



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

Appeal Number: HU/12809/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 April 2019**

**Decision & Reasons  
Promulgated  
On 25 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**LOUISON [K]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hodson, Counsel instructed by Elder Rahimi Solicitors  
For the Respondent: Ms Willocks-Briscoe, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a citizen of the Democratic Republic of Congo who appeals to the Upper Tribunal with permission of First-tier Tribunal Judge Andrew given on 11 March 2019.

## **Background**

2. The appellant first claimed asylum in the UK in 2015 and was interviewed about his claim on 13 March 2015. His claim was based on a fear that if he returned to the Democratic Republic of Congo (DRC) he would face mistreatment due to his imputed political opinion as a family member of a UDPS member because of his membership of a particular social group and as a lone child in the DRC.
3. The respondent refused that application for asylum and his grounds of refusal were set out in a letter dated 16 October 2016. The appellant appealed to the First-tier Tribunal and that appeal came before Judge A J M Baldwin sitting at Hatton Cross on 11 January 2019. Judge Baldwin noted that the appellant was unrepresented but that the respondent was represented by Mr Wain, I assume, a Home Office Presenting Officer, and I have only seen a full decision today because unfortunately the version sent to me in advance of today had only the odd numbered pages copied. Judge Baldwin heard evidence from the appellant but made a number of adverse findings relating to the evidence he gave, including his inability to recall certain key facts. He decided on the totality of the evidence to dismiss the appeal on all grounds argued and make no anonymity direction, finding that the appellant had not discharged the burden of proof.
4. The appellant appealed to the Upper Tribunal on 6 February 2019. Judge of the First-tier Tribunal Andrew on 11 March 2019. Judge Andrew was satisfied there may be an arguable error of law in that the appellant was a young man who was unrepresented at the hearing and having considered a statement from his solicitor, Annette Elder. Having regard to that letter, which is on the tribunal's file, Judge Andrew thought it was at least arguable that there had been an error of law, in that Judge Baldwin had failed to either adjourn the case in order to allow an interpreter to present his evidence before the First-tier Tribunal (FTT). Judge Andrew considered it to be arguably unfair for Judge Baldwin not to adjourn in the circumstances and gave permission to appeal to the Upper Tribunal.

## **The Hearing Before the Upper Tribunal**

5. At the hearing before the Upper Tribunal it was conceded by the respondent that the appellant's appeal had raised an error of law and following a Rule 24 response on 26 March 2019, the respondent decided not to oppose the appeal. Furthermore, it was recognised by both representatives that the matter had to proceed by way of a remittal back to the First-tier Tribunal and that was necessary for a *de novo* hearing to take place before a different judge than Judge Baldwin.
6. After standing the matter down, I decided that it was appropriate to accept that there had been a material error of law and remit the matter back to the First-tier Tribunal. It is clear that there is a perception of unfairness by

both sides to this appeal. According to paragraph 7 of the Practice Statement, Immigration and Asylum Chamber, First Tier Tribunal and Upper Tribunal, where the Upper Tribunal finds a material error of law it will normally re-make the decision within the Upper Tribunal unless it is satisfied that, *inter alia*:

“(a) the effect of the error has been to deprive a party before the First-Tribunal of a fair hearing...”.

7. This appears to be the case here or at least that was the perception of the judge’s decision by both sides to this appeal. Accordingly, it is appropriate to remit the appeal to the First-tier Tribunal.

### **Directions**

8. In accordance with the Practice Statement, and specifically paragraph 7.2 (b ) thereof, it is necessary to set out the nature and extent of any fact finding that will be necessary to remake the decision as well as any specific directions which apply to the remitted hearing.
9. The only directions that I consider necessary are:
  - (1) For this appeal to be remitted to the First-tier Tribunal for *de novo* hearing to be held at Hatton Cross.
  - (2) The appeal is to be heard before any judge other than Judge Baldwin.
  - (3) None of the earlier findings of fact shall stand.
  - (4) A Lingala interpreter is to be booked for the hearing, but the appellants’ representatives are to notify the FTT if one is not required, no later than seven days before the adjourned hearing.
  - (5) All further directions, including those for re-listing the matter, requests for an appropriate time estimate and availability of the parties with a view to a hearing taking place, are to be issued by the First-tier Tribunal.
10. Accordingly, the decision of the Upper Tribunal is that the appeal is allowed. The decision is set aside, and the matter is remitted to the First-tier Tribunal for a *de novo* hearing before a different Tribunal than Judge Baldwin.
11. No anonymity direction is made.

Signed

Date 19 April 2019

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**  
**FEE AWARD**

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

Signed

Date 19 April 2019

Deputy Upper Tribunal Judge Hanbury