Upper Tribunal
(Immigration and Asylum Chamber)

Appeal No: UI-2022-001715
(FtT no: HU/15947/2018)

THE IMMIGRATION ACTS

Heard at Field House, London
On 1 February 2023

Decision & Reason Promulgated
On 27 March 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

E T N
(anonymity order made)

Respondent

For the appellant, Mr S Whitwell, Senior Home Office Presenting Officer, attending remotely
For the respondent, Mr Greg Ó Ceallaigh, instructed by Turpin & Miller LLP, Solicitors

DECISION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.

2. FtT Judge Singer allowed the appellant's appeal against deportation to DRC by a decision promulgated on 23 February 2022. That decision is clearly structured, detailed and thorough.

3. At [60] the tribunal found the evidence insufficient to establish the appellant's contention that when passing through immigration and security control he would be unable to pay a bribe.

4. However, the tribunal went on:

> … he has no family or friends in the DRC to help him on his return, and speaks only basic Lingala, not fluent, and only has a limited understanding of it. These are still important risk factors which lead me to judge, taking everything in the round, that there is a reasonable degree of likelihood that his detention would be for more than a single day, given what the CPIN states at 2.4.31 (above).
>
> [61] Because of these findings, and what is stated at 8.1.3 of the CPIN and the concession made at paragraph 13 of BM and others (that a period of detention in a DRC prison exceeding approximately 1 day would violate Article 3 ECHR) which was accepted by the Upper Tribunal, and maintained at 2.4.32 of the CPIN, I am satisfied that the appellant has adduced evidence capable of proving that there are substantial grounds for believing that his expulsion from the United Kingdom would violate Article 3, and I am not satisfied that the respondent has dispelled any serious doubts about this.
>
> [62] ETN's appeal therefore falls to be allowed under Article 3 ECHR.
>
> [63] For completeness' sake I go on to consider Article 8 ECHR.

5. At [80] the tribunal found that the appellant:

> … (but for his not being a "medium offender") the appellant would meet Exception 1 in s.117(C)(4) – and he would meet it very firmly.

6. And finally, at [111]:

> Weighing everything, the factors on the appellant's side of the balance sheet are, I find, sufficiently compelling to outweigh those on the respondent's side, despite the very strong public interest in the deportation of foreign criminals generally and this appellant in particular, set out above in more detail. The extremely serious offences he has committed, his gang affiliation, his poor conduct in prison and the very high risk of his committing further serious offences are all very serious matters and all carry very great weight in the balancing exercise, as does the principle of deterrence, as well as the public concern at his crimes, and the need to maintain public confidence in the making of deportation orders. But weighed against that are the also very powerful and very compelling factors in favour of the appellant. He has lived here since birth and has no family or friends in the DRC, as set out in my findings above. His identity has been formed in the United Kingdom since birth and he is still socially and culturally integrated despite his criminality, his imprisonment and his period of homelessness. He would face very significant obstacles to his reintegration. The nature and length of his residence, when taken together with the other factors in his favour, ultimately, I judge, outweighs the very strong public interest in his deportation. Taking

> everything in the round, his Article 8 ECHR private life claim is, I find, "very strong claim indeed", as set out above. I find that the Appellant therefore does meet s.117C(6) because, weighing the above factors and all of the evidence in this case, I find there are very compelling circumstances over and above Exceptions 1 and 2. Striking a fair balance between the general community interests and the particular circumstances of the Appellant, I find that the deportation of the appellant is disproportionate under Article 8 ECHR.

7. The SSHD sought permission to appeal to the UT on grounds headed (1) material misdirection of law on article 3 - challenging the finding of risk through detention on return – and (2) inadequate reasons on article 8 – challenging the findings on integration in the UK, on difficulty in integrating in the DRC, and on very compelling circumstances.

8. FtT Judge Athwal granted permission on 15 March 2022, principally on ground (1), but without restriction.

9. The appellant's rule 24 response, dated 27 April 2022, argues that the grounds are no more than disagreement.

10. Mr Whitwell submitted on ground 1 that the matters specified by the tribunal at [60], read with the CIPN, did not include anything by which transit and bribery at the airport were likely to lead to ill-treatment in terms of article 3.

11. Mr Ó Ceallaigh said that the tribunal cited circumstances relevant to the risk of detention for more than one day, and also took matters "in the round", which included not only the appellant having no-one to help him, and being limited in Lingala, but not wishing to explain why he would be there, as a first ever arrival, not a returning resident, and "sticking out like a sore thumb"; and that the respondent was trying re-argue the issue, adding points not made in the FtT. He said it was difficult to see that the tribunal needed to say any more.

12. I can see why on a reading of [60] alone permission was granted on the finding of a risk of detention for more than a day. However, on reading the decision more widely, it was open to the tribunal to conclude that the specific factors cited, taken with everything else, disclosed a risk of detention for more than a day. What it meant by "in the round" may sensibly be gleaned from the rest of this comprehensive decision. The reasoning has not been shown to be less than legally adequate.

13. I also deal shortly with the challenge to the outcome on article 8. Ground 2 does not assert that no tribunal might rationally have found (i) that the appellant is integrated in the UK (ii) that he faces very significant obstacles to integration in the DRC or (iii) that there are very compelling circumstances over and above the statutory exceptions to deportation. Mr Whitwell expressly did not seek to elevate the grounds into a rationality challenge. As Mr Ó Ceallaigh submitted, the decision is as compendious and thorough, both on the law and on the facts, as any decision should be.

14. The tribunal may have found this a difficult and finely balanced case on all those three aspects. Another tribunal might, without erring in law, have come down on the other side of all or any of them. That does not equate to any error.

15. The Judge granting permission thought ground 2 to be “far weaker”. On examination, I find nothing in it which goes beyond disagreement.

16. Parties agreed that an anonymity order should remain in place.

17. Under 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-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

18. The SSHD’s appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

1 February 2023
UT Judge Macleman