



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

Appeal Number: AA091702014

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

On 14 July 2017

**Promulgated
On 03 August 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[R K]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Evans, Harry Pratt, Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Rosa Kasongo, was born on 1 January 1983 and is a female citizen of the Democratic Republic of Congo (DRC). She entered the United Kingdom and claimed asylum in June 2014. By a decision dated 7 October 2014, the respondent refused her claim for protection. The appellant appealed to the First-tier Tribunal (Judge Sharkett) which, in a decision promulgated on 31 October 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. In a lengthy and thorough decision, the judge found that the appellant had worked for the UDPS in the DRC; that she had given a credible account of her arrest and detention by the DRC authorities in 2011; she had also given a credible account of her second arrest; that she was recognised by soldiers who had previously arrested her in Kinshasa where she had been previously arrested. At [91], the judge wrote:

“I accept that the appellant was involved with the UDPS and as a result of that she was arrested on two occasions and subsequently released and then she was arrested a third time for a reason that she was not connected with. I accept she was held at Makala prison for a time and that conditions were harsh.”

3. The country guidance for UDPS members in DRC is still provided by the decision of *MM* (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023. The grounds of appeal at [8] quote paragraph [250] of that decision:

“Mindful of the risk categories as identified in *AB* and *DM*, confirmed in *MK* and now re-affirmed by us, we recognise that had we found the Appellant to be credible, we would have concluded that as a person who had a role in the UDPS and who was known to the authorities and who had been detained and ill-treated by them for his political opinion and who had escaped from detention, he would arguably, not least to the lower standard of proof, be at risk on return to the DRC. Conversely, he would not be at real risk on return, if we found the Appellant to be no more than a mere member of the UDPS.”

4. At the Upper Tribunal initial hearing in Manchester, Mr McVeety, for the respondent, told me that it was the inevitable consequence of the judge’s positive credibility findings (the judge did disbelieve certain other parts of the appellant’s account) that, subject to the authority of *MM*, the appeal should be allowed. I agree. Notwithstanding the fact that the judge found that the appellant had fabricated or embellished certain parts of her account, the fact that she has been found to have been a low level member of the UDPS and that she had been arrested on more than one occasion for UDPS activities, indicates that she is likely to be regarded as something more than a “mere member” of the UDPS. In the circumstances and in the light of Mr McVeety’s submission, I allow the appeal. I remake the decision allowing the appellant’s appeal against the respondent’s decision on asylum and Articles 2/3 ECHR grounds.

Notice of Decision

5. The decision of the First-tier Tribunal which was promulgated on 31 October 2016 is set aside. All of the findings of fact shall stand. I have remade the decision. The appellant’s appeal against the decision of the respondent dated 7 October 2014 is allowed on asylum grounds and on Article 2/3 ECHR grounds.
6. No anonymity direction is made.

Signed
Upper Tribunal Judge Clive Lane

Date 31 July 2017

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed
Upper Tribunal Judge Clive Lane

Date 31 July 2017