



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-003904  
First-tier Tribunal No: PA/53082/2022

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:

14<sup>th</sup> February 2024

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**EMB (REPUBLIC OF THE CONGO)**  
**(ANONYMITY ORDER MADE)**

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Mr F Aziz, Solicitor, Lei Dat & Baig Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

**Heard at Manchester Civil Justice Centre on 9 February 2024**

**ANONYMITY ORDER**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.**

**Failure to comply with this Order could amount to a contempt of court.**

## **DECISION AND REASONS**

### **Introduction**

1. This appeal is a salient reminder that experts are only experts in matters where they have the necessary knowledge and experience, underpinned by a reliable body of knowledge or experience, to assist a tribunal in its task.
2. An expert is therefore required to have insight as to the boundaries of their expertise and to be clear when a particular question or issue falls outside their expertise.
3. A failure to exercise such insight can result in valuable judicial time being used to consider bald statements of opinion that are of limited, if any, real assistance to a tribunal.
4. This appeal provides a clear example of such failure. Ms Ticky Monekosso has previously been accepted by the Upper Tribunal to be expert on identified matters. She is not expert in document verification. Three judges have been required in these proceedings to consider her opinion that copies of documents provided to her online are “genuine” and “valid”. These statements of opinion have proven to be of no real assistance to this Tribunal.
5. Of concern is that upon considering the identified material instructions to Ms Monekosso, she was not asked to verify the documents provided. She appears to have undertaken this task of her own accord.
6. Turning to the substance of the appeal before the Upper Tribunal, the appellant seeks international protection. By agreement between the parties, the remaking hearing was conducted by submissions alone, and the appellant did not attend. I take no adverse point as to the appellant’s non-attendance; it previously being agreed between the parties.
7. Mr Aziz confirmed at the outset of the hearing that though the appellant previously relied upon family life rights with a daughter born in this country, his human rights (article 8) appeal in these proceedings was not allowed by the First-tier Tribunal and there was no subsequent cross-appeal. Mr Aziz informed me that a human rights appeal founded upon article 8 was not pursued before the Upper Tribunal.

8. As to the appellant's extant appeal, his nationality is a matter of dispute. He asserts that he is a national of the Republic of the Congo, and fears persecution from the Congolese authorities. The respondent considers the appellant to be a national of Angola and relies upon judicial finding of fact in respect of nationality reached by Judge of the First-tier Tribunal Malik at [40] of a decision sent to the parties on 15 July 2019: PA/04821/2019. The conclusion as to the appellant's Angolan nationality was confirmed by Judge of the First-tier Tribunal Thorne in separate proceedings concerning the same appellant: PA/04384/2020, at [57] and [60].
9. Upon considering further representations received from the appellant under cover of a letter dated 7 December 2021, the respondent considered that they constituted a fresh claim for the purpose of paragraph 353 of the Immigration Rules. By a decision dated 15 July 2022 the respondent refused to grant the appellant leave to remain on both international protection and human rights grounds.
10. The First-tier Tribunal allowed the appellant's appeal on international protection grounds by a decision sent to the parties on 14 August 2023. Judge of the First-tier Tribunal Andrew Davies concluded that the appellant is a national of the Republic of the Congo. The Judge accepted expert evidence as to the reliability of documents relied upon by the appellant. The reliability of these documents and expert evidence was accepted to establish that the respondent had not established the appellant to be a national of Angola.
11. The attention of Judge Andrew Davies was not drawn to the guidance provided by the reported decision of *Hussein and Another (Status of passports: foreign law)* [2020] UKUT 250 (IAC) which I address below. Both parties erred in not addressing the Judge on this decision.
12. By a decision sent to the parties on 10 December 2023, Deputy Upper Tribunal Judge Bowler set aside the decision of Judge Andrew Davies in respect the appellant's international protection appeal, save for preserved findings detailed below, at [26].
13. The crux of Judge Bowler's decision is that the First-tier Tribunal erred in its approach to the evidence of Ms Monekosso contained in a report dated 20 April 2023. The Judge concluded, *inter alia*  

"11. ... The expert has knowledge and experience about society in Congo and Angola and those countries generally, including knowledge about the availability of documents. [She] does not have knowledge and experience in verifying documents as [she] specifically notes in [her] report and this concern was specifically raised at the hearing at the FtT by the presenting officer.

12. In addition, because the documents were only provided to the expert by way of online copy [she] was not in a position to do more than state that they were consistent with formatting and presentation of other documents [she] had seen. For example, the expert simply concludes that “considering the information” in the birth certificate the Appellant is a Congolese citizen.
  13. The Judge appears to have relied upon the expert’s conclusion that the documents were genuine despite the obvious limitations in assessing the copies and the expert’s own lack of verification expertise. The Judge specifically noted that he found it significant that the stamps of the documents were official stamps, but that assessment could only have been an assessment as to consistency in appearance as opposed to genuineness.
  14. I therefore consider that the Respondent’s first ground of appeal is made out. The Judge placed weight on an expert’s opinion on matters outside the expert’s expertise and despite the limitations arising from the expert only seeing copies.”
14. The appellant continues to rely upon Ms Monekosso’s report, as confirmed by Mr Aziz at the hearing. I observe §§6 and 8 of the appellant’s skeleton argument filed for the resumed hearing:
- “6. Deputy Upper Tribunal Judge Bowler raised matters with regards to the expert report. The report is still relied upon. The Tribunal is referred to the details of the interview that the expert conducted with the appellant and sets out the areas that he discussed with him (paragraph 15). ...
- ...
8. The expert then considered the appellants documentary evidence and the tribunal is referred to Paragraphs 55 onwards in [her] report. The expert found that the Congolese birth certificate is evidence of his Congolese nationality (para 82), and concluded that this along with his national ID card, passport, driving licence, marriage certificate and political movement documents are all valid documents from the Republic of Congo. [She] found that they are authentic duplicated copies. [She] explains that this means that the copies have been made from information registered in the national registries of birth certificates, driving licences, passports, civil marriage registry and other authentic registry (para 119). The expert comments that the format of the document is the same as other similar documents that he has seen (para 123). The Tribunal is invited to attach weight as deemed appropriate. The conclusions of the expert are of course not binding on the Tribunal but they opinions expressed do support A’s claimed Congolese nationality.”

15. A question for this Tribunal is whether Ms Monekosso can properly be considered expert in respect of her consideration of official documents relied upon by the appellant.

### **Anonymity Order**

16. An anonymity order was previously issued by Judge Andrew Davies and confirmed by Judge Bowler. No party asked that it be set aside. I confirm the order above.

### **Background**

17. The appellant asserts that he was born in 1967 and is presently aged 56. He states that he was born in Yamba, which situated in the Bouenza Department of the Republic of the Congo. He further states that he resided (illegally) in Angola from 25 December 2017 until 16 January 2019. On his account he secured Angolan documents through friends during a previous visit to the country in 2015 to permit him to cross the Congo-Angolan border should he need to do so.
18. As to events in the Republic of the Congo, the appellant details that he was a trade unionist working as a pipefitter and had been a member of the “Union panafricaine pour la démocratie sociale”, or Pan-African Union for Social Democracy (UPADS), until it lost power in 1997. Subsequently, he joined “Convention pour l’action, la démocratie et le développement” (CADD) in January 2016 and during an electoral campaign in February 2016 he spoke on television against acts being conducted on behalf of President Denis Sassou Nguesso. Following the March 2016 election, won by President Sassou Nguesso, the appellant was fearful of repercussions for speaking out and stayed at a friend’s house. He was arrested on 10 April 2016 and beaten by police officers. He suffered fractures whilst in custody. He was released on 13 April 2016.
19. He went into hiding for 14 months, staying with friends, before being arrested and detained on 10 June 2017. He states that he was beaten twice a week and threatened with death. He was released on 24 December 2017 after his family paid a bribe following the sale of his house. He details that he was released on the outskirts of Brazzaville. A military truck then arrived, and he was given a uniform. He travelled with soldiers, who informed him that he was a free man and would be leaving the country. He was given an envelope containing US\$2000 and a phone number for the Angolan friend who had helped secure the false Angolan documents in 2015. His Angolan friend arranged for someone to then pick him up, and they drove to Cabinda where he stayed for a day. He then travelled to Soya, in Zaire Province, Angola where he stayed for a week before travelling to Luanda where he

remained for approximately a year. His wife joined him approximately six weeks after his arrival. He earned money through a stall trading in cigarettes.

20. As to the appellant's immigration history, he was granted entry clearance as an Angolan national on 30 August 2018. He states that he left Angola on 16 January 2019 and travelled to the United Kingdom via Ethiopia, arriving in this country on 17 January 2019. He claimed asylum on the same day.
21. As detailed above, two judges have found as a fact that the appellant is an Angolan national who travelled to the United Kingdom using a genuine Angolan passport issued to him. In respect of the appellant's assertion that he secured and used a false Angolan passport, Judge Malik records the appellant's evidence at [18] and [26] of her decision:
  - "18. He claims he was given the (Angolan) passport one month after his arrival in Angola by a police man who asked for \$700.
  - ...
  26. The appellant was referred to his VAF, which referred to an address in Angola and that he had been there for nine years. The appellant said he never saw the person who filled in the VAF and dealt with the intermediary only. He was taken to the Consulate to confirm his name/ date of birth; he had not met the people who filled in the form. ..."
22. At the hearing before Judge Malik the respondent provided the appellant's form VAF submitted in the entry clearance application. The document referred to the appellant as an Angolan national, that he had resided at an address in Angola for nine years and that his parents were Angolan nationals. It provided details as to his employment as a pipefitter in Angola. The appellant informed Judge Malik that he never saw the person who filled in the form and dealt only with an intermediary. He attended the British Consulate to confirm his name and date of birth. He was provided with false documents to present and told what to say at his appointment interview. He was fingerprinted and photographed.
23. Judge Malik found the appellant to be an Angolan national, reasoning *inter alia*:
  - No reasonable explanation was provided as to why the appellant used an Angolan passport for entry clearance if he were from the Republic of the Congo
  - The objective evidence clearly detailed the various procedures in the issuing of an Angolan passport, including fingerprinting.

- There was no credible explanation as to why a policeman would hand him a passport for \$700.
  - The VAF contains information such as the appellant's date of birth and his employment as a pipefitter which he accepts is accurate. It was not credible that the appellant had nothing to do with the completion of the form.
  - VAD record checks were undertaken on the documentation provided with the application, including those concerned with employment and a bank account with a balance in the region of £18,000.
24. Judge Malik considered the appellant's fear of the Congolese authorities in the alternative. She did not find the appellant credible as to why, at the age of 49, he joined the CADD youth section in 2016, nor that as a person employed as a pipefitter with, on his own account, limited educational attainment, he would have in a short time been appointed as an advisor to the party. It was not considered likely that if he had spoken out against the President on television, and so have been of interest to the authorities, he would have been released within three days. The Judge further noted that the appellant had been inconsistent as to the number of detentions at interview and at the hearing. He also gave various inconsistent dates for his arrests. It was observed that the appellant had stated in his asylum interview that the contents of the VAF accompanying his entry clearance application was correct, and this confirmed he was living and working in Angola at the time he claims to have been persecuted in the Republic of the Congo. Though the appellant later contended that he was not aware of the contents of the VAF, Judge Malik concluded that even when applying the low standard of proof the appellant had not provided a truthful account of his personal history.
25. By means of fresh submissions dated 7 December 2021, the appellant continued to assert that he is a national of the Republic of the Congo. Additionally, he relied upon his paternal relationship with a child born in this country consequent to a relationship with a national of the Democratic Republic of the Congo. The relationship broke down during his former partner's pregnancy. I note that Judge Davies records at [12] of his decision that the child's mother was accepted by the time of the hearing to be an Angolan national, and so the child could relocate to Angola with both parents. However, as addressed above, there is no human rights (article 8) appeal before this Tribunal.

**Preserved Findings of Fact**

26. Judge Bowler set aside a decision of Judge Davies allowing the appellant's appeal on international protection grounds but preserved the following paragraph of the decision:
- “31. In the Appellant's witness statement of 21 December 2021 in support of his further claim he simply restated his fear of persecution and that he was a national of the Congo. He did not deal with any of the credibility matters raised by the Respondent or referred to in the earlier tribunal decisions.
  - 32. I considered a handwritten letter of 17 December 2021. There is nothing new in the letter. His claim about his house being burnt down in not accepted. I note his claim that his first house in Brazzaville was burnt and the second one sold. The issue of the burnt house was dealt with by Judge Malik. Judge Thorne noted that the authorities were said to be delivering documents or attempting to do so to a house that was clearly unoccupied. On the Appellant's case, the other house had been sold to fund a bribe for his release from detention. The provenance of the arrest/court documents remains unclear.
  - 33. The arrest warrant dated 8 September 2018 was before Judge Thorne. The judge was not satisfied that the Appellant had shown that this and other documents relied upon were reliable and genuine. I note that the document was purported to have been issued by the Court of Appeal of Brazzaville. The Appellant has not produced any background evidence about the court structure in Congo. On the face of it, it would not be expected that an appellate court would be issuing arrest warrants. I see no reason to depart from Judge Thorne's conclusion about the reliability of this document. That raises an issue about the Appellant's credibility generally.
  - 34. I find no grounds to depart from Judge Thorne's conclusions about the reliability of that document.
  - 35. The Appellant claimed that the governments of the Congo and Angola worked together. Nevertheless, on his recent account he spent a year in Angola before leaving on a visa for the UK. There is no evidence of flight. He applied for a visa. He was able to leave through the airport without hindrance. In his oral evidence, the Appellant stated, in a response to a question from Mr Aziz about any fear from anyone in Angola, that “they were all bandits”. He was referring to the risk of robbery. I am satisfied that the Appellant would face no risk of state persecution if removed to Angola. However, it is his case that he is not Angolan but a national of Congo (Brazzaville).”
27. The court document referenced is identified as originating from the Office of the Prosecutor, Court of Appeal Brazzaville, High Court District of Brazzaville. It is said to be issued by the Attorney General and signed by stamp on behalf of Christian Oba, President of the Court of



Appeal of Brazzaville. Accompanying this document are a summons and a search warrant again issued by the Attorney General and signed on behalf of Judge Oba, as well as an arrest warrant issued by the Attorney General on 8 September 2018 and again signed by stamp on behalf of Judge Oba.

28. Consequently, this Tribunal proceeds on the basis that there is a preserved finding as to the unreliability of a document purportedly issued by a senior court in the Republic of the Congo.

### **Discussion and Decision**

29. I commence by thanking Mr Aziz and Mr McVeety for their helpful and concise submissions.
30. It is for the appellant to prove, on the lower standard, that he is at risk on return to the Republic of the Congo of serious harm such as would constitute persecution, entitle him to humanitarian protection or engage the Human Rights Act 1998 (articles 2 and 3 ECHR). The appellant raises no well-founded fear in Angola, denying that he is a citizen of that country.
31. In assessing the evidence of the appellant, I am mindful of the guidance in *KB & AH (credibility – structured approach) Pakistan* [2017] UKUT 00491 (IAC) and that provided by the Court of Appeal in *SB (Sri Lanka) v. Secretary of State for the Home Department* [2019] EWCA Civ 160.
32. In relation to my assessment of the documentary evidence provided, I adopt the approach in *Tanveer Ahmed v. Secretary of State for the Home Department* [2002] Imm AR 318, at [35].
33. I note the guidance in *Devaseelan (Second Appeals – ECHR – Extra-Territorial Effect) Sri Lanka\** [2002] UKIAT 00702, [2003] Imm AR 1 and the consideration of the guidance by the Court of Appeal in *Djebbar v. Secretary of State for the Home Department* [2004] EWCA Civ 804, [2004] Imm AR 497.
34. In respect of the production of a genuine passport, I observe the guidance in *Hussein and Another (Status of passports: foreign law)* [2020] UKUT 250 (IAC), [2020] Imm. A.R. 1442, namely that a person who holds a genuine passport, apparently issued to him, and not falsified or altered, must be regarded as a national of the State that issued the passport. The burden of proving the contrary lies on the claimant in an asylum case. In this matter the appellant secured entry clearance to this country having presented an Angolan passport considered genuine by the British authorities. In addition, he used the

passport to travel to Ethiopia before entering this country using the same passport.

35. I confirm that I have considered with care the documents filed in this appeal. I have read the parties' skeleton arguments.
36. It is appropriate that I note a discussion conducted with the representatives at the hearing. Both representatives addressed me on a membership card issued by the "Convention pour l'action, la démocratie et le développement" (CADD) on the understanding it was issued in March 2003, as observed by the appellant's expert. On inspection, post-hearing, I now understand the confusion arises from the placing of certain photocopied pages in the bundle. The CADD membership card was issued in February 2016. It was a membership card issued by "FESYTRALIM" - the "Federation Syndicate des Travailleurs de L'industrie, Metallurgique et Peche" that was issued in March 2003.
37. I commence by addressing a key preliminary issue in this appeal: what is the appellant's nationality? If I conclude he is a national of Angola, that is the end of the matter as the appellant expresses no fear of persecution at the hands of Angolan authorities. If I conclude that he is a national of the Republic of the Congo, then I am required to consider his fear of the Congolese authorities.
38. There was discussion at the hearing as to the existence, or otherwise of the party the appellant asserts he joined in 2016, namely "Convention d'action pour la démocratie et le développement", or CADD. It was noted that André Okombi Salissa, to whom the appellant refers as re-igniting his political interest when standing as an opposition candidate in the Presidential election held in March 2016, was formerly the leader of a youth movement associated with President Sassou Nguesso's Congolese Party of Labour (PCT), namely the "Comité d'action pour la défense de la démocratie-Mouvement de la jeunesse" or CADD-MJ. However, upon reflection, I am satisfied that CADD existed in 2016, as it is referenced by Amnesty International at the time. I am further satisfied that it formed part of the "Initiative pour la démocratie au Congo" or Initiative for Democracy in Congo (IDC) led by André Okombi Salissa in the 2016 elections.
39. The appellant's case before this Tribunal is that various documents said to originate from the authorities and various political and trade union organisations in the Republic of the Congo, of various ages and with various photographs of him, are genuine, whilst the Angolan passport and various documents which were presented to the British Embassy, Luanda, considered genuine by the British authorities upon inspection, are forgeries/false documents. Both representatives accept that one

set of documents must be high quality forgeries and/or false documents. The appellant's case is that it is the Angolan documents that are forged and/or false. The respondent submits the contrary.

40. I observe that the Angolan passport and the attendant documents relied upon by the appellant when seeking entry clearance underwent verification by the respondent. The guidance in place at the time was, and remains, "*Documentation Verification Checks*", version 1.0 (12 December 2016).
41. The appellant relies upon a report authored by Ms Monekosso, dated 20 April 2023. The appellant contends that Ms Monekosso is qualified to give expert evidence.
42. Ms Monekosso hails from Cameroon. She is a journalist and researcher presently residing in France.
43. The index to the report identifies it as running to seventy-four pages, with an additional seven pages addressing sources. The document filed in the composite hearing bundle runs to fifty-six pages and does not include the sections concerned with 're-immigration matters', and the conclusion which addresses the 'plausibility of the claimed risks'. I have checked the First-tier Tribunal's online e-filing system, CCD, and the same fifty-six pages were filed with the First-tier Tribunal. Having discussed the length of the report with Mr Aziz and observing that the section concerned with the last question raised in Ms Monekosso's instructions was properly not placed before this Tribunal, I am satisfied that the truncated fifty-six-page document is the one the appellant continues to rely upon, as he did before the First-tier Tribunal. Additionally, I am satisfied that the entirety of Ms Monekosso's opinion concerned with the Congolese documents was placed before me.
44. Ms Monekosso details her instructions at pages nine and ten of her report. The appellant's representatives requested that she address fourteen questions. As I observed to Mr Aziz the final question posed is one of mixed fact and law, requesting Ms Monekosso to opine as to whether the appellant faces a real risk of persecution or serious harm on return. The question of law - real risk of persecution - is a judicial question and not one for an expert in proceedings before the Immigration and Asylum Chamber. It is long-established that an expert should not stray into the role of decision-maker: *Oldham MBC v. GW* [2007] EWHC 136 (Fam); [2007] 2 FLR 597, at [91]. The last question should not have been asked. I have not been provided with Ms Monekosso's answer which I understand has been excised from the truncated version of the report relied upon.

45. It is well-established that it is for a court or tribunal to consider what weight should properly be placed upon evidence, and the approach to expert evidence is no different. It is a judicial decision as to whether opinion evidence can properly be considered ‘expert’. The Supreme Court in *Kennedy v. Cordia (Services) LLP (Scotland)* [2016] UKSC 6; [2016] 1 WLR 597, at [43]-[44], approved a section of the South Australian decision in *R v. Bonython* (1984) 38 SASR 45, from which it distilled four key considerations which governed the admissibility of expert evidence (which in Scots law is known as “skilled evidence”).
- (i) whether the proposed skilled evidence will assist the court in its task;
  - (ii) whether the witness has the necessary knowledge and experience;
  - (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
  - (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.
46. The Upper Tribunal confirmed in *MH (review; slip rule; church witnesses)* [2020] UKUT 125; [2020] Imm. A.R. 983, at [39] that whilst no question of admissibility arises in the Immigration and Asylum Chamber these criteria are nevertheless relevant in deciding whether evidence is properly described as ‘expert evidence’.
47. I take judicial note that Ms Monekosso’s reports have been judicially considered by the Upper Tribunal on several occasions, including in one reported and two country guidance decisions: *BB (MCDDI, Known political opponent)* [2004] UKIAT 223, *SK (FGM, ethnic groups)* [2007] UKIAT 1 and *LM (risks on return) Republic of Congo (Congo-Brazzaville) CG* [2008] UKAIT 00064.
48. Having noted the four key considerations identified by the Supreme Court in *Kennedy v. Cordia (Services) LLP* I am satisfied that Ms Monekosso is expert upon the political situation in the Republic of the Congo. However, I am not satisfied that she is expert in the educational system in that country, in cultural anthropology, in linguistics and dialectology, as well the verification of genuine and counterfeit documents. These are areas where she offers opinion.
49. Ms Monekosso’s report commences with an assessment as to whether the appellant is a Congolese national. I observe that Ms Monekosso considers the appellant to be credible having met him remotely. She was not aware, as this Tribunal now is, that the appellant has varied his evidence as to how he secured the Angolan passport presented to the entry clearance officer and later used to enter the United Kingdom. An

earlier version was that he was provided with it by a police officer to whom he paid \$700. I proceed to address this element of the appellant's evidence.

50. The appellant now explains by his witness statement dated 14 February 2023:

"4. I travelled to the UK on a visit visa issued using a fake Angola passport. In February 2018, two months after arriving in Angola I was approached by a policeman while working, he called me by my name, and spoke French. He told me that he had my papers. I questioned him as to how he could have my documents at which point he showed me a passport with my picture. He asked me for \$700, however I did not have the money. I haggled with the policeman, and he agreed to accept \$100 instead. Once I paid, he did not give me the passport and left with the fake passport.

5. The visa and passport I used to leave Angola was obtained with the help of an agent in July 2018. The agent came to my house and told me that we were going to the embassy to apply for my visa. I told him that I did not have my documentation, and the agent told me he would "take care of it". I attended the British embassy with the agent who gave me an envelope contained (sic) documentation and a fake Angolan passport. I was told what to say to the embassy during my appointment and I was fingerprinted and pictured. I do not know what information was on the application form as I did not complete any forms, everything was done by the agent. I do not know how the agent obtained the passport; everything was done by the agent who only asked for money."

51. Being mindful of the requisite standard of proof, I consider this evidence to be incredible. There is no cogent reason as to why an unknown police officer would create a false passport containing a photograph of the appellant in the hope of offering it for sale, with the real risk that the offer would be refused and his time wasted. This version of events is fanciful. It is a crude attempt by the appellant to divorce him from his previous assertion that he bought the passport from a policeman and was subsequently able to successfully use it for his entry clearance application before using it to travel to the United Kingdom. Such success, as identified by Judge Malik, was dependent upon the passport passing sophisticated security checks undertaken by the British authorities.

52. Ms Monekosso's assessment of the appellant's credibility was formed, in part, by her acceptance that appellant purchased the Angolan passport for \$700. She was not provided with the appellant's latest witness statement. This is unsurprising as she was instructed in

December 2022 and interviewed the appellant in January 2023. There was a short delay before the report was signed in April 2023. She was therefore unaware that the appellant has varied his evidence. As addressed above, I consider the appellant to be incredible as to how he secured the passport.

53. The respondent is critical of §§32 and 33 of the report:

“32. Indeed, [the appellant] received the Marxist education that was available in Congo Brazzaville when he was at school, where children were [taught] the story and ideology of the country. For me he nearly [knows] by heart everything that happen[ed] in his country. I mean, **even if you just wake him up**, he will give you the correct answer about any issues of discussion on Congo-Brazzaville including politics, economy, cultures, social matters, and many other points I raised in our interviews”

33. [The appellant] explained in detail the procedures in traditional marriage in Congo Brazzaville, the main figures, politicians, writers, musicians, and artists of Congo Brazzaville.”

[Emphasis added]

54. I accept some of the language used is not that expected of an expert. It is far too generalised and is suggestive of partiality. More importantly, the instructions presented by the appellant’s legal representatives do not identify Ms Monekosso as being instructed to provide expert evidence on matters of cultural anthropology education, or economics in the Republic of the Congo. Her resume comes nowhere close to establishing that she has expertise in these areas, and to possess the requisite knowledge and experience that will aid this Tribunal. Ms Monekosso adopts the approach of providing opinion on matters outside her expertise. This is permitted, as addressed below, but as non-expert evidence the weight to be placed upon such opinion is a matter for a judge.

55. The willingness of Ms Monekosso to divert from her area(s) of expertise to making general observation is further identified at §§34 and 35:

“34. From his French tone, accent and diction I quickly realised that [the appellant] is a daily French speaking (Francophone) [African], he is originally from Congo Brazzaville, not even from DRC as there are some differences in words pronunciation.

35. Indeed, he has a good knowledge of academic French language. The vocabulary he used and the detailed information he gave during our interviews is not the kind that could be gathered from the internet. Interview reflected the content of his written statement with even more detailed at certain points such as the preparation of the national election in Congo Brazzaville.”

56. Ms Monekosso is a journalist. Nowhere within her resume does she refer to significant academic study of linguistics, sociolinguistics, voice analysis or dialectology. I am satisfied that in these paragraphs she is again offering her non-expert opinion by means of statement, which does not aid this Tribunal in its task.
57. The report provides considerable detail as to the nationality laws of the Republic of the Congo, as well as the history and presentation of various official documents such as birth certificates, passports and identity cards. All of this information is readily available to those who seek it but helpfully collated in the report.
58. I observe that the instructions provided to Ms Monekosso do not identify her as expert in document verification. She was not specifically asked to verify the documents as genuine, rather she was asked, *inter alia*, to opine as to:
- The plausibility of [the appellant's] account of becoming involved with the Convention pour l'action, la democratie et le developpement (CADD), his arrest due to his political activity, treatment by the authorities and whether he is a member/supporter of the CADD.
  - The plausibility of how [the appellant] obtained the CADD documents, arrest warrants, court summons and Congolese nationality documentation. Specifically, the process of issuing and serving arrest warrants and court summons in Congo Brazzaville.
  - Whether there is anything out of the ordinary or unusual about these documents which would raise questions regarding their authenticity.
59. I am satisfied that by the drafting of their instructions, the appellant's legal representatives did not consider Ms Monekosso to be expert on document verification. The third instruction detailed above was a general question and one which required care by Ms Monekosso in deciding whether to answer. A damaged £5 note may appear unusual, but it may still be legal tender. It would be for an expert to ascertain whether it was a genuine £5 note in the first place.
60. Ms Monekosso was provided with copies of the documents addressed in her report. Despite the appellant's legal representatives seeking to be careful in the scope of their instructions, she identifies herself as being instructed to provide "criteria of evaluation of [the appellant's] identification evidence". She observes at §56:

“56. I have been asked to provide an analysis of the format, language/ structure/ significance of [these documents]. I fully understand the context of these documents and how the appellant obtained [these documents] from Congo Brazzaville, as well as the circumstances in which [these documents have] been issued.”

61. Two observations can properly be made at this juncture. Firstly, the appellant contends that all the Congolese documents were sent to him in this country by his daughter and so Ms Monekosso was reliant upon the appellant being honest as to their origin and how he received them. As noted above, Congolese court documents have been found unreliable, and the appellant has not been credible in explaining how he secured his Angolan passport and other documents filed with his entry clearance application. Secondly, having considered §56 with care, I am unable identify Ms Monekosso being instructed to provide “provide an analysis of the format, language/ structure/ significance” of the Congolese documents forwarded to her. Such instruction is not identifiable at pages nine and ten of the report. The closest identifiable instruction is that she consider “whether there is anything out of the ordinary or unusual about these documents which would raise questions as to their authenticity.” I am satisfied that Ms Monekosso proceeded to provide opinion beyond her instructions.

62. Ms Monekosso noted, at §§59-60:

“59. In my work as an expert witness, I have carried out many detailed investigations into issues including research into local legal procedures and texts to comment on documentation – such as arrest warrants, military driving licences, photographs, video tapes, newspaper articles, membership cards from political movements, birth or marriage certificates, medical certificates, and statements and affidavits from local lawyers and many other individuals.

60. Given the lack of guidelines and monitoring on information related to official documents in Congo, I draw inferences based on indicators I have developed from having seen a range of documents from the country.”

63. It is appropriate to observe that if Ms Monekosso is not an expert in document verification, her inferences are of no aid to this Tribunal.

64. She then proceeds to detail:

“63. The language, the style and the specific words used in official language have also been considered. The authorship is another factor in considering their origin compared to the country law and process of issuing such documents and by assessing the responsibility, the basic values, and goals of the institution to



evaluate the level of the authority with which the documents are issued.

64. The identification of the sources such as government authorities and national format and design of the country official documents involves examining the contents of the documents and other criteria of authenticity such as stamps, fingerprints, photograph, signatures, and dates of issuing or currency to assess the reliability of the document.

...

68. Therefore, I would consider the country situation during the period when the original documents were issued and the conditions in which such documents would have been issued and how this relates to the political, military and social situation in his country of origin as well as the risk [the appellant] will face due to these documents. I will then do a full assessment of validity of these documents issued in Congo.”

65. The last paragraph suggests Ms Monekosso’s understanding to be that the process by which documents generally are issued in a country may by itself establish an ability to address their validity. Such approach does not engage with the possibility of forgery or securing legitimately produced documents by illegitimate means such as bribery or unauthorised activity at the production stage. The last sentence of this paragraph strongly suggests that Ms Monekosso is content to opine as to the genuineness of a document by means of generalised observation in respect of whether the document considered is comparable to similar documents issued by the authorities. This equates to comparison alone establishing genuineness.
66. Whilst simple comparison can identify a false or forged document, it may properly be considered an ineffective approach when seeking to establish the genuineness of a document. For example, photo editing tools permit the manipulation of photographs and graphics, making it challenging to identify many false documents, such as arrest warrants and court summons, solely through visual inspection.
67. Ms Monekosso adopts her comparison approach to the copies of the passport, national identity card and driving licence forwarded to her, in the absence of the original documents. Many security features of a passport, national identity cards and driving licences are identifiable only upon visual inspection of the document, for example the use of watermarks and random security fibres in passports and raised printing on identity cards and driving licences. Many documents have holographic devices which are highly detailed and display different colours and designs when rotated and tilted. Ms Monekosso’s approach to verifying the Congolese passport, national identity card and driving

licence by consistency in comparison, as adopted in this matter, entirely bypasses consideration of several relevant security features incorporated into these documents.

68. I observe at this juncture that a forensic document examiner undertakes scientific examination, comparison and analysis of a document to establish whether it is genuine. Such examination can reveal alterations, additions or deletions. It can be possible to identify or eliminate the source of the machine used to produce the document. The examination is specific to the document.
69. Ms Monekosso concludes that the birth certificate is consistent with the expected attributes of a Congolese birth certificate. She then concludes, without more, that in her view the appellant “is a Congolese citizen considering information mentioned in his birth certificate”, at §82.
70. She considers that the copies of the Congolese passport, national identity card and driving licence provided to her are consistent with the style, nature and substance of these documents as produced by the Congolese authorities. She raises no concern as to various political party documents. In these observations she remains engaged within the boundaries of her instructions; in her opinion there is nothing out of the ordinary about these documents.
71. She then proceeds to conclude:
- “119. According to my professional assessment and knowledge of Congolese documents, I **believe [the appellant’s] birth certificate, national identity card, passport, driving licence, marriage certificate and political movement document are valid identification documents from the Republic of the Congo** and are authentic duplicated copies. This means that the copies have been made from information registered in the national registries of birth certificates, driving licences passports, civil marriage registry and other authentic registry.
120. I could not ask an official in Brazzaville to check the register of births, and [the appellant’s] birth, driving licence and passport are registered on the correct dates. However, his parents’ names appear, as they are written on his birth certificate.
121. The seal on the documents issued by the Congolese authorities is an official seal from the Republic of the Congo with the Emblem of a woman (the Congolese Marianne) holding a tablet in her hands where it is written the country’s motto “Unity-Work-Progress”.

122. I confirm the authenticity of this seal with the Congolese Embassy in Paris and in Brussels. This seal is the one used by the Ministry of Foreign Affairs as well as the country offices abroad - in addition to local councils, it is also the seal used to issue Congolese visas abroad.

123. In my opinion, the copies of identification documents provided by [the appellant] issued by the Congolese authorities are a **genuine document**. The format is the same as other documents on the title of birth certificates, driving licences and passports I have seen.

124. The names, place and date of birth, names of the parents as well as their full address are always registered in these documents and in the case of [the appellant] are consistent with other evidential identification documents I have received on his case.”

[Emphasis added]

72. An expert can and often will give evidence of fact as well as opinion evidence. Thus, like any non-expert witness, they can give evidence of what they have observed if it is relevant to a fact in issue. There are no special rules governing the admissibility of such factual evidence. Thus, Ms Monekosso can give evidence as to her belief that identified documents are consistent with the type and form of document issued by an authority. However, the weight to be given to her non-expert opinion is for a judge. Ms Monekosso details no personal qualifications or reliable history of expertise in document verification, and so I consider that she does not have sufficient knowledge and experience to be expert in the field of document verification. Her opinion in this field is akin to that of a non-expert witness.
73. I note the observation of Wessels JA, Supreme Court of South Africa (Appellate Division), in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371 that “an expert's bald statement of his opinion is not of any real assistance”, approved by Lord Reed and Lord Hodge in *Kennedy v. Cordia (Services) Ltd* at [48]. Their Lordships also approved the pithy statement of Lord Prosser in *Dingley v Chief Constable, Strathclyde Police* 1998 SC 548, 604: “As with judicial or other opinions, what carries weight is the reasoning, not the conclusion.”
74. I conclude that Ms Monekosso has inflated her opinion as to consistency when comparing documents to an unwarranted and unreasoned conclusion that the documents are “genuine” and “valid”, such conclusions being outside her expertise. Her reasoning underpinning this significant conclusion is founded upon no more than perceived consistency. As a non-expert in document verification, the

extent of her potential ability to assess several documents provided to her in copy form, not originals, is to identify consistency with documents she understands are issued by the Congolese authorities.

75. I am satisfied that in reaching a conclusion as to the genuineness of the documents, Ms Monekosso has failed to abide by the guidance provided to expert witnesses by Cresswell J in *National Justice CIA Naviera SA v Prudential Assurance Company Limited (The Ikarian Reefer)* [1993] 2 Lloyd's Rep 68, particularly at [52]:

“52. ....

4. An expert witness should make it clear when a particular question or issue falls outside his expertise.
5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.

76. I observe that Ms Monekosso confirms that she has read the guidance provided to expert witnesses by the Upper Tribunal in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC) which expressly references Cresswell J's judgment at [23] and so is taken by this Tribunal to be fully aware of the guidance detailed in the paragraph above.

77. As the Upper Tribunal observed in *MOJ & Ors*, at [23], judicial condemnation of an expert who does not appreciate her responsibilities is far from uncommon.

78. In declaring the documents to be “genuine” and “valid” I am satisfied that Ms Monekosso acted outside the confines of her area of expertise. She does not have the requisite skill, knowledge and experience to declare documents “genuine” and “valid” from photocopies simply by reason of their consistency with documents issued by an authority.

79. In the circumstances, and noting the observation of Wessels JA, Ms Monekosso's evidence in respect of the genuineness of the documents is of no real assistance to this Tribunal.

80. Returning to the matter before this Tribunal, the appellant's case, with the support of Ms Monekosso, is that ultimately the Congolese birth certificate, passport, national identity card, driving licence, marriage certificate, and the political documents are consistent with those

issued and so the respondent is unable, on the balance of probabilities, to establish that he is not a national of the Republic of the Congo.

81. The initial focus, as established in *Hussein and Another* [2020] UKUT 250 (IAC) is upon whether the Angolan passport used to enter the document is genuine. Contrary to the appellant's asserted position, the burden of proof in this matter rests upon him, not the respondent. The Vice-President observed, at [12]-[13]:

"12. It is simply not open to an individual to opt out of that system by denouncing his own passport; and it is not open to any State to ignore the contents of a passport simply on the basis of a claim by its holder that the passport does not mean what it says. It is considerations such as these that lie behind the passage in the UNHCR Handbook, paragraph 93:

"93. Nationality may be proved by the possession of a national passport. Possession of such a passport creates a prima facie presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country's nationality, must substantiate his claim, for example, by showing that the passport is a so-called "passport of convenience" (an apparently regular national passport that is sometimes issued by a national authority to non-nationals). However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality. In certain cases, it might be possible to obtain information from the authority that issued the passport. If such information cannot be obtained, or cannot be obtained within reasonable time, the examiner will have to decide on the credibility of the applicant's assertion in weighing all other elements of his story."

13. Of course the target of these observations is a passport that genuinely has been issued by the named State to the person named in it, and that is why, all over the world and particularly at international borders, such attention has to be given to the detection of forgeries and alterations in passports. A document detected as deceptive will not have the effect of a genuine passport. But the converse is also true: a document not detected as a forgery does have that effect, both at the diplomatic level and in the way its holder is perceived in a country that is not his country of nationality."

82. The appellant contends that the Angolan passport is false. However, as found by Judge Malik and Judge Thorne, the passport used to secure entry clearance and enter this country is genuine. Both judges

erroneously considered the burden of proof to rest upon the respondent to establish the genuineness of the passport and found in favour of the respondent. As subsequently established by the reported decision of *Hussein and Another* [2020] UKUT 250 (IAC) the burden rests upon the appellant to establish that it is not a genuine document. Consequently, even where the appellant benefitted from the burden of proof being wrongly attributed, he was unable to establish that the Angolan passport was not genuine.

83. My starting point are the decisions of Judge Malik and Judge Thorne, but they are not determinative, merely a starting point. I note that the Angolan passport underwent sophisticated security checks, both upon being provided to a British Embassy and subsequently upon arrival in the United Kingdom when presented to an immigration officer at a port of entry. The passport was used to cross several borders, raising no concerns with immigration officers. It raised no concerns with airport and airline staff. The appellant has changed his version of events as to how he secured this passport. For the reasons detailed above, I have found the new version to be fanciful, and a crude attempt to divert from the discredited assertion that he unofficially secured a passport already containing his photograph and personal details, which subsequently proved capable of passing British security checks. I additionally find that the version of events as to how the form VAF was completed without his knowledge, though including various elements of personal history that accords to his own, such as his employment, is untrue.
84. Noting the requisite burden of proof, I find to the civil standard that the appellant was issued with a genuine Angolan passport in his true identity, and so he had no requirement to use an agent when seeking to secure entry clearance. I note that the accompanying documents, including financial documents, were checked by the British Embassy to its satisfaction.
85. I observe Ms Monekosso's consideration of language and name patterns in Angola. However, her observations do not aid the appellant upon whom the burden rests. The Angolan passport has been used in cross-border travel without either the United Kingdom or Ethiopian authorities raising concern. Whilst a French name may be less common in Portuguese-speaking Angola, that alone does not mean that the appellant is not Angolan.
86. It is not the appellant's case that he holds dual nationality, and so adopting the guidance provided in *Hussein and Another* the appellant's appeal must be dismissed as his Angolan passport is genuine, and

therefore as observed at [39] above, it is the Congolese documents that are false.

87. I note Ms Monekosso's opinion of fact that several of the documents relied upon are consistent with documents issued by the authorities and political parties in the Republic of the Congo. Though there is no expert evidence as to his standard of French, or as to his knowledge of the culture, society and politics of the Republic of the Congo, I observe the appellant speaks French, and he has mainly been consistent as to his assertion of events in the country. He has identified well-known political parties and leaders. However, as noted above, court documents relied upon have been found to be unreliable. He has therefore proven willing to use unreliable documents. There is no expert evidence that the remaining documents are genuine. Importantly, unlike the Angolan passport, the Congolese passport has not been identified as having been subject to cross-border security checks, and so been examined by several countries. I observe that the financial and employment documents accompanying the entry clearance application in Luanda also went through sophisticated checks and considered to be genuine, unlike the Congolese documents.
88. Mr Aziz tentatively suggested that it was for the respondent to contact the Congolese authorities and ascertain their genuineness. However, there are two reasons for rejecting this proposition. The first, as advanced by the respondent at the error of law hearing, is that the appellant claims to fear persecution by the Congolese authorities, and it would be inappropriate for the respondent to inform the same authorities that he is seeking asylum in the United Kingdom. Secondly, in this matter the respondent is satisfied that the appellant is Angolan because he is satisfied that checks made upon the Angolan passport establish it to have been genuinely issued to the appellant.
89. In the circumstances, I am required to consider the provenance of the Congolese documents in light of the appellant failing to come close to establishing that the Angolan passport is not genuine. If the details placed on the Angolan passport are correct, and I have found that they are, and the information provided to the entry clearance officer by means of the form VAF are correct, and as I accept the passport and attendant documents were subject to a thorough check by the British authorities prior to the issuing of entry clearance, then the appellant was residing in Angola at times when he states that he was politically active, arrested and ill-treated in the Republic of the Congo. I conclude that at relevant times he was residing in Angola because he is an Angolan national. Consequently, I conclude that all documents said to

originate from the Republic of the Congo, and not just the court documents, are unreliable.

90. Having found that the appellant is a national of Angola, and the appellant accepting that he does not possess a well-founded fear of the Angolan authorities, this appeal is dismissed.

**Notice of Decision**

91. By a decision sent to the parties on 10 December 2023, the Upper Tribunal set aside a decision of the First-tier Tribunal dated 13 September 2023 and directed that the decision be remade.
92. The decision is remade. The appellant's appeal on Refugee Convention, humanitarian protection and human rights (articles 2 and 3) grounds is dismissed.
93. An anonymity order is confirmed.

*D O'Callaghan*  
**Judge of the Upper Tribunal**  
Immigration and Asylum Chamber

**12 February 2024**