Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/00683/2014

THE IMMIGRATION ACTS

Heard at the Royal Court of Justice	**Determination Promulgated**
On 4 April 2016	**On 19 May 2016**
Determination dictated immediately following the hearing	

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR HERVE MPANZU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of the Democratic Republic of Congo (hereinafter "DRC"), who was born on 16 February 1993. Having entered this country in June 2007, he was convicted of numerous offences between 2009 and 2012, culminating in a conviction on 14 June 2012 at Harrow

Crown Court of offences of robbery, unlawful wounding and possessing an offensive weapon for which he was sentenced to a total period of 66 months' detention. This offence, or offences, involved an unprovoked attack on a stranger outside his home, during the course of which attack the appellant stabbed the victim.

2. In consequence of this conviction the appellant became liable for automatic deportation pursuant to Section 32(5) of the UK Borders Act 2007 and the respondent invited the appellant to make representations as to why he should not be deported and, having considered them, made a decision to make a deportation order, on 31 March 2014.

3. The appellant appealed against that decision and his appeal was heard by a panel of the First-tier Tribunal, consisting of First-tier Tribunal Judge Powell and Dr T Okitikpi (non-legal member), who following a hearing at Newport on 20 April 2015 dismissed his appeal in a determination promulgated on 27 April 2015.

4. The appeal was founded upon his Article 8 rights and also on the assertion that the appellant would be at risk on return to the DRC because as a criminal deportee having served a sentence imposed on him for his crimes in this country he would be subject to further imprisonment and ill-treatment if returned to the DRC.

5. His appeal having been dismissed, the appellant applied for permission to appeal against this decision, and was granted permission to appeal by First-tier Tribunal Judge Fisher on 22 May 2015.

6. Although the appellant's grounds for seeking permission to appeal, which were before Judge Fisher, included a challenge to the panel's finding that in terms of Articles 2 and 3 of the ECHR the appellant would not be at risk on return, Judge Fisher did not specifically deal with this aspect of the appeal, but, (as I stated in my note of hearing after the hearing before me on 9 November 2015), granted permission on the very narrow ground indeed that it was arguable that the panel had given inadequate consideration as to whether or not the appellant might have had leave to be in this country such that its finding that he had no status might arguably have been inadequately reasoned. Judge Fisher said as follows, when setting out his reasons for granting permission to appeal:

> "Although the appellant may face an uphill battle, it is arguable that the Tribunal erred in law because the finding that the appellant had no status, if wrong, may have infected the other findings on whether there were exceptional circumstances".

7. When the appeal was before me on 9 November 2015, the appellant was unrepresented and was also not present. I was not satisfied at that stage that the appellant, who was believed to be on bail, had been properly served with notice of the hearing and in those circumstances was obliged to adjourn the hearing of the appeal but directed that enquiries should be

made as to where the appellant was and whether or not he had been served.

8. Following this hearing, enquiries were made and it appeared that the appellant had not been served because he had been rearrested after being released from serving his sentence for the very serious offences of which he had been convicted, and had been charged this time with possession with intent to supply class A drugs.

9. The circumstances of this are unclear, but before me at the hearing today the appellant, who was present but unrepresented, informed the Tribunal that the prosecution authorities had decided not to proceed with this charge. He had, however, been recalled to prison on the basis (which the appellant accepted) that he had been in breach of the terms on which he had been released on licence and it appears that he will now remain in prison as a result of his criminal convictions until at least 2017.

10. The appellant now being present, I was able to hear the submissions that he made as well as submissions made on behalf of the respondent by Mr Duffy, and was able to proceed with the hearing.

11. Although, as I have indicated, Judge Fisher did not give as a reason for granting permission to appeal any observations as to the manner in which the panel had dealt with the appellant's claim under Articles 2 and 3 of the ECHR, he did state, without giving reasons that "all grounds are arguable" and therefore it is incumbent on me to deal with any submission which might be arguable under Article 3. I do so even though these had not been made specifically by the appellant today, because as he is unrepresented it is necessary that these grounds, which were at least canvassed within his grounds of appeal, are properly considered.

12. The way in which the Article 3 (and Article 2) claim was formulated in the grounds is set out at paragraph 2 of the grounds under "asylum factors", as follows:

> "2. The Tribunal failed properly to consider all relevant risk factors on return, in terms of the Refugee Convention and ECHR Articles 2 and 3:
>
> In the course of the hearing, it was noted that the notice of appeal included asylum grounds and that, on 3 March 2015, the appellant's representatives, for the avoidance of doubt, had written to the respondent to summarise risk factors:
>
> - the appellant's grandfather and uncle [now in the UK following grant of asylum] had played significant roles within the former Mobutu regime, unpopular with the Kabila government, giving rise to perception of imputed political opinion;
>
> - return from a country within western Europe, a known centre of active Diaspora community;

- return after a long period away;

- return with no family or connections in the DRC.

These risks are additional to the appellant's status as a criminal deportee and additional to the fact that he left the DRC with a visa in his passport marked "family reunion" and "sponsor: Blemvenu Dinganga P[anzout]" linking him to family with the adverse political profile of refugee status in the UK …

The respondent did not refute that the appellant had been interviewed by DRC officials here in the UK about his and his family's history, in prison in 2013 …"

13. The grounds then make representations with regard to what is said to be a risk by reason of his being returned as a convicted criminal who had served his sentence, and observations with regard to the evaluation of the status of a decision in *R (P) v SSHD* [2013] EWHC 3879 (Admin) which was a decision allowing a claim for judicial review on the particular factors of that case.

14. The other ground of appeal, which was specifically dealt with by Judge Fisher was that the Tribunal had found that the Tribunal had misunderstood the evidence, when asserting that the appellant had entered and been in the UK unlawfully (at paragraph 23) whereas in fact he had entered lawfully in 2007, having entry clearance under refugee family reunion arrangements with indefinite leave to remain.

15. With regard to the Article 8 ground, it is right to state that it is apparent that there was evidence before the Tribunal that the appellant had in his visa a stamp showing that he had indefinite leave to remain which had been granted for the reasons as set out in the grounds of appeal. Although this Tribunal has been told today that the respondent has not been able to verify this stamp, the respondent has not been able to provide any evidence to suggest that the stamp which was in the appellant's passport was not a genuine one. Accordingly, this Tribunal must proceed on the basis that no evidence having been adduced to challenge what on the face of it is a genuine stamp in the appellant's passport, he has indeed been in this country lawfully as he has stated. Accordingly this Tribunal proceeds on the basis that the appellant having spent the majority of his childhood in the DRC, came here aged 14, and spent some four years or so here during the bulk of which he was committing criminal offences, albeit as a juvenile to start with, culminating in the extremely serious offence for which he received a substantial period of imprisonment.

16. I deal first of all with whether there can be said to be any arguable error of law in the panel's failure to give any credence to the appellant's Article 3 claim. Dealing first of all with the claim, raised in the grounds, that the appellant might be at risk because his uncle had been a supporter of the

Mobutu regime, this is in my judgment entirely unarguable. First of all, this was not even raised in the skeleton argument put before the panel, but moreover it is contradicted by the statement made by the appellant's uncle for those proceedings in which the uncle stated in terms that "I had problems with Mobutu because I was involved with an opposition politician". It was for this reason that he was given refugee status in this country. So, in fact, there could be no risk either to him or to his nephew because of his uncle's support for a regime which as a matter of fact he did not support.

17. With regard to the assertion which is now made that the appellant would be at risk as a returnee who was a convicted criminal, following the decision of the Presidential panel of this Tribunal in *BM and Others (returnees – criminal and non-criminal) DRC (CG)* [2015] 00293, this is also unarguable. I set out what is stated at head note 1 of this country guidance decision, as follows:

> "1. A national of the Democratic Republic of Congo ('DRC') who has acquired the status of foreign national offender in the United Kingdom is not, simply by virtue of such status, exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR in the event of enforced return to the DRC."

18. Having had regard to the evidence contained within the file and to the skeleton argument put before the panel on the appellant's behalf this generalised claim could not on this evidence have succeeded. Accordingly, the panel did not make any arguable error of law in failing to allow the appellant's appeal on this ground.

19. I turn now to the appellant's appeal on Article 8 grounds. It is correct that the panel made a mistake when considering that the appellant had been in this country unlawfully, but in my judgment, this mistake could not have had any material bearing on the decision that was made. Although in the grounds of appeal, reference is made to the European decision in *Maslov* it is entirely clear that the appellant could not have succeeded on the basis as asserted now. This appellant, even though he had entered this country lawfully, had clearly not spent the bulk of his childhood in this country, and appears regularly to have broken the laws of this country since being here. By the time he was convicted of the serious offences referred to above, he had been here only some four years or so, and had committed a number of other offences. Furthermore, as noted by the panel at paragraph 22, and contrary to what the appellant was attempting to claim before the panel (and attempted to say before this Tribunal as well) he had not learned by his mistake, but, as the panel notes was accepted by the appellant, "in the course of his current detention he has broken the rules by having a mobile camera phone, cash and legal highs called spice in his possession and has displayed anti-social behaviour in dealing with challenges to his behaviour by flooding his cell and threatening staff".

20. Although this does not have a direct bearing on the panel's decision (although it would have a bearing on mine were I to find that there had been an error of law such that I had to remake the decision) even after being released from custody the appellant was in further breach of his licence conditions such that he has been recalled to prison. This is clearly not a case of someone who has learned any lessons at all.

21. As the panel found, correctly, having regard to the provisions set out within Section 117D of the Immigration, Nationality and Asylum Act 2002 and also to the considerations set out within paragraph 398 of the Immigration Rules, in order to succeed in a claim that his deportation would be disproportionate for Article 8 purposes, the appellant must establish (the provisions within paragraphs 399 and 399A not applying) that "the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A".

22. On the facts of this case, the public interest in deporting this foreign criminal, whose criminality has been very serious indeed is very large, and there are no factors that are sufficiently compelling as exceptionally should lead a decision maker to consider that his removal under the automatic deportation provisions would be in any way disproportionate.

23. On the facts of this case, it is hard to see how any panel could have reached any conclusion other than that the deportation of this appellant was entirely proportionate, given the huge public interest in deporting foreign criminals who commit offences as serious as this appellant has done. Accordingly, although the panel made a minor error in concluding that the appellant had been in this country unlawfully, whereas he had in fact been granted indefinite leave to remain, this could not have made a material difference to the decision which was made. For the avoidance of doubt, even had I found that the error might have made a difference, I would have had no hesitation at all, had I been obliged to remake the decision, in finding that this appellant's deportation was entirely proportionate.

24. Accordingly the appellant's appeal must be dismissed, and I so find.

Notice of Decision

There being no material error of law in the decision of the panel of the First-tier Tribunal, the appellant's appeal is dismissed and the panel's decision, upholding the decision of the respondent to deport the appellant, is affirmed.

No anonymity direction is made.

Signed:

Upper Tribunal Judge Craig Date: 13 May 2016