



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

Appeal Number: PA/06139/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 November 2018**

**Decision & Reasons  
Promulgated  
On 04 January 2019**

**Before**

**THE HON LORD MATTHEWS  
UPPER TRIBUNAL JUDGE CRAIG**

**Between**

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

Appellant

**and**

**Z K  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Home Office Presenting Officer

For the Respondent: Mr A Eaton, Counsel

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Rodger. For ease of convenience I shall throughout this decision refer to the Secretary of State who was the original respondent as "the Secretary of State" and to ZK, who was the original appellant as "the claimant". An anonymity direction has previously been made.
2. The claimant's immigration history can be set out briefly. He was born in 1979 and is a citizen of the Democratic Republic of Congo (DRC). He

claims to have arrived in this country in 1994 when he was around 14 years old and since that time he has had children in this country. He was granted indefinite leave to remain in the UK as the dependant of his mother in 1999. In 2008 he was convicted of conspiracy to defraud and three counts of handling stolen goods for which he was sentenced to eighteen months' imprisonment. In December of that year a deportation order was signed against him and he was sent notice of the decision to deport him to the DRC. He lodged an appeal against the decision which appeal was dismissed on 11 June 2009. Following further challenges to this decision in the High Court he became appeal rights exhausted in August 2010.

3. The claimant did not leave the UK but on 1 November 2011 he made an application to revoke his deportation order which was refused in August 2012. His appeal against this decision was dismissed and he was appeal rights exhausted in respect of this appeal in September 2013.
4. Then in December 2013 the claimant made a claim for asylum but following screening and asylum interviews, that claim was dismissed in September 2015. That claim was certified under Section 96 of the Nationality, Immigration and Asylum Act 2002; a human rights claim was certified under Section 94B of that Act. A subsequent application for judicial review of this decision was rejected, permission being refused on the papers. The application was renewed orally on 28 July 2016 and on being refused again it was also certified as being totally without merit.
5. Again, the claimant did not leave the country but on 4 November 2015 he made further submissions with regard to his deportation in which it was claimed that his removal would be in breach of the Refugee Convention and also the ECHR. These fresh submissions were considered (the Secretary of State currently not taking the view that they should not be entertained as fresh submissions) but refused on 13 June 2017 but the claimant was entitled to appeal against this decision which he did. The appeal was then heard before First-tier Tribunal Judge Rodger sitting at Taylor House on 30 July 2018 and in a decision and reasons promulgated shortly thereafter on 17 August 2018, Judge Rodger allowed the appeal on asylum grounds and also under Articles 3 and 8 of the ECHR. The Secretary of State now appeals against this decision leave having been granted by First-tier Tribunal Judge Lambert on 10 September 2015.
6. Some of the assertions advanced before Judge Rodger on behalf of the claimant had been considered in his previous appeal but the judge paid careful regard to the guidance given in *Devaseelan* and also to the obvious scepticism to be felt towards a claim in which as the judge stated at paragraph 59 "He is likely to have been motivated by a desire to place himself within the category of risk as set out in the country guidance case" relating to the DRC. The claimant was claiming to have been engaged in various sur place activities on behalf of APARECO, a well-known opposition group within the DRC. In this capacity he had taken part in various television and other programmes which were said to have been broadcast

widely. In support of his appeal he adduced evidence from Mr Seddon an expert with regard to the DRC.

7. Having considered this evidence Judge Rodger accepted that the claimant would be at risk on return to the DRC essentially because of his activities in this country carried out post 2015.
8. Before this Tribunal, on behalf of the Secretary of State, Mr Jarvis stated as follows:

“The difficulty the Secretary of State faces is that the grounds, so far as I can see, do not identify a material error in the judge’s assessment and Mr Seddon’s expert evidence.

In any event, Mr Seddon’s evidence is not an essential core element of the applicant’s sur place claim. At paragraphs 24 and 25 of the First-tier Tribunal judgment, there is reference to transcript of speeches or dialogues which the claimant has had in a public context significantly criticising the DRC authorities and I do not consider that the Secretary of State can get very far in criticising the judge’s acceptance of that evidence at paragraph 66 where the Secretary of State has not otherwise shown that those transcripts were not from publicly available material.

That this material was publicly available was confirmed by Mr Seddon in his evidence (see paragraph 64 of the First-tier Tribunal decision) and accordingly the Secretary of State cannot argue that the judge was not entitled to draw the conclusions which the judge did from both the unchallenged transcript evidence and the viewpoint of Mr Seddon.

In any event, the Secretary of State does not in this case argue that the DRC authorities actively distinguish between opportunistic and genuine expressions of defiance and so ultimately the question of the credibility of the claimant’s motivation was not material to the assessment of risk on return”.

9. Mr Jarvis then explained to the Tribunal that he could not formally apply to withdraw the grounds of appeal and concede the appeal because this being a deportation case he would require higher authorisation to do so, but he accepted that there were sufficient difficulties with the Secretary of State’s case that effectively it would be pointless for him to pursue the grounds.
10. We are grateful to Mr Jarvis for taking what we consider to be an entirely responsible and proper course of action within this appeal. Although it would have been open to Judge Rodger to have come to a different conclusion if that is what Judge Rodger had considered to be appropriate on the evidence, the decision is nonetheless thorough and detailed and the reasoning is clear. There is in our judgment no material error of law within that decision so far as the asylum and Article 3 claims are

concerned and it follows that this appeal by the Secretary of State must be dismissed.

**Notice of Decision**

**The Secretary of State's appeal against the decision of First-tier Tribunal Judge Rodger is dismissed, the consequence being that Judge Rodger's decision, allowing the claimant's appeal, is affirmed.**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig", is written over a light blue rectangular stamp or watermark.

Upper Tribunal Judge Craig  
December 2018

Date: 27