



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

Appeal Numbers: PA/10158/2018

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 18 July 2019**

**Decision & Reasons Promulgated  
On 31 July 2019**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**SS  
(anonymity direction made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**For the Appellants: Ms Spencer-Bolton, Manuel Bravo Project  
For the Respondent: Mr Diwnycz, Senior Home Office Presenting  
Officer**

**DECISION and REASONS**

1. The Appellant is a national of the Democratic Republic of Congo born in 1964. She appeals with permission against a decision of First-tier Tribunal dated the 22<sup>nd</sup> November 2018 to dismiss her protection appeal.
2. It had been the Appellant's case before the First-tier Tribunal that she faced a real risk of harm in Congo for reasons of her imputed political opinion. The Appellant states that she is originally from Kinshasa where she had a good job in the telecoms industry. In December 2008 she was told that a friend of hers F had been arrested and was being held by the ANR, the national intelligence service. She made enquiries about his

whereabouts which came to nothing but a week later this friend had contacted her and said that he was in a small medical unit somewhere in Bandal. She went and collected him, and subsequently assisted him in getting him out of the country to Brazzaville. The Appellant states that since that incident the following things have happened to her:

- i) Men came to her house looking for her (December 2018);
  - ii) Men attended at her house during a power cut and demanded to be given entry so that they could search for hidden weapons. Her guard refused them entry and they left. The same night police attended and successfully searched the home of F's brother (January 2009);
  - iii) The Appellant believes that she was under surveillance (2010-2014);
  - iv) Armed men attended her home with an arrest warrant but failed to gain entry (September 2015);
  - v) The Appellant was poisoned (March 2016);
  - vi) She was attacked by armed men whilst driving (December 2016)
  - vii) Armed men tried to prevent her entering her home (January 2017)
3. The Appellant's oral account was supported by various items of documentary evidence including correspondence between her and F, country background material confirming the arrest and detention of F and medical evidence relating to the alleged poisoning incident.
  4. Having considered all of this evidence the First-tier Tribunal accepted that the Appellant had been employed as she claimed and that had she had met F through her work. It also accepted that she had made enquiries about his detention in December 2018.
  5. Beyond that the Tribunal was not satisfied that the Appellant had any further involvement with F. Specifically it rejected her claim to have helped F escape. The media reports stated that he had been released in Kinshasa, not that he had escaped in Bandal. It was inherently unlikely that he would not have been heavily guarded, had he in fact been held by the ANR. F had not written a letter in support, despite the fact that he now lives in this country. There was no objective evidence supporting the Appellant's description of the river border between the DRC and Congo-Brazzaville. The Appellant's evidence was that she had been able to travel in and out of the DRC on a number of occasions since 2008 and this was inconsistent with her claim that the ANR had an adverse interest in her. It was not reasonably likely that the ANR would have simply left her

premises having been denied entry. In respect of the alleged poisoning the Tribunal found this to have been a bacterial illness.

6. The Tribunal did accept that the Appellant had, on 5 occasions in an 8 year period, been a potential victim of attacks from criminals but found:

“I am satisfied that this is merely due to her being in well-paid employment in an area where there is a high crime rate rather than as a result of her falling foul of the government or ANR. She has failed to establish that there is no sufficiency of protection as nothing has actually happened to her, there is no evidence she has gone to the police for help and they have refused, and her employer has the ability to assist her in internally relocating and providing her with protection that her kept her safe”.

On that basis the appeal was dismissed.

7. The Appellant has sought and obtained permission to appeal on the grounds that the decision is perverse.

### **Discussion and Findings**

8. Before me Ms Spencer-Bolton submitted that the First-tier Tribunal failed to give reasons why it was not satisfied that the actors of aggression in the various incidents described were not ANR operatives. She submitted that given the other elements of the account that were accepted, it was irrational to reject the Appellant’s evidence on this point. In particular there was no evidential foundation for the conclusion that the attacks were by criminals.
9. On this last point Mr Diwnycz agreed that the First-tier Tribunal had impermissibly speculated. In a number of the incidents described it had been the Appellant’s evidence that she knew, or reasonably believed, the men involved to be agents of the state. In the very first incident her guard’s description of the men who attended the house accorded with the reports about F’s arrest – they appeared to be the same men [see Q44 of the asylum interview record]. In the second incident the men who attended her property were wearing police uniform [Q46]. She then described being routinely followed, “but not interfered with” throughout 2009-2010 by men in cars [Q51]: this does not appear to be consistent with any criminal activity. Then in September 2015 the men who came to the Appellant’s house actually had an arrest warrant and a document from the prosecutor’s office [Q57]. In each of these incidents the Appellant, or someone, had positively identified reasons why they believed the ANR to be the perpetrator. In fact it is only in the later incidents described, for instance the attack on her car in December 2016, that the Appellant was unable to say who her attackers were – in her asylum interview she said she referred to them as “bandits” for that reason. Mr Diwnycz agreed that all of this was not easy to square with the Tribunal’s conclusion that the men were in every case simply common criminals. He submitted that it

would have been open to the Tribunal to reject the Appellant's evidence altogether, but it does appear that this is what it had done.

10. This is an adversarial process, and where the parties were in agreement I would be slow to take another approach. In this case I accept that the First-tier Tribunal does not appear to have squarely engaged with the Appellant's evidence that the characters involved were either wearing uniform, carried official documentation or had otherwise been identified as ANR. I am however satisfied that the overall conclusion of the First-tier Tribunal - that the Appellant has not demonstrated that she *is at risk* - was one open to it.
11. The Appellant claims to have had some involvement with the escape of her friend F in 2008. Thereafter she remained in the DRC, freely travelling within and outside of the country, for some 8 years. She states that on three occasions men whom she believes to be from the security service attended her property. On each occasion they were armed, and on at least one occasion they claimed to hold official authorisation. She suspects that for a period of between 2-3 years they were tailing her. Assuming it was indeed the ANR behind all of this, that evidence strongly suggests that the Appellant is not in fact at any risk of harm. The objective evidence in the bundle unequivocally demonstrates that the ANR are able to act with impunity, conducting arbitrary arrests and holding suspects in incommunicado detention. The security services regularly commit serious human rights abuses including rape and torture. The point made by the First-tier Tribunal is that if they had actually wished to detain or otherwise harm the Appellant, it seems very unlikely that they would not have done so. By the Appellant's account the men turned away from her home empty handed because her guard refused to open the gate, and on one occasion because it was after six o'clock in the evening and "everybody knows" that they cannot make an arrest after that time. This would appear to underline the lack of any real interest on the part of the visitors. Had they wished to detain or otherwise harm the Appellant, they had ample opportunity to do so in the time that she spent in the DRC between 2008 and 2017 when she finally left.
12. That is the reasoning underpinning the First-tier Tribunal decision, and I am unable to say that it was irrational. The Tribunal may have gone too far in characterising the visitors as 'criminals' - that was a finding unsupported by the evidence - but on the evidence adduced it was quite entitled to find that the Appellant did not have a currently well-founded fear of persecution in the DRC.

### **Anonymity**

13. This appeal concerns a claim made under the Refugee Convention. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity

Orders we therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decisions**

14. The decision of the First-tier Tribunal does not contain any material error of law. It is upheld.
15. There is a direction for anonymity.

Upper Tribunal Judge Bruce  
20<sup>th</sup> July 2019