



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: PA/09576/2017

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 21 August 2023**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**R N
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Mughal, AMB Advocates

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 13 October 2022 and 24 July 2023

DECISION AND REASONS

1. The appellant appeals against the decision of the Secretary of State to refuse her claim for asylum on 15 September 2017. Her appeal against that decision, heard on 3 December 2019, was dismissed for the reasons set out in the decision promulgated on 12 March 2020. That decision was set aside for the reasons set out in my decision promulgated on 16 November 2020, a copy of which is attached.

The Appellant's Case

2. The appellant was born on 11 January 2004 and is a citizen of Democratic Republic of Congo ("DRC"). She has an elder sister, P, and two younger siblings O and D.
3. In 2012 the appellant's mother left DRC to join her husband who had been recognised as a refugee in the United Kingdom. The appellant and her siblings were left initially with family but the grandmother died and the children were split up. The appellant's siblings remained in Kinshasa, P staying with a friend of her mother's, Ms GM; the appellant went to the care of her friend Mireille who lived in Kisangani, a considerable distance to the east. That was in 2014 but Mireille also died in 2015 and arrangements were made then for her to be looked after by Mireille's sister, JZM. While she was living there in June 2016, JZM's house was raided, her father being a prominent member of the UDPS. JZM, her mother were attacked and her son was shot dead, in a further raid on 11 July 2016 JZM's father was abducted. Given what had happened the family decided to disperse, JZM taking the appellant with her and eventually they were able to reach Goma. There they were able to travel to Ethiopia where they contacted the appellant's mother who was by that point in the United Kingdom. They travelled to the United Kingdom on 22 September 2016.
4. In April 2018, the appellant's older sister, P, became involved with a political movement APARECO which resulted in her arrest on 8 April 2018 and the confiscation of her telephone which she had been showing videos. The two younger children staying at this point with another woman, Chantal, were taken on the same day. The appellant was told this by GM the following day, 9 April 2018. She advised GM to contact a lawyer in the DRC to attempt to locate the children but this did not prove successful. Later, their mother lost contact with GM.
5. The mother last had contact with the lawyer in 2002 but little progress had been made. She had to pay US\$7,000 which she was not able to pay.
6. The appellant's mother has a claim for asylum pending. She was interviewed on 24 January 2022. JZM has been recognised as a refugee in the United Kingdom subsequent to a successful appeal.
7. The appellant's case is that she is at risk on return to DRC for two reasons: first, because of her connection with her sister, P, given that her younger siblings were also arrested; and second, because she is identified with JZM.

The Respondent's Case

8. The respondent's case is set out primarily in the refusal letter but is, as Ms Cunha accepted, substantially altered as a result of the findings of fact made by the First-tier Tribunal which have been preserved. It remains the respondent's case, however, that the appellant would not be at risk on return to DRC on either the basis that she would be associated with JZM or, on account of the difficulties her siblings had encountered. In summary,

the respondent does not accept the account of what has happened to the siblings.

Procedural History

9. There is an unfortunate procedural history to this case. Although first listed for hearing on 26 October 2017, the appeal did not proceed and was adjourned until 9 January 2018. That too was adjourned given the failure of the respondent to file the relevant bundle.
10. On 6 June 2018 a notice was sent to the appellant's then solicitors, Montague Solicitors LLP, informing them that the appellant's mother's hearing had been listed on 17 July 2018 and asking if they wanted the appeals to be linked. On 17 July 2018 the appeal came before yet another First-tier Tribunal Judge who adjourned the matter who identified that there should be a combined hearing which was listed for 7 February 2019. That appeal was adjourned as by that point Montague Solicitors had ceased to act under the legal aid system and the matter was listed on 2 July 2019 for a Case Management Review before yet another First-tier Tribunal Judge on 28 March 2019. On that occasion Judge Andonian concluded that the appeal could not be heard with the mother's human rights appeal (HU/09307/2018) on the basis, it appears, that he considered separate representation was required and that separate appeal decisions would be necessary because different Rules applied to the case and the mother's case.
11. On 11 July 2019 the appeal came before yet another First-tier Tribunal Judge who adjourned the appeal as, contrary to Judge Andonian's decision, the appeals were both listed before him.
12. It was thus only on 3 December 2019 that the appeal came before Judge Davey, the sixth judge before whom it had been listed.
13. The judge noted that the appellant's mother's appeal had been dismissed on 20 December 2019 and that the person who had accompanied her to the United Kingdom, JZM's asylum appeal had been dismissed also on 20 December 2019. I pause to note that of course these two events postdated the hearing on 3 December 2019 when it is said the decision was prepared. It appears, however, that Judge Davey heard all three appeals: that of the appellant, her mother and JZM.
14. Subsequent to my decision, the matter was listed for hearing on 2 July 2021. For reasons which are unclear neither party was aware that the hearing was listed to enable the decision to be re-made, accordingly it was necessary to adjourn it to a later date. When the matter next came before me on 24 November 2021 as the interpreters which had been booked did not attend it was agreed for there to be a Case Management Review on 22 December 2021. At that point that the appeal of JZM had not yet been heard and the appellant's mother had yet to be interviewed. As it had been indicated that a decision was likely to be made within six to twelve weeks after the interview that it should be listed for a further Case

Management Review after 28 March 2022. After some discussion at the Case Management Review on 21 April 2022, it was agreed that the appeal should now be listed to avoid further delay. Unfortunately, when the matter next came before me on 26 August 2022 it had to be adjourned yet again owing to a failure to comply with directions.

15. Having dictated my decision on 18 October 2022 in which I reached conclusions as to the credibility of the witnesses, I was informed that a Country Guidance decision relating to APARECO was imminent. For that reason, I deferred promulgation of my decision. Unfortunately, the Country Guidance decision (now reported as PO (DRC - Post 2018 elections) DRC CG [2023] UKUT 117) was delayed significantly.
16. On 20 February 2023 I issued directions requesting further submissions in anticipation of that decision being promulgated; in the event that proved to be impracticable, hence the decision to relist the appeal on 24 July for further submissions.

The Hearing on 13 October 2022

17. I heard evidence from the appellant, her mother, and Ms JZM. The latter gave evidence through interpreters in Lingala and Swahili respectively. Additionally, I heard submissions from both representatives.
18. I had before me the respondent's bundle and a consolidated bundle prepared by the appellant's solicitors. In addition, I had before me a copy of the determination of the First-tier Tribunal allowing Ms JZM's appeal.
19. The appellant adopted her witness statement and was cross-examined. In cross-examination, the appellant said that she had found out what had happened to her siblings through what GM had told her mother. She said that the lawyer they had contacted had confirmed what they had been told but she was not sure how he was able to do that. She said that her older sister, P's son had also been taken.
20. The appellant confirmed that both of her siblings were younger than her and she had not heard from them since 2018.
21. The appellant said that her mother does all the talking with the lawyer, not her, and that she had nothing to go back to in DRC, that it would traumatise her. There was nobody there in her own family and even JZM's family were no longer there.
22. She said that she is currently repeating her level 3 course at college, intending to work in social care and nursing. She is in receipt of counselling, has been referred to a GP but had not been recommended any medication.
23. Re-examined, she said that she was not present when her mother received the call from GM about P but had been present when she spoke to GM on other occasions and when she had spoken to the lawyer.

24. JZM adopted her witness statement. She confirmed that her sister, Mireille, had not looked after the appellant's siblings and did not know if she had had contact with the siblings whilst she was in DRC. She confirmed that her sister had died when she had returned to Kisangani in 2008 and the appellant had come to live there, with her sister, in 2014. She was not aware of the appellant having any contact with her brother's siblings.
25. The appellant's mother adopted her witness statement. In cross-examination, she confirmed that she had come to the United Kingdom as her husband had been recognised as a refugee here on the basis of his membership with the UDPS. He had come here in 2007, she arrived in 2011 and that she had lived with the children in Kinshasa, leaving them with her mother when she came to the United Kingdom. She said that she had not had any contact with Chantal, with whom she had left the two younger children, since they had gone missing. She said that they had come to kidnap P, then went for the others on the same day. She had found this out from GM. She then spoke to Chantal who confirmed that they had been taken.
26. The appellant's mother said she had kept in contact by telephone before they went missing.
27. Asked who had told her that people from a political group had come to P, the appellant's mother said that GM had told her. At that point Kabila had been in power and P had joined the Youth Wing of APARECO. She had videos on her phone which she showed to friends amongst whom some were children of other parties who went to the authorities and informed against her. That was why she had been arrested, they took away her phone and she confirmed that that is what GM had told her. Asked if GM had been arrested she said no. She said further that P had been told that they wanted to see her parents and her brother and sisters and took away P's child and her siblings. She had been told that they wanted to arrest the parents too. She said she knew this because that is what GM told her and she did not know where her children were and had had no news of them since.
28. Asked how they knew GM is not P's mother she said that after the arrest they had asked P who had said that GM is not her mother, that she had been told about that by GM. Asked if they did not arrest GM, she said she was not arrested as she tried to defend herself and she explained that P was not a child and had nothing to do with this. She said that those who arrested P then went on to N'Djili to Chantal's house. She said this occurred on the same day but not at the same time. That is why GM did not inform Chantal to protect the children, she said that she called Chantal and it was then that she was told what had happened. She said they had been taken by soldiers, could be from the authorities.
29. I asked whether GM had been at the house when P was arrested. The appellant's mother said no. Asked how GM knew what had happened when P had been arrested she said that when she returned home she did

not find P in the house, went to look for her, called Chantal to find out if she was there and was then told that P had been brought there and, asked how GM would know what had been said at the time of arrest, she said she was told by people of the arrest and the reasons.

30. The appellant's mother said she had last spoken to GM around the beginning of September 2018 and she had not told GM to go to the police, they needed a lawyer to set it out, things being different in the DRC from the UK. She said that she had not spoken to Chantal for a long time and she was not willing to speak to him after the children were taken.
31. The mother said that she had been asked for \$3,000 before in the past and she had letters which confirmed the conversations with the lawyer. She said that GM had gone missing and they were not in contact and she did not know where they are.

Submissions on 13 October 2022

32. Ms Cunha submitted that the appeal should be dismissed on the basis that there was no reliable evidence to show that the appellant's siblings had been arrested or that if they were, they would be linked to her thereby putting her at risk on return. She submitted further that APARECO's presence was more abroad than in the DRC. She submitted further that the appellant's mother's evidence was neither credible nor was the account she had given of what had happened in DRC plausible given the inconsistencies in the evidence of what had actually happened regarding the arrests of the children and the absence of reliable supporting evidence.
33. Ms Cunha submitted further that there was no real possibility of the appellant being cared for by JZM putting her at risk owing to political activity and as was clear from the decision in respect of JZM, that the risk was specific to her.
34. She submitted further that it would not be a breach of Article 8 to remove the appellant to DRC.
35. Ms Mughal submitted that there was no reason not to believe the appellant, nor for that matter JZM and that she had been associated with JZM whose father was in the UDPS and she was at risk of having political opinion applied to her. She accepted that there had been an apparent change of government since the appellant had left but that in reality it was still Kabila rather than Tshikedi who was in charge, the change being in effect cosmetic.
36. Ms Mughal submitted that the evidence in respect of the siblings was supported by documentation from the lawyers in the DRC. She accepted that the search warrant was problematic given that it said that all the accused, which includes the siblings were all at the same address and appeared to accuse P's son who was well under the age of 10 as was the younger sister accused of crimes.

37. She submitted that there is no reason why the mother would part with money to support the children in DRC or pay the lawyer if that was not what was going on. She submitted further that the appellant was at risk on return as a lone female and that she had been traumatised in country.

Submissions on 24 July 2023

38. Ms Mohgal submitted that the appellant is still at risk through association with APARECO through her sister, P, who is still missing as are her other siblings. She submitted also, that she was at risk on return as a single female, and that it would be a breach of her article 8 rights to return her to DRC, given the length of time she has spent here at a formative period, and her age on arrival, as well as the lack of ties she has to DRC.
39. Ms Cunha submitted that, in light of PO (DRC) it could not be said that the appellant was now at risk on return, given the change of the situation with respect to APARECO. She submitted further that the appellant would not be at risk on return due to any perceived political opinion, nor would it be a breach of her article 8 rights to return her to DRC.
40. In response, Ms Moghal submitted that there was sufficient evidence in the CPIN on domestic violence against women in DRC to show she was at risk.

Decision

41. It is for an appellant to demonstrate, to the lower standard applicable in asylum appeals, that she has a well-founded fear of persecution in her country of nationality for one of the reasons set out in the Refugee Convention; or, on the same standard that she is entitled to Humanitarian Protection; or, that her removal would be in breach of the United Kingdom's obligations under the Human Rights Convention.
42. In reaching my decision, I have considered the evidence as a whole, and assessed the evidence of the appellant and other witnesses in the light of the background material, bearing in mind that in this case a substantial number facts have been preserved.
43. Given the dates on which many of the events are said to have happened, I have considered also the older CPIN reports placed before me which are relevant to that time period, in addition to the newer material and the Country Guidance case, PO
44. The starting point is the facts which have been preserved from the First-tier Tribunal's decision. The judge noted [15] the congruence between the evidence of JZM and the appellant's recollection of events in 2016 but he did not accept that the events involving JZM or her son related to the appellant. He did not find there was any knowledge of the appellant or direct or indirect adverse interest taken in her because of any imputed political opinion in 2016. He found her to be credible.
45. The judge did not find on the evidence as provided as to what had occurred in the DRC with regards to her siblings and he doubted the copy

search warrant of 10 April 2018, nor was he satisfied the appellant would be of adverse interest because of P's activities.

46. I am satisfied in the light of these findings and the findings also of the judge who heard JZM's appeal, which in turn proceeded on the basis that JZM's account of what happened to her in DRC was correct [11] and [21].
47. The rape of JZM and her mother in the raid on the family house as well as the shooting of JZM's son is consistent with the material set out in the CPIN "Democratic Republic of Congo (DRC): Gender Based Violence" of September 2018. See section 6.2 and section 2.4.9 to 2.4.11.
48. In addition, what happened at JZM's house is consistent also with the background material relating to how the UDPS was viewed, certainly at that time. See CPIN Democratic Republic of Congo: Opposition to government, November 2019.
49. I accept that there has been a change in the government of the DRC since BM and Others (returnees - criminal and non-criminal) DRC CG [2015] 293 and the appellant left. That situation is now dealt with in PQ, the headnote of which states:

1 The change in Presidency, following the elections held on 30 December 2018 and the announcement on 10 January 2019 that Felix Tshisekedi was the winner of the elections, has led to a durable change to the risk of persecution to actual and perceived opponents of former President Kabila and current President Tshisekedi, such that the following general guidance applies:

(i) Actual or perceived opponents of former President Kabila are not at real risk of persecution upon return to the Democratic Republic of Congo ("DRC").

(ii) Generally speaking, rank-and-file members of opposition political parties or political opponents of President Tshisekedi and/or the Sacred Union are not reasonably likely to be at real risk. That must be distinguished from high-profile opponents who may be at risk in some circumstances.

2. The assessment of those at real risk of persecution for reasons relating to [1(ii)] requires a fact-sensitive analysis of the individual's profile, wherein the following (non-exhaustive) factors will be relevant:

a. Whether an individual is a sufficiently high-profile opponent of President Tshisekedi having regard to their role and profile, including involvement in activity that is likely to have brought them to the adverse attention of the Tshisekedi regime.

b. The political party of which the individual is an officer or member, or to which the views of the individual are aligned.

c. *The position of the political party or the views of the individual towards President Tshisekedi and the Sacred Union.*

d. *The nature and frequency of the individual's activities in opposition to Tshisekedi's Sacred Union and to what extent the authorities know about him/her.*

e. *It is unlikely that a rank-and-file member of any opposition party or group will have a sufficient profile such that they will be at real risk upon return without more.*

3. *In particular:*

(i) *Members of the MLC and Ensemble pour le Changement are no longer at risk of being targeted.*

(ii) *Members or supporters and activists of the UDPS are no longer at risk upon return to the DRC. The country guidance set out in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in MM (UDPS members - Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023, as far as it relates to the risk of persecution of UDPS members and activists, should no longer be followed.*

(iii) *Leaders, members and activists associated with the Congolese Support Group ("CSG") are not at risk upon return to the DRC on account of their actual or perceived political opinion or sur place activities in the UK.*

(iv) *Simply being a journalist, media worker or blogger is not likely to lead to a person facing treatment that amounts to persecution or serious harm unless they are considered to be a sufficiently high-profile opponent of President Tshisekedi.*

(v) *Persons who have a significant and visible profile within APARECO (leaders, office bearers and spokespersons) may be at risk upon return to the DRC. Rank-and-file members are unlikely to fall within this category.*

4. *Failed asylum seekers are not at risk on return simply because they are failed asylum seekers and there is no basis in the evidence before us to depart from the guidance set out in BM and Others (returnees - criminal and non-criminal) DRC CG [2015] UKUT 293.*

5. *There is no credible evidence that the current authorities in the DRC are interested in monitoring the diaspora community in the UK; nor is there is any credible evidence that the intelligence capability exists, even if there were the appetite.*

50. *I bear in mind that this appellant has not been convicted of any offence but equally I bear in mind that return to Kinshasa will place the appellant*

in the hands of the DRC authorities. In that regard I consider that BM is still relevant.

51. It would thus appear that although the appellant is likely to be stopped at the point of return it is unlikely to be detained for a significant period or subjected to ill-treatment. There is nothing in PO at part 14 which indicates that. There is insufficient evidence to show that she would be questioned or evidence of any basis on which she could be linked to JZM's family.
52. I accept that there is some risk of the appellant being linked with JZM's family in the Kisangani area, were she to go there, but there is no requirement for her to do so. And, in any event, there is no reason to doubt her evidence that JZM's family have left the area.
53. I find that there are significant difficulties with the appellant's mother's evidence. As set out above, even allowing for the fact that she was giving evidence through an interpreter and the questions were at times confusing, there is significant discrepancy as to whether GM present when P was arrested or not. It is also less than clear how GM knew of what was said and why P was being arrested.
54. Whilst I accept the submission that it is unlikely that the authorities in DRC would arrest simply P and her brother and sister but not the person looking after them but it is dangerous to speculate how forces as undisciplined and arbitrary as those in the DRC would behave. Further, it would appear that what was occurring was, if true, effectively hostage taking.
55. That said, there were so many inconsistencies in the mother's evidence that, even discounting she was hearing this second hand, it is difficult to attach weight to it.
56. It is difficult to attach weight to the "search warrant" given that, as I pointed out during submissions, it indicated that all three children were living in the same place and that it was somewhat improbable that an arrest warrant would be directed to people as young as the appellant's younger siblings or P's child. I accept that there arbitrary actions taken in the DRC with regards to arrests, and the behaviour of police and other security forces on the ground, who would not be concerned with legal formalities. Nonetheless, I am unable to attach weight to this document. That said, I do not consider it implausible that, were the mother's evidence correct, that she would have asked GM to contact a lawyer rather than the police, given the evidence of ingrained attitudes of the police towards women and the level of violence against political opponents, as well as the clear level of corruption in the police.
57. There is no effective challenge to the appellant's credibility as opposed to that of her mother. And while the appellant's evidence as to what happened in the DRC is second or third hand hearsay she is of course a direct witness as to when she was told what was happening. That was in 2018.

58. That the appellant has an older sister and a younger brother and sister is a preserved finding from the decision of the First-tier Tribunal.
59. I bear in mind that the appellant is now just 18. She arrived in this country at the age of 12 having been, given JZM's evidence, if not actually an eye witness of a truly horrific attack, certainly a witness to the aftermath. She is reliant on her mother, her evidence as to what has happened to her siblings.
60. Taking all these factors into account, I am satisfied that something has happened to the appellant's siblings in DRC to the extent that they are no longer in contact with her. The alternative, given the positive credibility that attaches to the appellant who has been consistent about lack of contact, is that they are safe and well there, and that the appellant's mother has consistently lied to her about this and/or that she has colluded in this deception. This was not put to the appellant, nor were submissions made to that effect. I find it inherently improbable that the appellant's mother would, even given her poor credibility, be able to maintain such a deception. But it does not necessarily follow that the children were abducted by the authorities or that there would now be any real risk to the appellant as a result of what had happened in the past.

APARECO

61. In assessing whether the appellant is at risk through any association with APARECO, I note that it was P who was associated with that group.
62. The appellant's contact with P was limited. She ceased living with her in 2012 when she was approximately 10 years of age and she was either in Kisangani or in the United Kingdom. There is insufficient material to show given that the information flows from the mother that the daughter was in fact involved with APARECO and thus there is no real basis for connecting the appellant to APARECO.

Findings of Fact

63. I accept that the appellant is a citizen of DRC, born in 2004 and I accept her account of what happened to her and JZM when she was with her in Kisangani. I am satisfied that she is no longer in contact with her siblings and that the siblings are no longer in contact with her mother. I am not, however, satisfied that they were taken by the authorities or that P was involved with APARECO.
64. I am not satisfied either that the appellant would be at risk on point of return although I do accept that she would have no family or other people on whom to rely in DRC on return. I accept that would put her in a difficult position given she is a young woman with little or no experience of life in DRC and having left at the age of 12.
65. Having made these findings, I must consider whether the appellant is at risk on return to DRC. Following the guidance in PO, and even were I satisfied that P was involved with APARECO and had disappeared, I am not

satisfied that the appellant would face a risk to her because of that, or the disappearance of P or her other siblings. I find also that there is now insufficient risk to her in the Kinshasa area, as a result of what had happened to JZM and her family.

66. In reaching these conclusions, I bear in mind the acceptance in the CPIN on Domestic Violence that women in DRC face serious and significant threats, and constitute a particular social group. It does not, however follow, without more that they are at risk of persecution, even though single women without family support (like the appellant) are more vulnerable.
67. For all of these reasons, I am not satisfied that, on the findings of fact I have made, and in light of the background evidence that this appellant has a well-founded fear of persecution in DRC or that she is at risk on return there of ill-treatment of sufficient severity to engage article 3 of the Human Rights Convention. It therefore follows that the appeal falls to be dismissed on asylum and on humanitarian protection grounds.

Article 8

68. In considering the issue of Article 8 outside the Immigration Rules I have applied the decision of the Court of Appeal in Mobeen v SSHD [2021] EWCA Civ 886 at [43] to [50] as well as applying section 117B of the 2002 Act.
69. I accept that the appellant has lived here for nearly seven years, and that these were formative years, given that she arrived aged 12, but she does not meet the requirements for leave to remain under the Immigration Rules.
70. The appellant does speak English but that is a neutral factor. I have assumed that she still maintains a family life with her mother, but her status here is precarious too. But I am not persuaded that the appellant faces, on the evidence before me, unjustifiably harsh consequences as a result of removal to DRC, even taking into account that she will be alone on return. I have received limited evidence on this issue, and limited submissions as to the circumstances which she would face. It is not a matter which was the focus of detailed evidence or submissions at either hearing. The witness statements from 2022 contain very little detail on this issue.
71. I accept that, on the basis of the background evidence, that the appellant may well find it difficult to adapt again to life in DRC but she has some qualifications gained here, and speaks English very well, as well as speaking Lingala.
72. Accordingly, I am not satisfied that removing the appellant would be in breach of her article 8 rights. I therefore dismiss the appeal on human rights grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by dismissing it on all grounds.

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.

Signed

Date 24 July 2023

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul

ANNEX – ERROR OF LAW DECISION.

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

Appeal Number: PA/09576/2017

THE IMMIGRATION ACTS

**Decided Under Rule 34 Without a Hearing
At Field House
On 3 November 2020**

**Decision & Reasons
Promulgated**

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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**R N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Davey promulgated on 12 March 2020 dismissing her appeal against the decision of the respondent made on 15 September 2017 to refuse her asylum and humanitarian protection appeal.
2. The appellant was born on 11 January 2004, although it appears from the refusal letter that there is a dispute as to her name and as to her date of birth. She arrived in the United Kingdom on 22 September 2016 with a passport in the name VM, date of birth 10 July 2002; a further passport was found in her luggage in the name of RN. An earlier application for a family reunion visit visa to the United Kingdom made on 25 August 2009 had been refused as the documents supplied were considered not to be genuine. That application had been made in the name RDG.
3. The appellant's claim as recorded in the refusal letter is that her mother, MDM, came to the United Kingdom in 2011. After that, the appellant went

first to live with her grandmother who subsequently died and in 2013 she was taken in by a friend of her mother who also died in 2015. She was then looked after by the friend's sister, Jeannie.

4. In June 2016 Jeannie's house was attacked, her son was shot and killed but she was able to avoid being harmed as she was hiding in her room. She believed that the attack was carried out by soldiers, the father of the house being involved with the UDPS.
5. In July 2016 the soldiers returned again and took Jeannie's father away but they did not try to take her away. After this she left with Jeannie and eventually she travelled, she believed, to Kinshasa and from there arrangements were made for her to come to the United Kingdom by air, accompanied by Ms JZM
6. The Secretary of State accepted that the appellant was a national of the DRC but rejected the claim that she was living in a house attacked by the army. She rejected also the claims made under the Human Rights Convention.
7. I note in passing that it is unclear whether the Secretary of State accepted the appellant's identity or, for that matter identified a particular date of birth. That is, however, somewhat surprising given that on any of the dates of birth provided she was 15 years old at the date of decision. Although it is unclear whether the Secretary of State was satisfied that she had a family relationship with MDM it does, however, appear from paragraph 46 of the refusal letter that the appellant accepted that the appellant's mother is a national of the DRC, although this is referred to as a "claim" at paragraph 57.
8. There is an unfortunate procedural history to this case. Although first listed for hearing on 26 October 2017, the appeal did not proceed and was adjourned until 9 January 2018. That too was adjourned given the failure of the respondent to file the relevant bundle.
9. On 6 June 2018 a notice was sent to the appellant's then solicitors, Montague Solicitors LLP, informing them that the appellant's mother's hearing had been listed on 17 July 2018 and asking if they wanted the appeals to be linked. On 17 July 2018 the appeal came before yet another First-tier Tribunal Judge who adjourned the matter who identified that there should be a combined hearing which was listed for 7 February 2019. That appeal was adjourned as by that point Montague Solicitors had ceased to act under the legal aid system and the matter was listed on 2 July 2019 for a Case Management Review before yet another First-tier Tribunal Judge on 28 March 2019. On that occasion Judge Andonian concluded that the appeal could not be heard with the mother's human rights appeal (HU/09307/2018) on the basis, it appears, that he considered separate representation was required and that separate appeal decisions would be necessary because different Rules applied to the case and the mother's case.

10. On 11 July 2019 the appeal came before yet another First-tier Tribunal Judge who adjourned the appeal as, contrary to Judge Andonian's decision, the appeals were both listed before him.
11. It was thus only on 3 December 2019 that the appeal came before Judge Davey, the sixth judge before whom it had been listed.
12. The judge noted that the appellant's mother's appeal had been dismissed on 20 December 2019 and that the person who had accompanied her to the United Kingdom, JZM's asylum appeal had been dismissed also on 20 December 2019. I pause to note that of course these two events postdated the hearing on 3 December 2019 when it is said the decision was prepared. It appears, however, that Judge Davey heard all three appeals; that of the appellant, her mother and JZM.
13. The judge wrote:-

The events relied upon by the appellant essentially involved her life as a child in the DRC but her claim has been added too and I am treating the same as a claim as a refugee sur place.
14. The judge observed that the appellant's account did not identify any direct risk aimed at her [3]; that there were no significant discrepancies in her account bearing in mind her age at all material times [5]; and, that she was 15 years of age at the hearing. The judge noted that the appellant and JZM gave evidence in the same hearing although their appeals were not linked at the request of their representatives.
15. The judge noted that the appellant now said that her siblings in the DRC had been left behind [6], that her half-brother O and half-sister D had gone missing because of the sister's support for APARECO. The judge noted that O was born in 2008 and Divren in 2010 [10]. The judge found the appellant credible, although much of her knowledge was derived from JZM [15] but found that the unfortunate claimed events in 2016 involving JZM's son and the assault, rape on JZM was not directed at the appellant. The judge did not, however, find that there was sufficient evidence to show either the children in the DRC and the appellant's older sister remain detained [16] and that whilst there might be something in the points raised about the arrests and detentions [19], the evidence was too vague to show that the appellant had been of adverse interest because of her older sister P's activities.
16. The appellant sought permission to appeal on the grounds that the judge had erred in:-
 - (a) not noting that there had been a request for both appeals to be linked;
 - (b) failing to say that in finding that there was uncertainty regarding whether she and her mother learned on 9 April 2018 that the appellant's sister had been arrested as she had said so in her witness statement;

- (c) failing to note that there were attachments to the statement;
 - (d) raising questions and concerns about the onus, yet failing to clarify that during the hearing;
 - (e) commenting that there was no statement from the appellant's mother, that it was simply had repeated the same events;
 - (f) finding that the appellant would not be seen as having links to JZM without properly explaining this in the light of the positive credibility findings (6);
 - (g) failing to explain why he did not think that the appellant would be at risk on return due to the sister's involvement with APARECO despite the lawyer's letter and the authority's search warrant stating that they were being sought to obtain further evidence;
 - (h) failing to consider whether the documents were genuine or not;
 - (i) making contradictory findings as to the appellant being credible, yet the evidence being vague, there being no finding why there would be a risk to the appellant;
 - (j) failing to make findings relating to her return to the DRC as a child and a vulnerable young girl and in failing to make any Article 8 findings whatsoever.
17. On 4 May 2020 First-tier Tribunal Judge Buchanan granted permission to appeal on all grounds.
18. On 4 August 2020 Upper Tribunal Judge Hanson issued directions which provided a timetable for the parties to object to his preliminary view that the issue of whether the making of the First-tier Tribunal's decision involved the making of an error of law, and, if so whether that decision should be set aside; and, if they did not object to that, to make further submissions.
19. On 21 August 2020 the respondent replied by way of a letter pursuant to Rule 24 stating:-
- The respondent does not oppose the appellant's application for permission to appeal. After reviewing the determination the Secretary of State considers that there are a number of apparent oversights of admissions which make the decision unsustainable.
20. The Tribunal was invited to set aside the determination of the First-tier and list the case for a fresh hearing.
21. It is entirely regrettable that the appeal of a 16 year old girl should have been adjourned on so many occasions over a period of two years. This should not have happened.
22. I am aware from the Tribunals records that the appeals of the mother was dismissed, and permission to appeal to the Upper Tribunal was refused by

the Upper Tribunal on 13 August 2020. It is unclear why the appeal of the appellant was not linked to that of her mother or for that matter JZM.

23. It is, however, less clear how that is material. In any event it is unnecessary for me to decide that issue given that I find for the reasons set out below that the other errors identified in the grounds and set out above are made out. The judge has failed to explain why, having found that she was credible, he did not accept the appellant's account of what had been said to her about what had happened in the DRC after she had left, as her witness statement, as the respondent accepts, referred to that.
24. The respondent does not challenge the appellant's assertion that she had mentioned the events in her witness statement and that there were attachments to that statement referred to at paragraph (8) of the decision. For reasons which are unclear to me none of those statements are still on the court file.
25. I find further that the judge has failed, given the positive credibility findings, to explain why he did not accept the account of what had happened to her older sister P, nor why the appellant was not at risk of being identified with being part of JZM's family, nor does he explain why he did not accept that the appellant would be at risk on return. Whilst he does address the reliability of the search warrant at [17], it is difficult to discern why he did not accept its authenticity given the credibility finding and it is difficult to understand why he could have dismissed this evidence as being too vague to establish a risk to the appellant [19].
26. For these reasons, I consider that the decision of the First-tier Tribunal is unsustainable and must be set aside.
27. I do not consider that it would be appropriate to remit this case to the First-tier Tribunal given the procedural history and given also that there are a number of positive findings which are not challenged and would form the basis for any remaking.
28. I make an anonymity direction given the appellant's age and the nature of her claim.

Notice of Decision & Directions

1. The decision of the First-tier Tribunal did involve the making of an error of law and I set it aside. The appeal will be remade in the Upper Tribunal on a date to be fixed.
2. Having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, the Upper Tribunal is provisionally of the view that the forthcoming hearing in this appeal can and should be held face-to-face on a date to be fixed as it may be necessary to have further oral evidence via a court interpreter.
3. Any party wishing to adduce further evidence must serve it at least 10 working days before the next hearing, accompanied by an application

made pursuant to rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 explaining why it should be permitted

Signed

Date 9 November 2020

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul