



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

Appeal Number: PA/01835/2020

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 17 May 2021**

**Decision & Reasons Promulgated  
On 1 June 2021**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**KISSITA PADOUE LUSUKAMU**  
(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 Dimnycz Senior Home Office Presenting Officer.

**DECISION AND REASONS**

- 1.** The appellant appeals with permission a decision of First-tier Tribunal Judge Gould ('the Judge'), who in a decision promulgated on 13 October 2020 dismissed the appellant's appeal on all grounds.

**Background**

2. The appellant is a citizen of the Democratic Republic of the Congo (DRC), who on 1 October 2019 made a further application for international protection on the basis of his actual or imputed political which was refused by the Secretary of State.
3. The Judge noted an earlier decision of another judge of the First-tier Tribunal, Judge Foudy, promulgated on 11 February 2010 in which it was found the appellant's claim to have deserted from the army of the DRC lacked credibility for the reasons set out at [19 (a) - (d)] of that decision. It was also found that the appellant had not established an entitlement to a grant of international protection.
4. The Judge correctly took as the starting point in the appeal that earlier decision pursuant to the Devaseelan principles. The appellant again sought to rely upon an alleged risk arising from desertion of the army and the DRC but also, in addition, to his sur place activities in the United Kingdom. The Judge sets out findings in relation to both matters between [23 - 25] in the following terms:

#### Desertion from the Army

23. I am unable to place any weight on the documents served in support of the claim desertion for the following reasons: (a) the documents are copies and without the original documents it is difficult to assess them adequately; (b) the Appellant's explanation as to how he received these documents lacks credibility - the warrant appears to have passed through the hands of various people but the Appellant was unable to name any of them, provide their phone numbers or provide the envelope in which the warrant was sent; (c) the Appellant could not provide any reasonable explanation to address why the National Intelligence Agency would wait several years before attempting firstly to request his attendance and secondly to issue a warrant for his arrest and such a delay in locating a person accused of flagrant insubordination is inconsistent with his claimed fear and (d) the warrant refers to the Appellant's desertion in 2003, which is inconsistent with a search order served by the Appellant at his earlier appeal upon which is claimed desertion was dated 2009 -see Paragraph 19 (d) IJ Foudy Determination. By reason of the foregoing analysis I am satisfied that the appellant's claim that he deserted from the army and he is wanted is not credible and I reject this submission.

#### Sur place activities

24. The Appellant gave evidence that he was a member of RCK and CRC, both organisations are anti-DRC government and by reason of his membership and role he was at risk on return. I reject this submission for the following reasons (a) although a witness statement was served in support of this ground of appeal, no witness was called to support the Appellant's claimed role and activities; (b) despite the movement having an international presence and head office in Paris from which I infer it is well organised the Appellant produced no documentation from meetings or literature to support his claimed role; (c) despite the Appellant's claim that he had joined the protest marches he produced no photographs or video footage to support such a claim; (d) the Appellant claimed he had joined protest marches in London but provided no details as to dates and when asked where the marches had taken place he said he didn't know; (e). Although the Appellant claims to have been politically active within the RCK and CRC there is no reference to the date he joined either in the letter at Annex D of the Respondent's bundle nor on either membership card and (f) if the Appellant had been a member of the RCK and

CRC for four years and had the profile he claimed to have, it is inexplicable that the authorities in the DRC have not sought his arrest with more vigour and that the documents from the National Intelligence Agency make no mention of his claimed political affiliation. The inference I draw from the evidence is that the Appellant has invented a political affiliation to boost his claim for protection, and even if his claim is manufactured, there is no digital footprint to support the proposition that the authorities would have any knowledge of him, and therefore interest in him, upon return to the DRC.

25. For the reasons set out I dismiss the submission that the Appellant is entitled to protection as a refugee in reliance on the same findings of fact I dismiss the submission that he is in need of humanitarian protection.
- 5.** The Judge also dismissed the appeal pursuant to Article 8 ECHR on the basis any interference with a protected right was proportionate. Within that section of the decision the Judge referred to the appellant's claim that he had lost contact with his family in the DRC, finding at [27 - 28]:
27. In common with the findings of IJ Foudy I am satisfied the Appellant is not a credible witness and I reject his submission that he has lost contact with his family. The Appellant gave evidence that he contacted the Red Cross in the United Kingdom to assist in his attempts to contact his family. I am satisfied this not a genuine attempt to seek assistance because the Appellant provided no date of his request, no documentation in support and no evidence that he had made his own enquiries, for example. Furthermore, when the Appellant was asked in cross-examination to clarify his approach to the Red Cross it transpired that he had no more than a conversation whilst collecting food.
  28. If the Appellant is correct, he retains a network of contacts within the DRC because two letters from the National Intelligence Agency in DRC reached him and therefore he will have support on his return.
- 6.** The appellant sought permission to appeal alleging the Judge had erred in law by refusing to adjourn the hearing conducted via the First-tier Tribunal Cloud Video Platform ("CVP"), in drawing inferences, making errors in relation to the evidence given without giving the appellant an opportunity to address the Judge's concerns, and in failing to take into account the evidence the appellant had provided by way of a letter from the CRC together with his membership card from CRC and RCK, for the reasons more fully set out in the grounds attached to the appellant's application for permission to appeal.
- 7.** Permission to appeal was granted by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:
3. In the criminal courts witnesses regularly give evidence via a video link and credibility is assessed by judges and juries taking all factors into account and working to a higher standard of proof than the Tribunal. By itself the hearing by remote means was not an error. Not all of the complaints about the questions and answers have much merit, but if it is right that the solicitor did not ask for the envelope then that might arguably affect the decision overall. Similarly, it is surprising that the Appellant would not know where he went to

in London as it is not clear how he would have known where to go, but the documentation is arguable.

### **Error of law**

- 8.** The Judge records the adjournment application being made on the day by the appellant's barrister, Mr Emu-Ezeoke, for the hearing to be relisted as a face-to-face hearing on the basis the appellant would not receive a fair hearing via CVP. The Judge gives ample reasons at [5] why that application was rejected, particularly that no reasonable argument had been put forward as to why the Judge would not be in a position to assess credibility if the hearing was conducted remotely. The Judge also records being satisfied that it was in the best interests to proceed using CVP but that all matters will be kept under review. There is nothing in the determination or material provided to the Upper Tribunal to suggest that the appellant did not receive a fair hearing or that the Judge's adverse credibility findings were in any way adversely affected by proceeding by this means. It is also of note that Judge Foudy, who also found the appellant lacked credibility, did so following a face-to-face hearing.
- 9.** Not only does this ground as pleaded fail to establish arguable legal error, there is also nothing from Mr Emu-Ezeoke to support the appellant's contention that he did not receive a fair hearing on the day.
- 10.** The lack of evidence from those representing the appellant is also relevant to the appellant's claim that the Judge erred in relation to the envelope in which the warrant was sent to him in finding that the appellant had said "I forgot to give it to my solicitor." when he claims what he actually said was that his solicitor did not ask him for it.
- 11.** The appellant was represented by a firm of solicitors, Chris Solicitors, who would have been aware of the directions given in this case relating to the need for the appellant to file all the documentary evidence he was seeking to rely upon by the specified date. The Reply to an IAC Notice of Hearing dated 13 March 2020, completed by the solicitors, indicates that they were ready to proceed. Casework directions were sent to the parties and there is no evidence that the appellant did not file all the evidence he was seeking to rely upon. There is nothing from the solicitors to support the appellant's claim that a particular piece of evidence was not requested by them.
- 12.** The appellant has produced insufficient evidence to support his claim that what he said was different from that recorded by the Judge as recorded in the determination.
- 13.** The Judge was entitled to weigh up the evidence and consider what findings could be properly made in light of the same. Proceedings before the First-tier are by their nature adversarial in which the Judge was entitled to later consider the material provided, which would have included the submissions made by the advocates, and make the findings recorded in the determination. What the appellant appears to be complaining of is the fact that having arrived at those findings the Judge failed to return to the appellant to give him an opportunity to

comment upon the same. There is no legal requirement upon the Judge to have done so. There is no breach of the principle of fairness in the Judge proceeding in the normal manner. The appellant was represented, filed witness statements, was cross-examined and re-examined, and had ample opportunity for all the evidence he was seeking to rely upon to have been provided. In particular, the appellant in Ground 2 refers to the Judge referring to the warrant claiming the appellant's desertion was in 2003 which was inconsistent with the Search Order claiming the desertion was 2009, arguing that was never put either to him or to the Judge by the Presenting Officer, but such a claim is without merit, as that is also a finding made by Judge Foudy who found the difference in dates to be of concern warranting, in part, the adverse credibility findings. The appellant was fully aware this was an issue and could have called evidence to adequately deal with the same (if it existed) but did not.

14. The appellant also claims the Judge failed to take into account documentary evidence in Ground 3, but the Judge clearly refers to the membership cards provided when noting omissions from the same in the body of the determination.
15. I find the appellant's challenge to the determination without merit as it fails to establish any legal error by the Judge material to the decision to dismiss the appeal.
16. The Judge's findings are supported by adequate reasons. The Judge clearly considered the evidence with the required degree of anxious scrutiny and it has not been shown the findings made are outside the range of those reasonably available to the Judge on the evidence. Two judges of the First-tier Tribunal have made adverse findings in relation to the claim and the weight that could be given to any documentation the appellant produced. It was of no use to the Judge if the appellant had evidence that stayed at home when there had been a clear direction for all evidence being relied upon to be produced at the hearing.
17. Whilst the appellant may not like the Judge's findings and seeks to be granted permission to re-argue his case, the grounds fail to establish it is appropriate in all the circumstances to enable him to do so.

## **Decision**

18. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

19. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson  
Dated 18 May 2021