Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12446/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 March 2019	**On 21 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

S B D
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:
For the Appellant: Ms R Head, Counsel, instructed by Cassadys Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Abebrese (the judge), promulgated on 27 December 2018, in which he dismissed her appeal against the Respondent's refusal of her protection and human rights claims.

2. The Appellant, a national of Congo Brazzaville, had based her claim on alleged connections between her father and a high profile individual in her home country named Pastor Toumi. This individual led an organisation which was in opposition to the government of that country. As a result of what was said to be political opinion imputed to both the Appellant and her father, she asserted that she was at risk from the authorities of her home country. The Respondent rejected this claim for reasons set out in a decision letter dated 22 June 2018.

The judge's decision

3. In brief summary the judge rejects the credibility of the Appellant's account, as a result of which he concludes that there would be no risk on return. I will deal with more specific aspects of the decision, below.

The grounds of appeal and grant of permission

4. The grounds are twofold. First, it is said that the judge has created confusion by referring to the Appellant as a national of the "Democratic Republic of Congo" as well as making references to "the Congo" and "Congo Brazzaville". In his decision it is said that the confusion is sufficient to raise doubts about whether anxious scrutiny had indeed been applied to the Appellant's case.

5. Second, it is said that the judge approached the Appellant's protection claim on an incorrect basis. It is asserted that from [29], [30] and [32] it is apparent that the judge viewed her case as involving actual political opinion and the need to show a political profile of one sort or another. This misapprehension of the Appellant's case was material to the judge's overall assessment of credibility.

6. Permission to appeal was granted by First-tier Tribunal Judge Foudy on 18 January 2019.

The hearing before me

7. Ms Head relied on the grounds. She submitted that the confusion between the two countries was, to say the least, troubling. The references to the Democratic Republic of Congo were made in two important paragraphs in

the judge's decision, namely the introduction at [1] and the start of the findings of fact at [29].

8. In respect of ground 2, Ms Head emphasised what the judge himself had said in [29], [30] and [32]. She did accept that the Appellant had needed to show a connection between her father and Pastor Toumi, but that the judge had nonetheless approached the nature of this connection on an incorrect basis, namely actual political involvement with this individual.

9. For his part, Mr Bramble relied on the Respondent's rule 24 response. He submitted that the judge has simply made a slip when referring to the Democratic Republic of Congo in [1] and [29] of his decision. This was not material to the outcome. In respect of the more substantive challenge he suggested that when the decision was read as a whole, including the negative findings that had not been challenged in the grounds, the judge's overall conclusions were sustainable. He suggested that apart from the references to actual political opinion in [29], [30] and [32], all other findings related to the issue of imputed political opinion.

10. At the end of the hearing I reserved my decision.

Decision on error of law

11. This has not been an easy case to decide. After careful consideration I have concluded, by a relatively narrow margin, that the judge did commit material errors of law. Specifically, I am satisfied that he approached the Appellant's claim, at least to a material extent, on an incorrect footing.

12. It is clear to me that the whole thrust of the case was that whilst her father had had interactions with Pastor Toumi, neither he (the father) nor herself had ever had any *actual* political involvement and neither had belonged to any political movement as such. The issue was whether the authorities of Congo Brazzaville had *perceived* her father and, in consequence, herself as having such links as to place her at risk.

13. The reasons for my overall conclusion are as follows. First, it is right that at [5] the judge does refer in terms to "imputed political opinion". However, it is clear from that passage that he is in fact referring to what the Respondent had set out in the reasons for refusal letter. This reference is not of itself sufficient to indicate that a correct apprehension of the Appellant's claim was considered when the substantive findings and conclusions are set out later in the decision.

14. Second, in [29] and [30] the judge clearly states that he was not satisfied that either the Appellant or her father had been politically active. This is indicative of an erroneous approach to the underlying basis of the Appellant's claim. Having read and then re-read [30], I note that later on in that passage the judge states that:

> "I am also not persuaded by the evidence before me that the Appellant's father was assisting Pastor Toumi and the Ninja group because of the lack of evidence of the Appellant or her family's political connection with any party in Congo."

15. This is further indication that he was in effect finding against the Appellant's protection claim because he was not satisfied that there was an actual political opinion/profile.

16. I then move on to [31]. This paragraph, like others, does involve a number of particular issues within it, not all of which are connected to the particular question of whether there was any actual political activity on the part of the father or the Appellant. However, the first sentence is of some significance:

> "I do not find the core of the Appellant's evidence regarding the attack on the family home to be credible as implicated above the Appellant has not provided sufficient evidence to indicate that the DGST or the government had any reason to attack/raid the Appellant's family home."

17. On my reading this indicates another link between a rejection of aspects of the Appellant's case in general and the judge's finding that there was no actual political activity/profile on the part of the Appellant's father (or indeed herself).

18. Moving on to [32], the first sentence reads as follows:

> "I also do not find the evidence of the Appellant credible <u>for the main reason that she has no political profile</u> in Congo and she has not provided credible evidence to suggest that the Appellant could have provided the DGST with information that could not have been obtained from any of the people from her family who were being detained."
>
> (emphasis added)

19. I take on board Mr Bramble's emphasis on the second part of the sentence just quoted and the fact that the judge's decision must be read sensibly and holistically. Having done so, there is still in my judgment the inescapable probability that at least part of that "main reason" for rejecting the Appellant's evidence was the previous conclusion that neither she nor her father in fact had a political profile in Congo Brazzaville. Therefore, once again there is a common thread relating to a misapprehension as to the nature of the Appellant's claim.

20. Having set out these points, I make it very clear that I have read the judge's decision in its entirety and I very much have in mind the fact that there are numerous adverse credibility findings set out between [30] and [39]. A large number of these have not in fact been challenged by the Appellant, at least not expressly. Seen in isolation many if not most of these additional findings were open to the judge.

21. However, whilst in some cases it is possible to excise errors on particular matters from the findings and conclusions as a whole with no material impact on the outcome, that is not the case in the Appellant's appeal. In my view the erroneous approach to the essential nature of the Appellant's claim, as I have identified above, leads to the distinct possibility (if not a probability) of an infection of all the findings and conclusions. As a consequence, and as I have said previously, by a relatively narrow margin, the judge's decision as a whole in unsafe.

22. On the basis of the above I set the judge's decision aside.

23. For the sake of completeness, I address briefly the first ground relating to the confusion between the Appellant's countries of nationality. It is a fact that she is and always has been a national of Congo Brazzaville. It is unfortunate that the judge had created uncertainty by his reference to the Democratic Republic of Congo in [1] and [29]. One can see that the Appellant would be worried about whether the judge had in fact applied his mind properly to the correct country of origin. However, reading the decision as a whole and having regard to the Appellant's skeleton argument and background evidence placed before the judge, I am satisfied that these two erroneous references were essentially a slip and nothing of substance. There are numerous references to "Congo" and this can be contrasted with the specific references to the Democratic Republic of Congo in the paragraphs already cited. The distinction suggests, on balance, that the judge did indeed have the correct country of origin in mind when making his decision. There is no material error here.

Disposal

24. It is quite clear that this appeal must be remitted to the First-tier Tribunal for a complete rehearing with no findings of fact preserved. This is entirely consistent with paragraph 7.2 of the Practice Statement and both representatives were agreed that were I to set the judge's decision aside remittal would be the appropriate course of action.

Notice of Decision

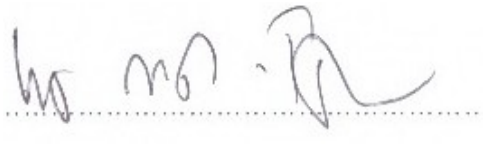
The judge's decision contains a material error of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

1. **This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact;**

2. **The remitted appeal shall not be heard by First-tier Tribunal Judge Abebr**ese.

Signed  Date: 18 March 2019

Deputy Upper Tribunal Judge Norton-Taylor