Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00137/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12 September 2019	**On 10 October 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

C M
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Ms P Solanki, instructed by Duncan Lewis & Co Solicitors (Harrow Office)

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a Judge of the First-tier Tribunal who allowed on asylum and human rights grounds the appeal of CM against the Secretary of State's decision of 5 September 2018 refusing his protection and human rights claim.

2. I shall refer hereafter to the Secretary of State as "the respondent", as she was before the judge, and to CM as "the appellant" as he was before the judge.

3. The appellant first came to the United Kingdom on 12 April 2007 at the age of 9 with indefinite leave to remain under the Family Reunion Scheme as a dependant of his father.

4. On 1 August 2016 he was convicted of robbery and sentenced to two years and six months' imprisonment at a young offenders' institution. He also has a conviction for battery on 4 October 2013 for which he was sentenced for a referral order for six months, and convictions on 25 April 2016 for possessing an offensive weapon in a public place, for which he was sentenced to 145 days in a young offenders' institution and of possessing a knife/blade/sharp pointed article in a public place and sentenced to 28 days concurrent in a young offenders' institution.

5. The Secretary of State applied section 72 of the Nationality, Immigration and Asylum Act 2002, having concluded that the appellant had been convicted of a particularly serious crime and that he constituted a danger to the community. It was not accepted that the appellant had rebutted the presumption in accordance with section 72(6) of the Act.

6. The appellant argued that his protection concerns remained, referring to the fact that he was granted refugee status on the basis of a fear of persecution due to his and his father's mixed Hutu/Tutsi heritage and imputed support for the Hutu rebel activity. He originated from Kinshasa in the DRC.

7. With regard to Article 8 of the Human Rights Convention, the appellant has a girlfriend who at the time was expecting a child. The respondent did not accept that his removal from the United Kingdom would breach his right to family life with his partner, nor that there would be significant obstacles to his integration into the DRC.

8. The judge heard evidence from the appellant, from one of the appellant's sisters, from his partner, a social worker who has been working with him at the young offenders including the appellant, and from a care worker at Birmingham Children's Trust.

9. As regards the section 72 issue, the judge concluded that the appellant was guilty of a particularly serious crime, bearing in mind the sentence and the impact on the victim and the interests of the community.

10. The judge however concluded, bearing in mind the evidence of the social workers which he said was very positive about the appellant, that on the evidence before him the appellant was not currently a danger to the community and had therefore rebutted the presumption raised under section 72(2) of the 2002 Act.
11. Having concluded that the certificate was not to be upheld, the judge went on to consider the implication of Article 1C(5) of the cessation clause. He noted that the respondent recognised that any change in the circumstances in respect of which the appellant had been recognised as a

refugee had to be significant and non-temporary and that his fear of persecution had no longer to be regardable as well-founded. The respondent had noted the UNHCR's view that there had not been a fundamental change in regard to security in the DRC. He noted that, as pointed out by Ms Solanki, who also appeared below, the Secretary of State did not refer to any country guidance case and how this might have applied to the appellant.

12. The judge also noted expert evidence from Dr Kodi and the fact that the respondent in the decision letter observed that whilst there was ethnic violence prevalent in some areas of the DRC, there was no evidence to suggest that this was the case in Kinshasa and the appellant could return to that area. Dr Kodi whose credentials were not challenged, did not think the appellant would be safe in any part of the country if people knew that he was of mixed Hutu/Tutsi heritage. Dr Kodi had also had discussions with human rights activists who confirmed that returned asylum seekers of Rwandan descent were at greater risk of victimisation than others because of entrenched anti-Rwandan feelings amongst the majority of the Congolese people. The expert noted also the problems the appellant would face on return in obtaining accommodation, lack of knowledge of the Congolese language and absence of family or social network and his past criminal record as further difficulties he would experience.

13. In light of what was said in the refusal letter and the expert's opinion and the view of the UNHCR, the judge concluded that there was not a significant change in regard to the appellant's position as a refugee. He concluded that the appellant's fear of persecution was still applicable and that there had been no fundamental and significant change in the DRC to revoke his refugee status.

14. The judge went on to consider the position as regards Article 8. Applying paragraph 399 of HC 395, he found that the appellant had a genuine and subsisting relationship with his partner in the United Kingdom. He considered it would be unduly harsh for the appellant's partner to live in the DRC, and also unduly harsh for her to remain in the United Kingdom without the appellant.

15. As regards paragraph 399A, the respondent accepted that the appellant had been lawfully resident in the United Kingdom for most of his life. With regard to whether he was socially and culturally integrated into the United Kingdom, the judge bore in mind the fact that he had committed a number of offences and took into account such other matters as the fact that the appellant had been taken into care, was vulnerable, had little memories of the DRC, bore in mind his criminal record and also the evidence of the social workers that the signs were that he had learned from his mistakes and on balance considered that the life he had lived in the United Kingdom, including his remorse, showed that he was culturally and socially integrated into the United Kingdom. The judge also considered that there would be very significant obstacles to the appellant's integration into the

DRC, bearing in mind that he was still a refugee and therefore faced risk as someone of mixed ethnicity there. The appeal was therefore allowed on asylum and human rights grounds.

16. The Secretary of State sought and was granted permission to appeal on the basis that the judge had failed to take into account country guidance in AB and DM [2005] UKIAT 00118 and NA [2008] UKAIT 00071; had failed to give adequate reasons for the finding that there would be significant obstacles to the appellant's integration into the DRC; had erred in law in finding that the appellant was socially and culturally integrated into the United Kingdom and, finally, that the reasons given for finding that the effect of the appellant's deportation on his partner would be unduly harsh or inadequate.

17. In his submissions Mr Walker adopted the points raised in the grounds of appeal. The judge had failed to engage with the analysis required by the country guidance in the two country guidance cases. A thorough analysis of risk on return to the DRC had not been carried out. The judge could have quoted more from the expert report. It was not clear how he had analysed the information before him and the risks on return. Perhaps the strongest point was ground 4 with regard to undue harshness, bearing in mind that the appellant's partner had been the main carer for the child and given the particular crime in question. The reasoning was inadequate.

18. In her submissions Ms Solanki relied on the Rule 24 response and developed the points set out there. She argued that the judge had given full and proper consideration to the issue of risk on return and the context of the correct test in a certified case, having borne in mind the expert report and the views of UNHCR. In the refusal letter from paragraph 26 onwards it was accepted that there was ethnic violence and the respondent had said the appellant could go to Kinshasa, so the judge had looked at that issue and the expert, whose evidence had not been challenged, spoke of risk to the appellant on return there.

19. With regard to the country guidance cases, Kinshasa was considered as an issue with AM and DM, where it was said at paragraph 39 that the evidence of the expert of the current dangers for Tutsis in Kinshasa was accepted, the great majority of Tutsis being unable generally to obtain the protection of either MONUC or the authorities. In NA, though the appellant there was of Hema ethnicity, it was said at paragraph 38 that Hema would be treated in the same light as those of Tutsi or Rwandan origin and he would be at risk in Kinshasa or any other Government controlled area. The judge had applied the test correctly on the basis of the evidence before him.

20. With regard to ground 2, the judge had made detailed findings in respect of very significant obstacles to the appellant's integration into the DRC. He had addressed all aspects of the case. His findings about language were not confused as could be seen in particular from paragraph 51 which

contained the judge's conclusions. The reference to Said [2016] EWCA Civ 442 was irrelevant as the test in destitution cases was different.

21. The point at ground 3 had been considered in detail by the judge in paragraphs 50 to 53. Ground 4 was probably, it was agreed, the Secretary of State's strongest ground, but the matter was addressed by the judge and made no difference if the Tribunal were in agreement with Ms Solanki as to the other matters.

22. Mr Walker had no points to make by way of reply.

23. I reserved my decision.

24. As regards ground 1, country guidance cases were not referred to by the respondent either in the decision letter or in submissions to the judge. It is a point that the judge noted at paragraph 52 of his judgment. He took into account the test of the change having to be significant and non-temporary, and bore in mind the UNHCR's view that there had not been a fundamental change with regard to security in the DRC, and also noted the detailed report of Dr Kodi and considered that there was a place in the DRC in which the appellant would be safe if people knew he was of mixed Hutu/Tutsi heritage. It is relevant also to note the points made today by Ms Solanki concerning what was said in the country guidance cases in any event about risk in Kinshasa, bearing in mind the fact that in the decision letter the respondent accepted that ethnic violence was prevalent in some areas of the DRC but considered there was no evidence to suggest that that was the case in Kinshasa. The judge considered the submissions made of the evidence and came to conclusions which were properly open to him and his findings were not contradictory to the country guidance. As a consequence I consider that it has not been shown that he erred with regard to the certification and his decision in that regard is upheld. I should add that there was no challenge to the findings about the appellant not constituting a danger to the community of the United Kingdom.

25. As regards the human rights issues, in essence ground 2 falls away in light of my findings that the judge did not err with regard to risk on return to the DRC. Clearly, if the decision to cease his refugee protection is wrong, then it follows almost automatically that there would be significant obstacles to his integration in the DRC. As regards ground 3, the judge gave careful consideration to this issue, and no evidence of any materiality as brought to his attention was not considered in the examination of the issues in this regard at paragraphs 50 to 54 of his judgment. Again, I see the challenge to this is a matter of disagreement only.

26. There is more strength to the challenge set out in ground 4 to the findings on undue harshness. These are thin findings and in my view inadequately reasoned. I think that the challenge in that regard is made out, and indeed, in an e-mail provided subsequently to the hearing, the appellant withdrew his opposition to ground 4. However, for the reasons set out above, since the judge did not err in law with regard to the issue of risk on

return or the certification, the decision as regards the issue of international protection is maintained.

Notice of Decision

The appeal of the Secretary of State is dismissed.

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 his 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.

Signed Date 8 October 2019

Upper Tribunal Judge Allen