support. Read in that way the report is therefore one which is appropriately contingent on the findings of fact which may be made about the circumstances to which Mr P K will return".

7. I would accept that the judge's reference in paragraph 26 to the report "bear[ing] the weight of the core submission made about it (that a victim of trafficking would need family and friends if they were going to avoid a real risk of being re-trafficked)" lacks any clear content. Given however that the claimant's core submission was that there was background country evidence supporting the claim that he would be at real risk of re-trafficking, I agree with Mr Palmer that the judge's intention here was to say what is spelt out at paragraph 28, namely that this report was broadly consistent with background country material.
8. This leads me to the SSHD's next point which was that the judge's reliance on the US State Department Report failed to address the points made by the SSHD in the refusal letter at paragraph 54, namely (to summarise) that it was only in some areas of the DRC that adult men are at risk of abduction and re-trafficking. However, the report extracts set out at paragraph 53 of the same refusal letter (extracts from the US Department of State Trafficking in Persons Report 2016) does not in terms state what is asserted in paragraph 54; at most this report confirms a risk of re-trafficking of adult men in eastern DRC. Read as a whole the US State Department Report on which the judge relied cannot be read as limiting the risk of re-trafficking to eastern

DRC. Hence, there was no irrationality in the judge not following the SSHD's own analysis as stated in paragraph 54 of the refusal decision.

9. The next point raised in the SSHD's grounds complains that the judge was wrong to treat as a relevant factor as regards risk to the claimant that he was a "westernised man", which would only be relevant if he was to be returned to a rural area but would be inapplicable as regards return to Kinshasa. It may be that being a "westernised man" would place the claimant at higher risk outside Kinshasa, but I consider it was open to the judge to consider that this was a relevant risk factor for former victims of trafficking in relation to return to Kinshasa as well. Unpacking what was meant in the claimant's case by referring to him as "westernised", it was not in dispute that he had not lived in the DRC since he was 7 and that he did not speak any of the languages of the DRC. I would add that as he has been accepted by the SSHD to be a victim of trafficking, the claimant as a young adult is likely to remain a vulnerable person or I do not understand the Secretary of State to submit otherwise. It was reasonably open to the judge to conclude that as the SSHD did not suggest the claimant had friends or family in the DRC that without such networks he would be at real risk of re-trafficking on return.
10. The SSHD's final ground submits that the judge failed to give any clear reasons as to why the claimant now an adult would be at risk of being re-trafficked if deported to the DRC. I am satisfied that the judge did give clear reasons grounded on the background country evidence, the expert report and taking into account in the claimant's case that he would have no network of family or friends.
11. The decision of the judge that the claimant would be at real risk of re-trafficking was not necessarily one that any other judge would have reached on the same evidence. However, I am not entitled to interfere in a judge's findings unless they are outside the range of reasonable responses or otherwise tainted by legal error. That is not the case here.
12. For the above reasons I conclude that the SSHD's grounds must fail and accordingly that the decision of the FtT Judge to allow the claimant's appeal must stand.
13. An anonymity direction is made.

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 his 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: 13 June 2018



Dr H H Storey
Judge of the Upper Tribunal