



**First-tier Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/53561/2021

THE IMMIGRATION ACTS

**Heard at Hatton Cross
On 04 May 2023**

Decision Promulgated

Before

JUDGE IQBAL

Between

Sboniso Gumede

(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Hounto of counsel instructed by Montague Solicitors Ltd
For the Respondent: No Attendance

DECISION AND REASONS

Immigration History

1. The Appellant is a national of the Democratic republic of Congo born on the 29th June 1992. He claims to have left DRC in March 2019 to travel to South Africa, staying there for a few weeks and travelling to the UK on the 24th June 2019. He was served with an ILL EN 101 for illegal entry on the 26th December 2019 when he claimed asylum. The Appellant claimed he was at a risk from the authorities given his political activities with the UDPS PEUPLE in opposition to the main UDPS party.

2. On the 2nd July 2021 a decision was made to refuse to grant asylum and humanitarian protection under Paragraphs 336 and 339M/339F of HC395 (as amended). The Appellant has appealed against the decision under section 82 of the Nationality, Immigration and Asylum Act 2002, contending removal would be in breach of the UN Refugee Convention and of the European Convention on Human Rights.
3. I find that an anonymity order is appropriate in this case as I accept that the evidence in this case demonstrates that the publication of this Appellant's name may impact upon his protected rights

The Hearing

4. The hearing was conducted with all participants at the hearing centre. The Appellant elected to give his evidence in Lingala and was provided with an independent interpreter by the Tribunal who he confirmed he understood. I explained the procedures to him and he confirmed the contents of his witness statement and gave further oral evidence.
5. On behalf of the Respondent's there was no attendance at the hearing and there was no request by the Respondent to adjourn the hearing. I therefore proceeded with the hearing taking into account the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014:

Hearing in a party's absence

28. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal – (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and 16 (b) considers that it is in the interests of justice to proceed with the hearing

6. At the end the hearing I reserved my decision. A full note of the evidence and submissions are set out in contained in the recording of the hearing and I will refer to it during the course of my determination where relevant.

Evidence

7. I have had regard to the following evidence which was before the Tribunal when the appeal was heard:
 - (a) Documents uploaded using my HMCTS (or CCD) namely two bundles from the Appellant, 100-pages and a supplementary bundle of 36-pages, the Respondent bundle of 75-pages and a Respondent review as well as an appeal skeleton argument served by the Appellant's representatives.

Appellant's case

8. The Appellant's claim is fully recorded from his various documents and summarised as follows. He is national of the Democratic Republic of Congo (DRC). He claims that as a result of his support and activities for the UDPS and based on his political profile, he was sought after by the authorities. He further claims that since his arrival in the UK

he has continued his political activities through involvement with APARECO. For these reasons he feared his profile would put him at risk of adverse attention on return to the DRC.

The Respondent's decision

9. The Respondent in their refusal letter of 2nd July 2021 accepted the Appellant's nationality; however, was not satisfied the Appellant had given a credible account as to the risk of adverse attention to him to his political activities.
10. During the course of his interview, he was asked a number of questions, which included when the election dates were, however, he was unable to remember this information. It was noted in his screening interview he had stated he had never been arrested, nor had he been involved with political organisations, the inconsistencies with his full asylum interview undermined his account to be politically active. Further, it was noted the Appellant had not demonstrated a high profile, having only attended three demonstrations within a three year period and that he was released each time from detention was not charged with any offense. It was considered the Appellant did not have a specific profile which would attract the particular attention of the authorities on return to the DRC.
11. Insofar as the Appellant's involvement with APARECO in the United Kingdom was concerned, he had provided no evidence or documentation that supported his activities. Consideration was given *BM (DRC) CG [2015] 293* in relation to activities with APARECO in the UK, and in considering the Appellant's account in the round, it was considered he did not have a profile which would put him at risk of adverse attention on return to the DRC.
12. The Respondent considered there would be no breach of Article 2 or Article 3 of the ECHR and that the Appellant did not qualify for humanitarian protection or for protection as a result of a breach of Article 15C of the Qualification Directive.
13. Consideration was also given to the Appellant's family life and private life under Article 8 of the ECHR, Appendix FM and paragraph 276ADE as well as whether or not there were any discretionary reasons to constitute exceptional circumstances which would warrant consideration of leave in accordance with published policy. However, the Appellant was not seen to qualify with reference to any of the Immigration Rules and/or Article 8 as well as any policy.

Issues

14. The Appellant's skeleton argument sets out the schedule of issues as follows:
 - Whether the Appellant's political activities in the DRC were as claimed
 - Whether the Appellant had been subject to past persecution such that he would be at risk on return, and whether he was of current interest to the authorities
 - Section 8 considerations
 - Risk on return

Findings

15. I have taken into account the entire documentary evidence and I am guided by the Court of Appeal in the case of *Karanakaran [2000] Imm AR 271*, where it was made clear that I must evaluate all the material which has been put before me, relating to the Appellant, his circumstances and the country situation generally, (whether or not established as a hard fact) giving to each item the weight which is fair and appropriate and discarding only any which may be found to have no measure of credence. I must then reach a composite finding.

16. I have also considered the case of *Budhathoki (reasons for decision) [2014] UKUT 00341* which stated, inter alia, as follows:

"... We are not for a moment suggesting that judgments have to set out the entire interstices of the evidence presented or analyse every nuance between the parties. Far from it. Indeed, we should make it clear that it is generally unnecessary, unhelpful and unhealthy for First-tier Tribunal judgments to seek to rehearse every detail or issue raised in the case. This leads judgments becoming overly long and confused. Further, it is not a proportionate approach to deciding cases. It is, however, necessary for First-tier Tribunal judges to identify and resolve the key conflicts in the evidence and explain in clear and brief terms their reasons for preferring one case to the other so that the parties can understand why they have won or lost..."

17. In the first instance I consider the inconsistency that arises with reference to the Appellant's evidence in his screening interview and in his full asylum interview. Particularly, at his screening interview it was highlighted that the Appellant had stated that he had not been involved politically, nor had he been arrested. The Appellant in his evidence highlights that he was provided with a French interpreter at the time and would have preferred an Lingala interpreter due to the differences with the French dialect. I note that during the course of his full asylum interview (question 63), the Appellant fully explained this and stated that as a result of the French interpreter explains there were errors during the course of the screening interview. I have considered the guidance in *YL (Rely on SEF) China [2004] UKIAT 00145* and *R (Dirshe) v SSHD [2005] EWCA Civ 421; [2005] 1 WLR 2685; 20 April 2005* [at 13-15], which provides guidance on the need for caution when considering inconsistencies between a Screening Interview and other sources of evidence which could be held to damage credibility.

18. Given the Appellant's explanation in his full interview, which was one of the first opportunities he had to correct those inconsistencies, together with fact that the account he provides of his political activities in the DRC and the UK are both consistent with someone can be considered as politically active, than I am willing to accord the Appellant with the benefit of doubt.

19. I go on to consider his account in his full asylum interview where he provides detailed evidence not only of his political activities, but also of the three occasions on which he was arrested. I find his evidence is clear evidence in demonstrating an increased awareness of the Appellant by the authorities as the circumstances around three arrests demonstrate an escalation from the first arrest on the 31st December 2017.

20. The Appellant explains his first arrest was at a demonstration with others and at this time, he was detained and taken to a detention centre where he spent two weeks with his fingerprints and a photograph being taken as well as his family details. His second arrest was following another peaceful demonstration on the 25 February 2018, and again arrested and taken to the PIR and they began an investigation on him as they had noted he had been previously arrested. He had to pay a fifty-dollar fine and sign a piece of paper which was blank, and further promised not to continue with any further activities or they would locate him or a member of his family and kill them. He accordingly signed the piece of paper but states that he continued his work with the UDPS. His third arrest was at home on the 27th February 2019, while he was there with friends discussing their political activities having also attended a demonstration against the coalition of Kabila and Tshisekedi following the elections. They arrested everyone in the house and they were taken to the PIR where they spent one week without being questioned, and then transferred to ANR. He was questioned about his political activities and plans for future demonstrations, and wanted to know the names of the people they were working with including those abroad.
21. The only discrepancy the Respondent appears to raise, is with reference to the Appellant's recall of the election date, and I find his answers given to (questions 75-76). The background evidence is that elections took place December 2018 and that inauguration ceremony of Mr. Tshisekedi as President, was on 24 January 2019. Considering the political climate and as highlighted the different dates above which demonstrates an election process over a certain time period, I am satisfied the Appellant's recollection of the election date is not such that it detract from the credibility of the whole of his account.
22. Likewise, when the Respondent claims that in respect of the party aim, the Appellant was unable to directly answer the question, I note to the contrary, there is nothing before me from the Respondent to demonstrate what they expected the response of the Appellant to be with reference to this question and in considering the asylum interview record at questions 69-70, his evidence about his role and goals was entirely clear.
23. In particular, with reference to treatment of those in opposition to the current government, I have considered the CPIN; DRC opposition to government November 2019 in its entirety and would highlight the following matters:

1.2.1 Opposition to the government should be viewed broadly and includes persons who are, or who are perceived to be, members of political parties and armed opposition groups, journalists and media workers, bloggers, civil society activists, the church, human rights lawyers/defenders and students. Such persons may participate in activities inside and/or outside of the Democratic Republic of Congo (DRC).

2.4.3 Presidential, national and provincial legislative elections finally took place on 30 December 2018. Felix Tshisekedi of the opposition Union pour la Démocratie et le Progrès Social (UDPS) was declared the winner of the presidential race. The ruling party alliance, the Common Front for Congo (FCC), led by former President Joseph Kabila, won a majority in both the parliament and the provincial assemblies (see Elections: 2018).

2.4.4 Before and during the electoral campaign state forces used threats and intimidation against voters, human rights defenders and other civil society activists, journalists and opposition candidates. Excessive force was used to disperse political gatherings and demonstrations against the government in various parts of the country. The beating of demonstrators and use of tear gas, rubber and live bullets resulted in injuries and the

killing of numerous protesters. The government has also arbitrarily arrested, ill-treated, tortured, forcibly disappeared opposition members and demonstrators with impunity

*2.4.8 In the country guidance case of **AB and DM (Risk Categories Reviewed – Tutsis Added) DRC CG [2005] UKIAT 00118**, (21 July 2005) (heard 25 February 2005) the Upper Tribunal (UT) held that:*

'We confirm that there continues to be a real risk for those with a political or military profile ... We would emphasise first of all that use of the word "profile" highlights the fact that this category is intended to mark out those whose actual or perceived military or political activities or involvements are likely to have brought them or to bring them to the adverse attention of the Kabila regime. Mere membership of an opposition political party will not demonstrate that a person has such a profile.' (paras 44-45).

*2.4.10 If someone is considered to be (or would be perceived to be) a person of interest (in an opposition group), then likely adverse consequences could include imprisonment. In the country guidance case of **BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 293 (IAC)** (2 June 2015) (heard in March and April 2015), the Home Office acknowledged, amongst other things, that, owing to the poor prison conditions, a period of detention of more than approximately one day would result in a breach of Article 3.*

*2.4.23 APARECO, on the available evidence has no overt presence in DRC (see Opposition groups outside the DRC). The Upper Tribunal in **BM** went on to find that:*

*'Persons who have a significant and visible profile within APARECO (UK) are at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in **MM**. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers and spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.'* (Paragraph 88 (iii)).

6.5.5

The United Nations committee against torture in their June 2019 'Concluding observations on the second periodic report of the Democratic Republic of the Congo' commented that they were 'seriously concerned about reports of the very widespread use of torture in many places of detention [in the DRC] particularly against individuals suspected of belonging to the political opposition, by members of the Armed Forces of the Democratic Republic of the Congo, the National Police and the National Intelligence Agency.' 81

*They were also concerned that the lack of judicial oversight of the National Intelligence Agency's actions and the 'immunity granted to its officers and the effective lack of investigations and prosecutions in connection with acts of torture is helping to create and maintain a situation of generalized impunity'*82.

The UN Committee also noted that

*'... **the practice of rape in custody is endemic**, particularly where women have been detained on account of their participation, direct or indirect, in some form of political opposition or human rights defence activities. While taking note of the legislative, institutional and judicial measures taken by the State party in its efforts to combat this scourge, and the appointment of a personal representative of the Head of State on sexual violence, the Committee remains alarmed at the endemic nature of such violence, which continues to be used – in its most brutal forms – **as a weapon of war against an extremely worrying and, it appears, growing number of women, young girls, men** and children, by both government forces (the Armed Forces of the Democratic Republic of the Congo and the Congolese National Police) and non-State armed groups, acting in a climate of total impunity.*

24. It is clear there were numerous difficulties for those who were in opposition to the government especially around the time of the 2018 elections, and I find this is entirely consistent with the Appellant's account. Whilst initially the Appellant appears to have been a member of the UDPS after the coalition in 2019 with the Kabila party he left to join the UDPS Pueple and on his evidence consider the aims of APARECO, based outside of the DRC.

25. In further considering the Appellant's evidence, it is clear that he was not someone who was high profile, but I find to the lower standard of proof applicable that he is someone who has come to the attention of the authorities, such that on the third occasion when he was arrested, it was from his home address as he had been identified following a demonstration against the coalition.
26. I find the nature of the Appellant's political activities are corroborated by the background evidence and that the ill-treatment he was subjected to, particularly on the third occasion which included a sexual assault is consistent with the background evidence of rape being used as a weapon of war.
27. I find the Appellant's account to the lower standard of proof applicable entirely consistent and credible against the background evidence, especially when considering in the round the Appellant's action of remaining politically involved in the UK, which I go on to consider below. Therefore, I accept he was politically active as claimed and ill-treated in detention after his arrest in the DRC.

Surplus activities

28. Since the Appellant's arrival in the UK, he states he has been involved with APARECO and has provided a number of photographs of himself at demonstrations with APARECO. I further have a letter before me dated thest1 March 2023 in which the representative in the UK, Mr. Alomo Lingmoba, which confirms the Appellant's role includes spreading the APARECO ideology within the Congolese community, and he also details two of the more prominent demonstrations the Appellant attended and spoke at in 2022. This included one outside Number 10, as well as the Rwanda High Commission. The respondent in the refusal letter was concerned there was no evidence from APARECO, however I am satisfied to the lower standard of proof applicable having considered this letter from the representative in the UK, together with the photographs which support his activities with APARECO that there is evidence to demonstrate the Appellant is politically active with them.
29. The Appellant's evidence in relation to his current activities were that his family were threatened more recently by the authorities visiting their home and they showed his family photographs of him at demonstrations in the United Kingdom and stated that they would kill him unless he stopped demonstrating.
30. There is nothing before me independently from the Appellant's family, but I have accepted the Appellant to be a credible witness and considering his evidence in relation to this aspect of his account I find it is corroborated by guidance of the Tribunal in *BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 293 (IAC) (2 June 2015)*, which confirms the monitoring in particular APARECO as well as other diaspora political groups. I find to the lower standard of proof applicable therefore that his family have been approached as claimed.
31. For these reasons, having considered the background evidence as well as guidance given by the country guidance, I am satisfied to the lower standard of proof applicable that he is someone who has come to the attention of the authorities albeit his activities in the DRC were not what would have been classed as high profile; however, certainly

his activities in the UK are as detailed by APARECO are such that he has come to the attention of the authorities and will continue to be of interest especially given his previous arrests and detentions in the DRC.

32. I find the Appellant's account does highlight to the lower standard of proof applicable that he has a well-founded fear of persecution on return back DRC. For these reasons I have therefore concluded the Appellant's circumstances also do demonstrate that his Article 2 and 3 rights under the ECHR would be violated. Given my findings above I find that the Appellant would not be entitled to humanitarian protection.

Decision

I ALLOW THE APPEAL

Order regarding anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This order applies both to the appellant and to the respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed

S IQBAL

S Iqbal

Judge of the First-tier Tribunal

Date sent: 12th June 2023

To the respondent

Fee award

As I have allowed the appeal I make a full fee award.

Signed

S IQBAL

S Iqbal

Judge of the First-tier Tribunal

Date sent: 12th June 2023