



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

Appeal Number: PA/07008/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 22 November 2018**

**Decision & Reasons  
Promulgated**

**On 25 February 2019**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**CHRISTELLE [M]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Semega-Janneh, instructed by Sentinel Solicitors  
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated 10 May 2018, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside.

2. At the resumed hearing at Bradford on 22 November 2018, I heard evidence from the appellant. The witness who had given evidence at her previous hearings has since died. The burden of proof in the appeal was on the appellant and the standard of proof was that of reasonable likelihood. It is for the appellant to prove that there are substantial grounds for believing there to be a real risk that she would be persecuted or ill-treated upon return to DRC.
3. In reaching my decision on the Article 2/3 ECHR in asylum appeals, I have had regard to all the documentation including the medical evidence. I have considered the evidence as a totality before reaching any findings of fact. I have sought to identify “core” elements of the appellant’s case and to distinguish these from more peripheral aspects.
4. The appellant gave evidence in Lingala with the assistance of an interpreter. The appellant claimed that she was still a member of the International Congolese Rights organisation (ICR). This is the organisation with which the late Mr Mukendi (who gave evidence at the previous Tribunal hearing) was connected. I have documentary evidence from Mr Mukendi which have taken into account in reaching my decision. The appellant claimed that she had attended demonstrations and held signs at those demonstrations. She had been to about three demonstrations in London since she arrived at the age of 16 years in June 2010.
5. Cross-examined by Mrs Pettersen, the appellant said that she had attended demonstrations in her home town of Barnsley. She moved to Barnsley in 2013. She said that she had not been to a demonstration at all in the United Kingdom since 2013. She said it was a “standoff” at the embassy in London. However, she could not remember exactly when it was. As regards activities in Barnsley, she distributed leaflets and propaganda.
6. The appellant has a partner in the United Kingdom, Mr [HM]. He is an asylum seeker whose application for asylum has been rejected. She did not know whether Mr [M] had appealed that decision.
7. The appellant continued to take medicine for stress and inability to sleep.
8. I reserved my decision.
9. The appellant seeks to rely on arrest warrants which were issued in 2010 after she left to come to the United Kingdom. I bear in mind that she was then a very young woman aged only 16 years old. Medical evidence indicates that she did suffer some trauma in her past but the causes of it are unclear. Her *sur place* activity is at the lowest level. She has not attended a demonstration in the United Kingdom since 2013. I questioned whether handing out leaflets and propaganda in Barnsley amounts to a form of *sur place* activity which would ever come to the attention of the Congolese authorities. Indeed, the appellant does not purport to be a senior member or activist of the Congolese opposition movement. In my

opinion, even taken at its highest, the appellant has no genuine fear which is well-founded of persecution or ill-treatment in DRC. Even on the assumption that the warrants that she has produced are genuine, she would be returning to DRC almost ten years after they were issued and at that time issued to a child. She has done nothing whatever whilst in the Congolese diaspora in the United Kingdom which would have maintained any profile she may have had as a 16-year-old in DRC or formed a new significant profile. I find that she is at the present time unknown to the Congolese authorities. I find that there has been no evidence produced to show that upon return to DRC anything that she has done in the past or any of her *sur place* activities would bring her to the attention of the Congolese authorities.

10. As regards Article 8, the appellant's circumstances have moved on since previous Tribunal hearings. All of her children have been born in the United Kingdom. The eldest child has now been here for more than seven years and is therefore a "qualifying child" for the purposes of Section 117 of the 2002 Act (as amended). Section 117B(6) provides:

In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

11. Mrs Pettersen, who appeared for the Secretary of State, acknowledged that the appellant should be granted a period of leave to remain on account of the fact that she is in a genuine and subsisting relationship with her eldest child who is a "qualifying child". It is only on this basis that she is entitled to leave; absent the "qualifying" characteristics of the eldest child, the appellant, her children and her partner are all Congolese and could continue their family life in their country of nationality.

### **Notice of Decision**

12. This appeal is dismissed on asylum grounds.
13. This appeal is dismissed on Article 2/3 ECHR grounds.
14. The appellant is not entitled to humanitarian protection.
15. The appellant's appeal is allowed on Article 8 ECHR grounds.
16. No anonymity direction is made.

Signed

Date 21 February 2019

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 21 February 2019

Upper Tribunal Judge Lane