



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

Appeal Number: PA/09838/2017

THE IMMIGRATION ACTS

Heard at Liverpool

**Decision & Reasons
Promulgated**

On 8 November 2018

On 27 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**GM (DEMOCRATIC REPUBLIC OF CONGO)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Hossain, Solicitor, Lei Dat & Baig Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal promulgated on 24 April 2018 whereby Judge Brunnen dismissed her appeal against the refusal of her protection and human rights claims in which she contended that she faced a real risk of persecution on return because of her familial association with her father, who had become a high profile supporter of the Bundu dia Kongo (“BDK”) movement, and also because she had made enquiries about the whereabouts of her father and mother following their arrest at a BDK meeting on 20 September 2016.

2. Judge Brunnen did not accept that the authorities in the Democratic Republic of Congo (“DRC”) would wish to do the appellant harm just because her father was involved in the political side of the BDK, and he also did not accept that a single threatening phone call to her in April 2017 from an unknown source, not necessarily connected to the authorities in the DRC, was sufficient to give rise to a real risk that she would be targeted on account of inquiring about her parents’ whereabouts; and there was even less reason to think that she would be at risk if her parents were now dead, as she and her sister evidently believed.

The Reasons for the Grant of Permission to Appeal

3. On 17 May 2018 First-tier Tribunal Judge Murray granted permission to appeal for the following reasons:

The grounds assert the First-tier Judge erred in finding that the appellant would not be at risk no return to the DRC in failing to have regard to evidence that sent various emails that would put her at risk.

The grounds are arguable. It is arguable that having found the appellant to have given a credible account (paragraph 24) the Judge failed to have regard to emails in the respondent’s bundle from the appellant to various human rights organisations and to the Ministry of Justice and failed to consider the threatening phone call she received against this background (paragraph 8 of her witness statement).

Relevant Background

4. The appellant is a national of the DRC, whose date of birth is 29 May 1992. While she was studying in Australia, she successfully applied for a 6-month visit visa to enable her to visit her sister who was settled in the UK. The visa was issued to her on 26 October 2016, and she arrived in the UK on 28 November 2016. The visa expired on 7 May 2017, and the appellant claimed asylum on 3 May 2017.
5. In her screening interview, she was asked to briefly explain the reasons why she could not return to her home country. She said that her father had been arrested as he was part of a political/religious sect called BDK, which was in opposition to the Government of the DRC. He was trying to stop Joseph Kabila from returning to power. Her father had been advising the group on strategies to take Kabila down. He had been arrested at a religious meeting of the BDK.
6. She had since been trying to find out why the DRC did not respect freedom. She had spoken to Teo Ngombo, the President of the UDPS in the UK.
7. On 29 April 2017 she had received telephone call from an unknown person who spoke to her in Lingala. He told her to stop, or they would arrest her like her father or kill her. She reported the call to the Edmonton Police,

and she had been told to change her telephone number and to contact Amnesty International.

8. She was asked whether she had any documents relevant to her claim that she wanted to submit in support of her application. She said she could supply emails which she had sent to the Ministry of Justice and other people in the Congo, and that her uncle in the DRC would be able to send newspaper articles confirming the arrest of her parents.
9. The appellant subsequently provided the following documents, which appear in section E of the Home Office bundle: (a) an undated and untranslated article in French apparently published in a DRC newspaper which referred to the arrest of the appellant's father and two others (who did not include the appellant's mother) by the Congolese Police, their transfer to an ANR prison at a specified location, and the fact that no one, including family members, was being permitted to visit them at this prison; (b) an email from the appellant to [~]@gmail.com on 23 December 2016, in which the recipient was addressed as "*Ministre de Justice*" (i.e. Minister of Justice) and in which the appellant informed the recipient that she was writing to him/her to raise awareness about the arrest of her mum and dad on 20 September 2016 by the National Police, that it had been over three months since her parents had been arrested "*and there is no whereabouts of their existence*", and asking for advice on legal actions that she could take; (c) an email sent by the appellant at 15.42 on 27 April 2017 to Human Rights Watch with similar content to that of the first email, expressing the hope that "*solutions can be found and more enlightenment can be made towards this matter*"; (d) an email sent on 29 April 2017 to Amnesty International in almost identical terms to the email sent to Human Rights Watch; and (e) an email from Amnesty International on 5 May 2017, advising the appellant that she needed to redirect her enquiry from Amnesty UK to Amnesty's International Secretariat where Amnesty's research on worldwide human rights abuses was conducted.
10. The respondent gave her reasons for refusing the appellant's protection claim in a decision letter dated 11 September 2017. She had failed to substantiate why she would be on the radar of the DRC authorities, as by her own admission she had never been politically active. With regard to the anonymous phone call to her mobile telephone around 29 April, she had failed to provide a reasonable explanation as to how the authorities in the DRC would be in possession of her private telephone number, and how they had become aware that she had been trying to obtain details regarding her parents. Added to this, she had a sister who lived in the UK and an uncle and cousin who lived in the DRC, and none of them had received any such calls or threats. She had failed to provide a reasonable explanation for the authorities' motives in contacting her or in having an active interest in her and what they would gain from this.

The Hearing Before, and the Decision of, the First-tier Tribunal

11. The appellant's appeal came before Judge Brunnen sitting at Manchester on 12 April 2018. Both parties were legally represented. The Judge received oral evidence from the appellant, who was cross-examined by the Presenting Officer.
12. In her skeleton argument on behalf of the appellant, Ms Patel said that the appellant was claiming asylum on the basis of her fear of persecution based upon imputed political opinion. She was in Australia at the time she heard from her sister that the authorities had come to their parents' house looking for her father, and that he was later detained at his place of worship. She had struggled to deal with this news by herself, and therefore she came to the UK to be with her sister. She and her sister had contacted the UDPS; they had attended Bundu religious gatherings; and they had also contacted Human Rights Watch, all with a view to obtaining information about the whereabouts of their parents. After making these enquiries, the appellant had received a threatening phone call from someone who spoke Lingala. Her father had provided the BDK with financial support and he would regularly hold meetings at his house. This was how he had reached a prominent position within the BDK. As her father held a prominent position in the BDK, and as the appellant had made enquiries about her parents' whereabouts, the DRC authorities would seek to harm the appellant.
13. The appeal bundle contained a translation of the undated article which the appellant had provided as evidence of her father's arrest and detention.
14. In his subsequent decision, Judge Brunnen addressed the appellant's account of how events had unfolded between January 2016, when she first learned that her father had become a supporter of the BDK movement in 2015, and her arrival in the UK on 28 November 2016 as a visitor.
15. At paragraph [24], he held that the appellant had given what he considered to be a consistent, coherent and credible account of the core circumstances which had led to her claim of asylum in the UK. He found that there was a reasonable degree of likelihood that the core of her account was the truth, and he accepted it.
16. The Judge then turned to consider whether the appellant would be at real risk if she were to return to the DRC. She asserted that she would be at risk because she was her father's daughter and she bore the same surname. She said that the authorities knew that the family home was associated with the BDK, not least because her father used to host BDK meetings there. The Judge did not accept what the appellant said about BDK meetings being held at the family home. This was a claim which had appeared for the first time in her appeal statement. He found it significant that the appellant had not mentioned this when asked about her father's BDK activities during her interview.
17. Another reason given by the Judge for rejecting future risk was that the background evidence did not show that the authorities in the DRC had an

adverse interest in all BDK members, nor in the families of BDK members. There had certainly been arrests, but the evidence showed that these had been of BDK leaders or supporters who had been involved in civil unrest. The appellant had never had any involvement at all. She said that this was irrelevant because her mother, who also had no involvement, was arrested. However, her mother was involved in the religious side of the BDK and was arrested at the BDK church meeting. The appellant had said (AIR Q&A 74) that her understanding was that when the authorities raided a meeting, they took anyone who was there. Her mother's arrest was explicable in this way. Whereas the appellant's mother was involved in the religious side of the BDK movement, the appellant had no involvement with the BDK of any kind.

18. The Judge continued in paragraph [29]:

The appellant relies on the threatening phone call that she says that she received in April 2017 as an additional risk factor. There is no justification for assuming that the further calls she received with no caller ID were from the same person. Most people with mobile phones receive such calls. I do not accept that a single threatening phone call from an unknown source, not necessarily connected to the authorities in the DRC, is sufficient to give rise to a real risk that the appellant would be targeted and harmed if she were to return to the DRC. If her parents are indeed dead, as she and her sister evidently believe, there is still less reason to think that she would be at risk.

19. The Judge added in paragraph [30] that he fully understood that, having been outside the DRC since 2005, and "*believing that she has lost her parents and being close to her sister*", the appellant was desperate to be allowed to stay in the UK. However, he could not find that she had established a well-founded fear of persecution in the DRC, or that upon return there she would be at real risk of suffering inhuman or degrading treatment or punishment.

The Hearing in the Upper Tribunal

20. At the hearing before me to determine whether an error of law was made out, I noted the translation of the article and I also noted from the Record of Proceedings that the appellant had been extensively questioned about its contents when giving evidence. I drew Mr Hossain's attention to the fact that, on the face of it, news of the father's arrest, detention and whereabouts was a matter of public knowledge in the DRC and that his plight had been highlighted in the DRC media by a human rights defender organisation called the ACAJ (the Association Congolese for Access to Justice).

21. Mr Hossain agreed that it was open to the Judge to find that causation had not been established, but he submitted that the Judge had failed to give reasons as to why there was no causative connection between the emails sent by the appellant - in particular the email to the Minister of Justice on 23 December 2016 - and the threatening phone call in April 2017. He submitted that the appellant was of adverse interest to the authorities as

she was someone who could cause trouble. It was easier for the authorities to target the appellant, who was low profile, than it was for them to target the ACAJ, which was high profile.

22. On behalf of the respondent, Mr Tan questioned the materiality of the emails in light of the fact that the Presenting Officer's case in her closing submissions was that it was the appellant's investigations *in the UK* that had exposed her to risk. There was no independent evidence that the email sent on 23 December 2016 to what appeared to be a private email address had actually gone to the Minister of Justice in the DRC, and it was inherently unlikely that the appellant's other emails had come to the attention of the authorities in the DRC.
23. In reply, Mr Hossain relied on the fact that it was the appellant's specific evidence that the email of 23 December 2016 had been sent to the Minister of Justice in the DRC, and the Judge had not found this claim to be untrue.

Discussion

24. In **South Bucks District Council v Porter (2) [2004] UKHL 33** Lord Brown said at [26]:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. *Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision* (my emphasis). The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. *The reasons need only refer to the main issues in the dispute, not to every material consideration* (my emphasis).

25. It is apparent from reviewing the material that was before the First-tier Tribunal that the appellant relied on two related propositions in support of her claim that she would be at real risk of persecution on return to DRC. The first was that her father was a particularly prominent and important member of the DK, so she would be at risk merely by association with him, whereas her uncle and cousin in the DRC were not at risk because they did not share the same surname. The second proposition was that, as a result of making enquiries about her father - both orally and by email - the appellant had received a threatening telephone call from the authorities in the DRC at the end of April 2017, so this represented an additional risk factor for her on her return to the DRC.
26. Accordingly, the error of law challenge is a narrow one, as it is not suggested that the Judge did not give adequate reasons for holding that the appellant would not be at risk *per se* on account of her father's

activities for the BDK and the fact that she was his daughter and she shared the same surname as him.

27. It is also not suggested that the Judge erred in law in failing to engage with the possibility that the appellant had come to the adverse attention of the authorities in the DRC through her and her sister making enquiries about their parents at a UDPS meeting in the UK in January 2017, or through any other oral enquiry in the UK.
28. The error of law challenge is further narrowed by Mr Hossain's acknowledgement that the telephone call that the appellant says she received at the end of April 2017 cannot reasonably be linked to her unacknowledged email to Human Rights Watch on 25 April 2017, and still less can it be linked to her email to Amnesty International UK. For her evidence is that she contacted Amnesty *after* she received the threatening phone call, not beforehand. Moreover, as Mr Hossain agreed in oral argument, it is not credible that Human Rights Watch or Amnesty would have tipped off the authorities in the DRC about being contacted by the appellant. The proposition is so absurd that the Judge did not err in law in not specifically addressing it.
29. Accordingly, the error of law challenge rests solely on the email sent four months earlier to a person whom the appellant says is the Minister of Justice in the DRC, but in respect of whom she did not bring forward any background or independent evidence to verify that the recipient of the email was indeed the Minister of Justice.
30. The Judge recorded in paragraph [13] of his decision that it was the appellant's evidence that she had made efforts through various avenues to trace her parents, including her sending an email to the Minister of Justice in the DRC. The Judge did not make a finding one way or another as to whether the addressee of the email of 23 December 2016 was in fact the Minister of Justice. This may be because the issue was not addressed in the refusal decision. It was not addressed there because the recipient of the letter was addressed in French, although the remaining text was all in English. Similarly, the respondent did not comment on the contents of the article referring to her father, as this was also in French and not translated. Another reason for the Judge not making a specific finding is that it does not appear from the skeleton argument or the record of proceedings that the appellant's representatives placed any particular weight on this email as being causative of adverse interest in the appellant, as distinct from simply relying on investigations by her and her sister in the UK generally, without focusing on the chronology (i.e. when enquiries were made relative to the timing of the phone call).
31. I do not consider that the Judge erred in not giving weight to the email of 23 December 2016 as fortifying the case that the single threatening phone call in April 2017 might be connected to the authorities in the DRC, or in not giving reasons as to why, objectively, there was very unlikely to be a connection.

32. Firstly, as previously stated, no special weight was placed on this particular email as having been responsible for the threatening phone call.
33. Secondly, having provided a translation of the news article in the bundle for the hearing, it was apparent that by December 2016 the arrest and detention of her father was a matter of public knowledge in the DRC - and, moreover, that his treatment by the DRC authorities was the subject of a public campaign and protest by a human rights defender organisation in the DRC. Against this background, the appellant's mild-mannered enquiry was not remotely provocative, either in itself, or still less by comparison with what had been published in the DRC media.
34. Thirdly, the appellant had not disclosed any acknowledgement of the email from the Minister of Justice. Fourthly, the appellant had received the threatening phone call more than four months after sending the email.
35. Against this background, I consider that the Judge gave adequate reasons for his broad finding at paragraph [29] that the evidence relied upon by the appellant was not sufficient to establish that there was a real risk that the appellant would be targeted and harmed on return to the DRC on account of the investigations that she and her sister had made in the UK. Although the Judge did not make express reference to this aspect of the appellant's claim in paragraph [29], it is clear from the final sentence that he had this aspect of her claim in mind. His reasoning was that, since the appellant and her sister apparently believed that their parents were dead, the trigger for the threatening phone call of April 2017 no longer existed. The premise which underlay the appellant's account of the threatening phone call was that she was causing trouble by continuing to try to find her father who was still alive, but who the authorities were detaining in secret at an unknown location. If her parents were now dead, as she believed and as was reported by a pastor from the DRC in a letter dated 5 January 2018 - see paragraph [16] of the decision - it was open to the Judge to draw the inference that there was even less risk of the appellant being perceived as a trouble maker as she was not going to continue to try and establish her parents' whereabouts.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

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 21 November 2018

Deputy Upper Tribunal Judge Monson