



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

Appeal Number: HU/16141/2017

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 23 November 2018**

**Decision &  
Promulgated**

**On 31 January 2019**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**HELENE [O]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms M Bayoumi of Counsel instructed by Duncan Lewis Solicitors

For the Respondent: Mr C Howells, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Page promulgated on 23 May 2018 in which the Appellant's appeal against a decision of the Respondent dated 1 November 2017 refusing leave to remain in the UK was dismissed on human rights grounds.

2. Before me Mr Howells conceded that there was merit in some of the Appellant's grounds of challenge, and accordingly the Respondent did not seek to resist the Appellant's assertion that the decision of Judge Page should be set aside. It was common ground between the parties that in consequence the decision in the appeal should be remade before the First-tier Tribunal by a different judge with all issues at large. I accept that this is an appropriate outcome.
3. In the circumstances I do not propose to set out the full details of the Appellant's immigration history, or her criminal history, or to explore the full details of the evidence before the First-tier Tribunal, or all aspects of the Judge's decision: I focus on those matters particularly pertinent to the aspects of challenge conceded by the Respondent to be meritorious.
4. The Appellant is a citizen of the Democratic Republic of Congo born on 15 April 1993. She arrived in the UK in 2010 as a visitor; she subsequently remained as the dependent of her mother who was pursuing an asylum claim; although the asylum claim was dismissed and the Appellant's mother became 'appeal rights exhausted' in June 2011, the Appellant was subsequently granted discretionary leave to remain in line with her mother on 19 May 2014 until 19 November 2016. On 21 October 2016 she made an application for further leave to remain. In substantial part the application was based on the Appellant's family and private life in the UK together with her four children and her unmarried partner [MK].
5. [MK] is a citizen of Guinea born on 27 December 1977. He has no current status in the UK. An application for asylum made in December 2001 was refused and a subsequent appeal dismissed - [MK] becoming 'appeal rights exhausted' in June 2002. On 8 August 2008 he was sentenced to 12 months imprisonment on two counts relating to possession of false identity documents, and recommended for deportation. A Deportation Order was signed on 9 December 2008; an appeal was dismissed on 14 April 2009. Since that time he has made further representations to the Respondent, including placing reliance upon his relationship with the Appellant and, at the time, their firstborn child. On 31 January 2014 the Respondent refused to revoke the Deportation Order. Again, an appeal to the IAC was unsuccessful. I was told today that in the last few days [MK]'s representatives have submitted yet further submissions to the Respondent, although the substance was not known.
6. The couple have four children: the oldest was born on 2 March 2012, the next on 22 November 2014, and the Appellant was delivered of twins on 11 November 2015. None is a British citizen.

7. The essential basis of the Appellant's case before the First-tier Tribunal is summarised at paragraph 12 of the First-tier Tribunal's decision as being that there would be significant obstacles to the Appellant's integration if she were returned to the DRC, and/or that leave to remain should be granted outside the Immigration Rules.
8. As part of the Appellant's case before the First-tier Tribunal it was argued that it would not be possible for the family to relocate as a unit to either the DRC or Guinea. [MK] claimed that the Guinea Embassy did not recognise him as a national of Guinea and he could not obtain travel documentation; this meant that the family could not go to Guinea together as a unit, and also that [MK] would not be able to accompany the Appellant and their children to the DRC.
9. I pause to note that other arguments were also advanced to the effect that it would not be possible to obtain a visa as an unmarried partner – whether that be for the Appellant to enter Guinea or for [MK] to enter the DRC. However, no supporting evidence was provided in respect of such a claim, and seemingly nothing was offered as to why it would not be possible for the couple to marry if that was necessary to maintain the family unit (e.g. see paragraph 37).
10. In respect of documentation [MK] said this at paragraph 2 of his witness statement dated 12 April 2018 (Appellant's bundle pages 13-17):

*"... It is clear to me that the Guinean authorities would not even let me into the country now. In June last year the Home Office arrange for me to attend a travel document appointment at the Guinean embassy and when I went there they refused to accept I am from Guinea because I don't have any ID documents and have never had a Guinean passport. After the appointment, they wrote to the Home Office to say that they won't issue me with a travel document. The Home Office has previously said that they want to deport me to Guinea, because in 2008 was prosecuted for working with a false document, but I don't think it is possible for the Home Office to deport me to Guinea due to the Guinean authorities saying this."*

11. The Judge noted the substance of this evidence at paragraph 32 of the Decision. However, in unnumbered paragraphs under the heading 'Findings and Reasons' the Judge stated:

*"If he assisted the Guinea authorities he could obtain a travel document. He wants to remain here and has no incentive to*

*obtain one so long as the appellant and his children are here. If he had a travel document there would be nothing to stop him going to Guinea and having his family join him there. Or he could relocate to the DRC."*

12. Mr Howells conceded that the Judge did not reconcile the finding that [MK] could obtain a travel document if he wanted to, with the evidence. There was nothing before the Judge that expressly indicated that the difficulty in obtaining travel documentation arose because [MK] was being obstructive.
13. Given the significance of this issue to an overall consideration of the appeal this was plainly a material error such as to warrant the setting aside of the Judge's decision.
14. If the Respondent's concession had been limited to this single issue I might have been minded to the view that the decision in the appeal could be remade without the necessity for a further hearing. However, Mr Howells also conceded that the Judge had erred in his reasoning in respect of the present whereabouts of the Appellant's father: in short it was conceded that there was no evidential foundation for the observation that the Appellant's father "*is obviously still in the DRC*", particularly in circumstances where it was the Appellant's evidence, and the evidence of her mother, that he was last heard of in Namibia where he worked as a diplomat.
15. Accordingly I accept that the interests of justice require that the appeal be remade after a new hearing with all issues at large.
16. It was possible to ascertain from the Tribunal's records today (i.e. at the hearing) that [MK] had no outstanding appeals with the IAC; moreover Mr Howells told me a check of the Respondent's records showed that he had seemingly very recently made further representations to the Respondent. I do not accept Ms Bayoumi's invitation to defer the proceedings herein until such time as the Respondent has made a decision on those representations: the Tribunal can consider the substance of any such representations in so far as it impacts upon the circumstances of the Appellant and indeed the family unit within these proceedings. In so far as those representations might be based completely or in part on the issue of returnability to Guinea, that is a matter that can be properly explored by the Tribunal in the context of the instant appeal.
17. I acknowledge that the Tribunal may have to consider and make findings upon, amongst other things, [MK]'s ability to secure some form of identification or travel document that would enable him to enter either Guinea or the DRC. In so far as it may be suggested that there is a

problem in respect of obtaining such documentation, the Tribunal may need to engage with the question of whether that is a problem arising by reason of the intentional obstruction of [MK], or for some reason beyond his control.

18. Depending on the answer to this issue, it may then be necessary to consider whether the system of immigration control of either the DRC or Guinea will, as a matter of fact, operate to prevent the family relocating to one country or the other as a unit.
19. If it is concluded that it will not be possible for the family to relocate as a unit, the Tribunal will then need to consider whether the removal of the Appellant and her children to the DRC without her partner - and their father - would in all of the circumstances of the case be disproportionate.
20. In all the circumstances I make the following **Directions**:
  - (1) The appeal is to be relisted on the first available date after 49 days from the date shown as the promulgation date of this document, with a time estimate of 3 hours.
  - (2) Within 28 days of the date shown as the promulgation date of this document both parties are:
    - (i) to use their best endeavours to file and serve copies of the decisions in [MK]'s appeals in 2009 and 2014;
    - (ii) to file and serve any evidence upon which they seek to rely in relation to the issue of 'documenting' [MK] as a citizen of Guinea.
  - (3) Further, within 28 days of the date shown as the promulgation date of this document the Appellant is to file and serve any evidence relied upon in support of the claim that it would not be possible for the Appellant and/or her children to enter Guinea as the family members of [MK], or for [MK] to enter DRC as the family member of the Appellant and/or their children. Such evidence should not be confined to the relationship between the Appellant and [MK] but should include consideration of the children's ability to enter Guinea as the children of a national (and indeed the possibility that they may have dual nationality), and the consequent implications in immigration terms for their mother, and [MK]'s ability to enter the DRC as the father of citizens of the DRC irrespective of the status of his relationship with the Appellant.

- (4) In the event that the evidence suggests that there is an obstacle to entry to either or both the DRC or Guinea on the basis of being an unmarried partner, the Appellant should be prepared to address the Tribunal as to why she and [MK] might not reasonably be expected to contract a civil marriage to preserve the integrity of the family unit.
- (5) The parties are to file and serve any further evidence upon which they wish to rely - whether in response to evidence filed by the other party pursuant to the Directions above or otherwise - at least seven days prior to the relisted hearing.

**Notice of Decision**

21. The decision of the First-tier Tribunal contained errors of law and is set aside.
22. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Page with all issues at large.
23. No anonymity direction is sought or made.

Signed:  
**Deputy Upper Tribunal Judge I A Lewis**

Date: **14 January 2018**