



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00138/2015

THE IMMIGRATION ACTS

Heard at Liverpool  
On 16 August 2018

Decision & Reasons Promulgated  
On 24 August 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Z

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel, instructed by Broudie Jackson Canter, Solicitors.  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. Following a hearing on 5 June 2018 it was found a judge of the First-tier Tribunal had erred in law in assessing the risk the appellant may face as a result of his status as the manager of a reggae band, [ ~ ], in light of the political climate which exists in Burundi. The matter comes before the Upper Tribunal today with a view to a decision being substituted to either allow or dismiss the appeal.

Discussion

2. An issue that arose at the error of law hearing was whether the First-tier Tribunal Judge had made any specific findings in relation to whether the above appellant's roles as a manager of the reggae band in question was accepted. This

was found to amount to arguable material error for it is the status of the appellant as the manager of the band which he claims places him at risk on return to Burundi.

3. At [7] of the Error of Law decision the Upper Tribunal wrote:

“No party was able to identify a specific finding by the Judge on this issue because no such finding was made. What the Judge does is to refer in detail to some aspects of the evidence provided and then go on to assess the risk the appellant would face on return by reference to country and other aspects of the evidence. There is no specific finding by the Judge that the appellant was not who he claims to be and Mr Diwnycz accepted that it could be inferred from the decision that the Judge had accepted that the appellant was the manager of the reggae band in Burundi.”

4. The issue to be considered at this stage is whether, in light of that concession, the appellant will face a real risk on return to Burundi.
5. It is not in issue that over the years [ ~ ], a band which whilst not itself politically motivated, have used their music to express concerns that many others feel too frightened to speak up about as a result of which they have come to the adverse attention of the authorities in Burundi. The country material shows that musicians from the band have spent time in prison and been censored for creating songs addressing corruption, freedom of expression and human rights issues relevant to Burundi.
6. In his appeal bundle the appellant provides documents establishing his connection with the band and providing additional background material.
7. It is not disputed that five members of [ ~ ] have been granted refugee status in other countries, as a result of it being accepted they face a real risk of persecution if returned to Burundi.
8. There is also within the appeal bundle a copy from a publication entitled *Burundi: Biography of a Small African Country* which when commenting upon the music of that country states *“Other musicians of note are Kamundu, who is a popular blues-like songs also carry a strong peace message, Bahaga, who lives in Germany; [ ~ ], a reggae group are very critical of Nkurunziza and exiled for that ...”*
9. There are ample country reports within the appellant’s bundle confirming President Nkurunziza’s re-election for 1/3 term of office and the crackdown upon anyone deemed to be opposed to the regime, including musicians. An article headed *“Burundi: Musicians menaced, silenced and fleeing the country”* under a subheading *“Fleeing to Uganda and UK”* states *“By the end of August 2015, the situation had evolved to a point that almost all artists are menaced in one way or the other. Several musicians have fled abroad. [ ~ ] is probably the most famous one – “”, as they are often called, literally – in Kirundi. Several of their songs are directly targeting the party in power, CNDD-FDD, and drew an antagonistic response from authorities: [ ~ ]’s studio was closed, and many of its concerts were abruptly cancelled. Some members found refuge in Uganda. According to International Business Times, one of the members is currently seeking political asylum in the United Kingdom”*
10. A letter dated 30 November 2016, written by Nigel Watt MBE, author of the publication referred to above *“Burundi, the Biography of a Small African Country”* states:

To whom it may concern

I am writing to support the application by [Z] for political asylum in the UK.

I follow events closely in Burundi, having lived there for four years and written a book about the country, "Burundi, the Biography of a Small African Country", the latest edition of which covers the period up to 2015. In the book there is mention of "[ ~ ]" the band of which [Z] was manager until he had to flee the country. The band had never supported any political party but their songs often criticised abuses which took place in Burundi. To quote from a press release of October 2014: "For some time [ ~ ] has not been able to perform. Acts of intimidation and persecution are the reason for this. Some members of the group now live in hiding since their security is threatened." [Z] has provided the Home Office with text, signed statements and photographs which prove his membership of the group as manager.

[Z] has also given the Home Office evidence of the killing of his brother in an attack on his house. I can vouch for the appalling number of killings in the country at the present time, sometimes at the hands of the security services, sometimes by the ruling party youth wing and sometimes simply criminal attacks which the police are not very effective at preventing.

I recently attended and spoke at a conference in Manchester where an American expert on genocide warned that the present situation in Burundi is similar to that in Rwanda in the run-up to the tragic events of 1994. While the present regime is not 100% Hutu, the President's language has turned increasingly threatening towards Tutsis.

[Z] is a highly regarded artist whose life in Burundi has become so greatly threatened that he, his wife and two children fled the country. For him to return in the present circumstances would directly threaten his life. His wife and two children are in exile in Uganda.

I am writing this letter as Chair of Volunteer Action for Peace which recently hosted a seminar on the subject of refugee and asylum. When choosing participants I contacted Burundian friends who recommended [Z] and he made a very compelling presentation entitled "[ ~ ]". I also write as a friend of Burundi. Many of my friends have had to flee the country and some have died.

11. The sentiments expressed in the above letter are reflected in the other country information.
12. On 30 July 2018 a supplementary bundle was provided by the appellant providing more up-to-date information. This includes an up-to-date letter from Mr Watts dated 19 June 2018 in which he writes:

The situation in Burundi

The political and security situation in Burundi remains very bad. Individuals believed to be opposed to the government are arrested by the Bureau de Renseignements (Special Branch) quite often arbitrarily. There are also numerous cases of attacks by bandits. Courts of justice operate but are subject to political pressure. Particular groups such as musicians are especially vulnerable as they are can spread anti-government messages.

I have been in contact with friends inside the country since the publication of the last edition of my book about Burundi and I would advise any Burundian known

to have been critical of the regime to stay away until there are major political changes in the country.

13. A letter from [ ~ ] signed by band members confirms they continue to reside in Uganda as refugees and support the appellant's claim.
14. There is clear evidence to support the appellant's contention that he faces a real risk on return to Burundi as a result of his connection as the manager of [ ~ ], the band of which members of had to flee Burundi as a result of acts of persecution.
15. There is clear evidence that the appellant himself suffered past persecution and that members of his family have suffered as a result of the crackdown by the current regime against those they perceive to be in opposition to them or their policies.
16. I find the appellant has made out, to the lower standard applicable to appeals of this nature, that he faces a real risk on return to Burundi of being identified as the manager of this high-profile reggae band and that there is a real risk he will face further ill-treatment sufficient to amount to persecution as a result of an imputed adverse political opinion. It matters not whether such opinion is actually held by the appellant but how he will be viewed through the eyes of his persecutors. The country information clearly shows that a credible real risk exists sufficient to entitle the appellant to succeed with his appeal.

### **Decision**

17. **I remake the decision as follows. This appeal is allowed.**

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 16 August 2018