



**Upper Tribunal
(Immigration and Asylum Chamber)
DA/00487/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 8 October 2015

**Decision & Reasons
Promulgated**

On 2 November 2015

Before

**UPPER TRIBUNAL JUDGE PERKINS
UPPER TRIBUNAL JUDGE S STOREY**

Between:

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(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: No Representative

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Respondent. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We make this order because the First-tier Tribunal has made a similar order and we do not want there to be any possibility of the Respondent being put at risk on return by reason of publicity about this appeal.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against the decision of the Secretary of State that he be deported.

3. The First-tier Tribunal gave a very thorough, careful and measured Decision. The First-tier Tribunal looked into all of the circumstances raised on the claimant's behalf and took note particularly of the fact that the claimant has been in the United Kingdom since he was only 7 years old or thereabouts and was 25 years old at the date of the hearing.
4. The Tribunal also took note of his personal circumstances and made reasoned and clear findings about his relationship with his partner and his child and his protestations about his future behaviour.
5. The claimant is subject to a deportation order because of his criminal record. Most recently he was sent to prison for seven years for an offence of wounding. As is implicit in a sentence of that length it was a very nasty incident. Its relevance for these proceedings is that it was a sentence of four years or more and as the First-tier Tribunal recognised it is very difficult to allow appeals in those circumstances. They can only be allowed if there are compelling circumstances over and above the exceptions recognised in Section 117C of the Nationality, Immigration and Asylum Act 2002. The precise legal test is set out at section 117C(6) which states:

"In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2."
6. All the things that might have constituted very compelling circumstances were aired before the First-tier Tribunal, who found against the claimant in all but one very important respect.
7. The First-tier Tribunal was aware of the decision of the High Court in **The Queen v Secretary of State for the Home Department, ex parte P (DRC) and R v SSHD, ex parte R (DRC)** [2013] EWHC 3879 (Admin) where Phillips J was presented with very cogent evidence that anybody returned to the DRC who had been imprisoned in the United Kingdom would be of interest to the authorities in the DRC so that they risked serious ill-treatment by prolonged confinement in internationally unacceptable conditions. If we may respectfully comment, that decision was wholly justified on the evidence before the court.
8. The First-tier Tribunal thought it had to follow that decision. We do not know why the judge thought that. The decision of the High Court was clearly fact-specific and the First-tier Tribunal's task was to make a decision on all of the evidence before it which included the fact of the High Court's finding but also additional evidence produced by the Secretary of State.
9. At paragraph 36 of its Decision the First-tier Tribunal showed that it considered itself obliged to follow the decision of the High Court. It was wrong to think that, not because High Court decisions are not to be respected but because findings of fact in the High Court do not bind subsequent findings made on different evidence. We found this a surprising error in what is otherwise a very thoughtful and considered decision.
10. As the First-tier Tribunal expected, the decision was challenged and permission to appeal was given. Since then we have the benefit of a

country guidance decision which is reported as **BM and Others (returnees - criminal and non-criminal) (CG) [2015] UKUT 00293 (IAC)** where a division of this Tribunal (the President, Mr Justice McCloskey with Upper Tribunal Judge Jordan) looked very carefully at the evidence relating to returning someone to the DRC and was wholly unpersuaded that there is any general risk as a consequence of criminal convictions in the United Kingdom.

11. Paragraph 119 of the decision in **BM** could hardly be clearer. At paragraph 119(i) it says:

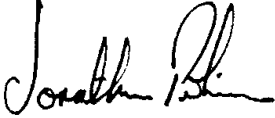
“DRC nationals who have been convicted of offences in the United Kingdom are not at real risk of being persecuted for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR in the event of returning to their country of origin.”

12. We therefore have no hesitation in setting aside the decision of the First-tier Tribunal and remaking the decision.
13. The claimant is clearly distressed at his predicament but he conducted himself with dignity before us this morning and we appreciate his conduct before us. Nevertheless he cannot get around the fact that anything that he might have wanted to have said has been considered and analysed properly by the First-tier Tribunal Judge. The only material point of dispute is the decision that he could not be deported safely. The First-tier Tribunal Judge was wrong to find that he had to follow the High Court decision. Further, we are satisfied on the evidence before us, particularly the Country Guidance case, that he can be returned safely.
14. We follow the country guidance. We rule that there is no risk to this claimant in the event of his return.
15. It follows therefore that although he has spent a large part of his life in the United Kingdom he is not entitled to remain here he is a national of the DRC.

Decision

16. We allow the Secretary of State’s appeal. We set aside the decision of the First-tier Tribunal for error of law and we substitute a decision dismissing the claimant’s appeal against the decision of the Secretary of State.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 29 October 2015