



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04667/2017

THE IMMIGRATION ACTS

Heard at Bradford
on 16 January 2019

Decision & Reasons Promulgated
On 20 February 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JEANCY [L]
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodgson, in-house Counsel with Elder Rahimi Solicitors

For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Caswell promulgated on 6 December 2017 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of the DRC born on 13 March 1999 who arrived in the United Kingdom with a false passport in October 2016, claiming international protection and leave to remain on human rights grounds on 28 October 2016 which was refused by the respondent on 28 April 2017. It is the appeal against that decision which came before the Judge.
3. The appellant's case is summarised by the Judge at [4 - 8] in the following terms:

"4. The Appellant's case can be summarised as follows. He was born and lived in Kinshasa, N'Djili district. He attended the first year of university, and after that had to stop for financial reasons. He lived with his family, including his wife and two children, and sold car parts from home to support them. The 2014 the Appellant became a sympathiser member of APARECO, a human rights organisation opposed to the Kabila government, having contacted them online. He was given the task of mobilising support from the youth in N'Djili. He would hold secret meetings in various locations. Sometimes this was in the compound of a friend's house, and sometimes it was in public locations, such as football matches, Internet cafés and churches. Effectively the surroundings acted as cover.

5. In September 2015, when there was a UDPS demonstration, the Appellant was caught up in the arrests when he was in the area. He was taken to Makala prison and beaten almost daily for three and a half months. He was never interrogated or charged and was released upon being made to sign a document. Fortunately, the authorities never discovered that he was an APARECO member.

6. On 19 and 20 September 2016, there was an uprising in the DRC against the government. The Appellant and his APARECO associates joined in at a location on the Matete Bridge. Many people were being arrested but the Appellant was not and ran away. The Appellant did not go home, but to the house of a friend, whose older brother told him that the government were arresting APARECO members. When he received news of this, the Appellant realised his life was in danger. He again did not go home but cashed in the money that he had contributed towards a buying fund with others, and fled overland to Angola. From there he came with a false passport to the UK, helped by an agent. He claimed asylum on arrival.

7. Since being in the UK, the Appellant has continued his APARECO involvement. He was given the position of mobiliser for the London area, when he lived in London. He attended meetings in London. After he moved to Huddersfield, he took part in telephone meetings. He has posted extensively online for APARECO, sharing APARECO material on his Facebook page. He has made YouTube videos denouncing the Kabila

government. The DRC authorities will be aware of his activity for APARECO in the UK.

8. The Appellant's case is that, if returned to the DRC, he will be arrested at the airport, detained, tortured and killed, on the grounds of his political opinion."

4. The Judge sets out findings of fact from [18] of the decision under challenge which can be summarised in the following terms:

- i. There are various internal inconsistencies in the Appellant's account most notable being discrepancies as to where secret meetings were held by the appellant in the DRC and as to whether he and others in his group attended the September 2015 demonstrations outside the UDPS headquarters, which were not fully resolved in the appellant's oral evidence in which the Judge found the appellant appeared to be trying to reconcile two differing accounts [18].
- ii. The appellants explanation in his oral evidence did not emerge in a logical or credible fashion and he effectively changed his account. The appellant was vague about his actual involvement with APARECO in the DRC and could not at any point give a clear explanation of what he did or its effectiveness and appeared to have a limited grasp of politics and of the aims of the organisation often simply repeating that Kabila was a Rwandan and not Congolese at all [19].
- iii. The appellant seemed to be suggesting that he was being directed by his superiors in London whereas the email from the UK Secretary of APARECO indicates there is no office in the UK and only an office in France which is the organisation's headquarters. The Judge found it lacked credibility, especially as the appellant is French-speaking, the claim he has superiors in London telling him what to do in the DRC. The Judge finds there was no real explanation of what is meant by the appellant being a "mobiliser" for APARECO or how the author of a letter purportedly from a UK Territorial Representative had obtained that information. The author did not attend to give evidence nor did anyone else from APARECO UK. The Judge finds the fact the letter shows the Territorial Representative operates from a flat in Tottenham confirms the low prominence of APARECO in the UK as opposed to France [20].
- iv. When asked about the incident in September 2015 which the appellant claims prompted him to flee the DRC, the Judge found the appellant often delayed in answering questions, when asked how he obtained the \$1600 to fund the trip events claimed he cashed in a share of a car part buying fund whereas there is no mention of this before, which was said to be at odds with his evidence that he was

very poor and only just managed to support his family from the car parts sales [21].

- v. The appellant could not give a clear consistent account of the way in which he was told about the arrests of APARECO members or why he believed was in danger such that he had to flee the country without even going home to see his wife and children describing on the one hand being telephoned by a friend yet in another being told in person by the older brother of a friend. The Judge did not find the appellant's explanation for the discrepancy credible. The Judge did not find in any the case that it was apparent why the appellant would need to flee since he could not identify what led the authorities to believe he was an APARECO member [22].
- vi. The appellant's account of claimed activism in the DRC is out of line with objective and country information and country guidance case law confirming that those who have or are perceived to have a military or political profile in opposition to the government are persecuted with there being very little evidence of APARECO activism in the DRC as opposed to actions by members of the UDPS [23].
- vii. The Judge did not find the country information provided and considered supported the appellant's case that members of APARECO face persecution as a result from the authorities even to the lower standard of proof [24].
- viii. The background evidence did not support the appellant's claim that he was an APARECO activist in the DRC or that he risked coming to the attention of the authorities as such at the time when he left the DRC [25].
- ix. The appellant's account is rejected. The appellant was not found to be a credible or reliable witness [26].
- x. Country guidance case law does not support the appellant's case that his actions for APARECO in the UK would put him at a high enough level to attract the adverse attention of the DRC authorities on return. The Judge did not accept the appellant did anything significant for APARECO in the DRC and the terminology used does not convey someone with an official role. The Judge does not find the appellant has acquired a significant visible profile within APARECO UK and does not find he is or is perceived to be a leader, office bearer or spokesperson when applying the language of the country guidance case law. The Judge notes there is only one subscriber to the appellant's YouTube channel, and it has attracted very few views and there is little evidence of his Facebook page being widely viewed. The Judge notes the appellant's claim to have attended a few meetings of APARECO but found it is not credible that this would have been of interest to the DRC authorities or noted by them

especially given the low profile which APARECO apparently has in the UK [27].

- xi. The Judge does not accept the appellant has told the truth about his actions for APARECO, finds he has little or no contact with them in the DRC and did little or anything to promote their aims. The Judge does not find the appellant was involved with demonstrations as he has claimed or that he left the country for political reasons. The Judge finds the appellant has failed to show even to the applicable lower standard of proof that he has done anything that would be viewed as significant by the DRC authorities and has failed to show that they will be aware of his involvement in APARECO [28].

5. As a result of the above finding the Judge finds the appellant would not face a real risk on return to the DRC for any reason and accordingly dismissed the appeal.
6. Permission to appeal was sought by the appellant but refused by another judge of the First-Tier Tribunal found the grounds did not identify any arguable material error of law and that there was no basis on which to interfere with the decision the First-Tier Tribunal.
7. The application was renewed to the Upper Tribunal where permission was granted on 14 May 2018, the operative part of the grant being in the following terms:

“I consider that the grounds are arguable in terms of First-Tier Tribunal Judge Caswell’s (“the FtJ”) assessment of the activities of APARECO in the DRC and the import of the country guidance decision of *BM and Others (returnees - criminal and noncriminal) DRC CG [2015] UKUT 00293(IAC)*, notwithstanding that the FtJ referred to various items of background material in terms of their activity or presence in the DRC.

Likewise, I consider arguable the points advanced in relation to the FtJ’s adverse credibility assessment in terms of the basis of his account and what are said to be inconsistencies. It may be that notwithstanding any errors of fact made by the FtJ her adverse credibility assessment overall can stand, but that is a matter for argument at the hearing. All grounds may be argued.”

8. The Secretary of State has filed a Rule 24 reply dated 25 July 2018 in which he confirms his opposition to the appeal; submitting the Judge addressed herself properly to the evidence before her and reached adequately reasoned findings. The respondent submits the grounds amount to little more than disagreement with the findings which were unfavourable to the appellant, that no material error of law is established and that any factual errors in the determination are minor in the context of the Judge’s comprehensive and detailed consideration (paragraphs 18 – 29) of the credibility of the appellant’s account and of the risk to him on return.

Error of law

9. The documents refer to the country guidance case of *BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 00293 (IAC)* in which it was held that a national of the DRC who has a significant and visible profile within APARECO (UK) is, in the event of returning to his country of origin, at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in *MM (UDPS Members – Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023*. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers or spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.
10. On behalf the appellant Mr Hodgson submitted that the Judge mixed up her assessment of the evidence and findings of fact and that from a reading of the determination it was not clear what the Judge had seen and taken into account. The appellant argues there was nothing inconsistent in his account. It is argued that [87] of *BM* provides guidance regarding APARECO as an organisation confirming they operate underground in the DRC which it is argued supports the appellants evidence of meetings in public places.
11. In that paragraph the Upper Tribunal found:

“We address the discrete question of risk to those who are considered to be opponents of the Kabila regime by reason of their *sur place* activities in the United Kingdom. In addressing and determining this question, we make the following specific findings:

- (i) APARECO is a cohesive, structured organisation which has its main base in France and strong basis in certain other European countries, including the United Kingdom. It also operates in Canada and the United States.
- (ii) APARECO is implacably opposed to the regime of President Kabila which has governed DRC during the past decade. Its overarching aims are the defeat of this regime and the re-establishment of the state on a different basis.
- (iii) APARECO has no overt presence in DRC, where it operates underground.
- (iv) The external opposition of APARECO to the governing regime of DRC is overt and visible. Its highest profile activities unfold in public places, accessible to all. Activities of this nature are accompanied by advance publicity.

- (v) In common with many comparable regimes throughout the world, both present and past, the DRC Government has a strong interest in opposition organisations, including APARECO. Such organisations are monitored and data is recorded. This includes information about the identities of the most prominent members of such organisations, that is to say their leaders, office holders and spokespersons.
 - (vi) The monitoring of APARECO (UK) is likely to be undertaken by and on behalf of the DRC Embassy in London. This is the agency with the most obvious motivation to carry out and co-ordinate such scrutiny. Such scrutiny is likely to generate periodic reports to the DRC Government, in particular its ANR and DGM agencies.
 - (vii) It is likely that the leaders, office bearers and spokespersons of APARECO (UK) are known to the DRC UK Embassy and the DRC Government, in particular ANR and DGM.”
12. The finding at [25] that the background evidence did not support the appellant’s claim that he was an APARECO activist in the DRC may be affected by legal error if the basis for that conclusion was that the Judge did not accept that the country material established that members of this group were present in the appellant’s home state. It was argued that the area error is material as the appellant’s claim was consistent with the country material.
 13. In *BM* it is identified that APARECO are based in France and the United Kingdom which Mr Hodgson submitted means it is not implausible that the appellant could have had connections with those operating in the United Kingdom from where he received instructions as to his activities in the DRC. This submission is noted but as the Judge found the profile of any organisation within the UK appears to be very low as opposed to the head office of this organisation in France. The finding of the judge that it is more likely than not that if the appellant was to receive instructions from APARECO officials outside the DRC they would come from the head office in France rather than London has not been shown to be a finding that is arguably irrational or outside the range of those available to the Judge considering the evidence as a whole. Nobody from APARECO UK attended to confirm the appellants claim. As the source of instruction in relation to what the appellant claims to have done has been found to lack credibility the specific finding in [25] becomes more relevant as it is tailored to the appellant as an individual and not the group as a whole.
 14. The challenge to the Judge concerning the alleged source of funding for the appellant’s travel to United Kingdom is noted in which Mr Hodgson argues that there are no inconsistencies in relation to the appellant’s account when one considers the written and oral evidence. It is argued there is no inconsistency in the appellant’s explanation referred to at [22] or [21] of the decision under challenge. I do not accept it is made out that the Judge failed to consider the evidence made available with the required degree of anxious scrutiny and the Judge had the advantage of both seeing and hearing the appellant give oral evidence. It was considering the evidence in the round that led to the concerns in the mind of the Judge that there were inconsistencies in the appellants

evidence. The weight to be given to the evidence was a matter for the Judge. It is not made out the conclusions set out in the decision in relation to the weight to be given to the evidence or the Judges assessment of the same, based upon the opinion she formed of the appellant, falls outside the range of decisions reasonably open to the Judge on the evidence.

- 15. The Judge identified a general vagueness in the appellant’s evidence in relation to matters of which the Judge was entitled to expect the appellant would have had a more detailed knowledge if his activities were as he claimed. Even if the Judge did err in relation to the activities of APARECO within the DRC, in light of *BM*, and/or it is accepted that in his asylum interview the appellant claimed that the money to pay the agent to bring him to the United Kingdom came from car parts, these two issues fails to establish material error in the findings of the Judge when considering the evidence as a whole.
- 16. I do not find, having considered the determination, submissions made before the Upper Tribunal, and evidence available to the Judge that although some concerns arise the appellant has established legal error material to the decision to dismiss the appeal. There are a number of concerns arising from the evidence identified by the Judge sufficient to justify the adverse credibility findings.
- 17. It was not made out anything on the appellant’s Facebook account or YouTube would have come to the adverse attention of the authorities or establish that the appellant’s profile is sufficient to place him at risk on return in light of the findings in *BM*. As the appellant is not credible any entries do not represent a genuinely held fundamental belief meaning the Facebook account can be closed down and any entries deleted without infringing the HJ (Iran) principles if the appellant has any concerns.
- 18. I find no error of law material to the decision to dismiss the appeal made out. The decision of the Judge shall stand.

Decision

- 19. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 20. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 16th February 2019