

Heard at Field House
On 16 December 2002
UKIAT 06471

Appeal No HX23788-2002
TT (Risk - UDPS) Democratic Republic of Congo CG [2002]

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

12/02/2003

Before

Mr S L Batiste (Chairman)
Mr F T Jamieson
Mr M G Taylor CBE

TSHIBANGU TSHIMANGA

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of the Democratic Republic of Congo, appeals, with leave, against the determination of an Adjudicator, Miss M E Lewis dismissing his appeal against the decision of the Respondent on 25 April 2001 to issue removal and refuse asylum
2. Ms G Brown represented the Appellant. Mr M Pichamuthu, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant claims that his problems arose on 7 July 1998. At that time he was a practicing lawyer in Kinshasa, and was one of a number of lawyers who gave their time voluntarily to advise the UDPS, an opposition party in the Democratic Republic of Congo. On 7 July he was attending an illegal public meeting outside the home of the leader of the party with some hundreds of others. The police raided the meeting and arrested a number of the attendees. The Appellant was among those arrested, but there is no evidence that he was specifically targeted. He claims that he was held in prison and ill treated for twenty days following which the door of his cell was opened and a man who he did not know took him out of prison and handed him over to someone else, who took him to Congo Brazzaville and from there to the UK. The Appellant assumes that it was someone from UDP his who arranged his escape but does not know. Once here he joined the UK branch of the UDPS and was appointed to the role of secretary liaison. However he was replaced in this job in July 2001, and has held no post in the party since.

4. The Adjudicator accepted that the Appellant was a lawyer in Kinshasa and that he worked for the UDPS voluntarily between 1996 and 1998. She did not accept that he was a prominent member and concluded that such low-level activities as he undertook would not have attracted any adverse attention by the authorities. She appears to accept that he was detained as one of a number of people attending an illegal meeting in July 1998, but concluded, as he was not charged and there was little evidence of any continuing adverse interest in him after leaving prison, that his account of torture during detention and his escape lacked plausibility and were embellishments. She did not accept that the authorities in DRC would be aware of the Appellant's activities in the UK on behalf of the UDPS. She made an assessment of the objective material and came to the conclusion that he would not be at any real risk of persecution or ill-treatment on return
5. There were four grounds of appeal upon which leave to appeal was granted. For convenience we have first addressed Ms Brown's complaints about the Adjudicator's findings of fact.
6. She argued that the Adjudicator had failed to set out clearly what evidence was accepted and what was not accepted. It is true that the Adjudicator did not state in terms whether she accepted that the Appellant had been detained at all. However it is clear from the context of her conclusions in paragraph 10.4 of the determination, that she proceeded on the basis that he had been detained at the illegal meeting and Mr Pichamuthu accepted this. The Adjudicator did not state in terms either how the Appellant was released from detention or how he was treated in prison. However, again in the context of the findings by the Adjudicator in paragraph 10.4, it is plain that she did not accept the account of escape as plausible, and the Tribunal agrees that the evidence fully supports this conclusion. Indeed this finding has not been challenged. That is not surprising because the account is in itself inherently plausible and if the Appellant had been released on the intervention of the UDPS it is also implausible that he would not then or since have obtained confirmation that the party was involved. The only viable alternative to this implausible account of escape is that he was released from prison by the authorities, and as the Adjudicator said, without charge. As to how long he was detained for and precisely what happened to him during detention the Adjudicator's conclusion that there is embellishment is justified on the evidence. The medical evidence about the Appellant's scars is ambivalent as to whether they can realistically be ascribed to torture. The death threat, about which much was made at the hearing before us, was by way of general intimidation in detention and not targeted specifically at the Appellant, at least according to his account in his asylum interview. He said he was held in a room with others and they were beaten and they were told they were going to die. This account reveals no more than general intimidation and is a long way from comprising a specific death threat targeted at the Appellant because of his claimed role with UDPS. We can see nothing of material substance in these criticisms of the Adjudicator's determination by Ms Brown on the basis of lack of clarity or incompleteness.
7. The second ground of attack by Ms Brown was also on the Adjudicator's findings of fact and was that she did not address the Appellant's supporting evidence. However this attack evaporated when Ms Brown acknowledged that the supporting evidence in question related to matters, which the Adjudicator had found to be credible. That being so, there was no need to deal with the items specifically.

8. The third ground of appeal is that the Adjudicator placed over reliance on perceived improvements in the situation in DRC. The determination shows that the Adjudicator had proper regard to the material placed before her. She concluded in paragraph 10.5 that "I find no indication of a pattern of sustained harassment or persecution of UDPS members, but rather random events that might pose problems for certain individuals. None of the reports I have read indicate that activity abroad is likely to found a reasonable likelihood of being persecuted on return."
9. It is this conclusion that Ms Brown attacked. She placed reliance upon the US State Department report for the year 2000 which included the following observations.

"On January 13, security forces arrested, detained and tortured for five days UDPS activist Crispin Banda, reputedly for distributing brochures on the Lusaka Accord. He was accused of committing offences against President Kabila but all charges subsequently were dropped and he was freed on 2 February. On 29 February, rapid intervention police arrested seven members of the UDPS in Kinshasa near the home of the UDPS President and detained them out in jail in Kinshasa where security agents reportedly lashed them with whips until their release the following morning."
10. She also relied on the US State Department report for the following year, 2001, which stated the police used excessive force to disperse demonstrations and there was no known action against the members of the security forces responsible for torturing, beating or otherwise abusing people in cases arising the previous year. The incidents described related to a much broader spectrum than the UDPS, including the death of Iyela Mokolo, a suspected poacher in illegal possession of weapons, which Ms Brown incorrectly ascribed to association with the UDPS. However there was evidence in the reports that security forces arbitrarily arrested several members of the political opposition, although the number of such cases decreased from the previous year. On 27 March two UDPS members were detained briefly but released without charge. On 20 July several other UDPS members were arrested but were released the following day. On 5 December five UDPS members were arrested for submitting a request to hold public rally, without having first submitted party registration papers. They were charged with assault, incitement to riot, and sedition and remained in detention at the year end. Ms Brown separately referred us to a report by Amnesty International about this same incident. There was also evidence in the US State Department report that the security forces prevented political party press conferences and rallies on several occasions by various of the opposition parties.
11. This was the extent of the objective material to which Ms Brown referred us on this subject. Mr Pichamuthu referred us to passages in the CIPU report, itself a compendium of opinions expressed by a range of sources.

"4.3 Political parties are allowed to exist and registered political parties can engage in political activities although some political activists have been subject to arrest and detention. Political parties have to be registered with the government to be officially recognised

5.20 On 17 May 2001 President Kabila issued a decree liberalising political activities. Under the decree, political parties can function legally upon simple notification to the Ministry of the Interior and on condition that founding members have national representation. The new law imposes some onerous conditions on political parties.

5.22 Political party offices by and large remained open and members of political parties can carry out internal administrative functions. In 2001,

opposition parties were able to hold private meetings without government harassment, which had not been the case in previous years. The government, however, prevented most public political gatherings and press conferences. Government harassment of various political parties decreased in 2001 as compared with previous years. also, in 2001, there were no reports the government prevented opposition party members from travelling.

5.33 Information obtained from the British Embassy in Kinshasa in 2001 indicates that Embassy officials there are not aware of any reports that indicate failed asylum seekers returned to the DRC via Kinshasa are subject to detention or persecution - either on arrival at the city's airport or subsequently.”

12. We conclude from this evidence that there is no material error in the Adjudicator's assessment that it reveals random events affecting a limited number of individuals, but no pattern of sustained harassment or persecution. The number of cases where individual members of the UDPS, at any level, have faced ill-treatment, which could be of the severity required to constitute persecution or breach of Article 3, is tiny. The Adjudicator found that the Appellant was not a prominent member of party and that his low level activities for the UDPS would not have attracted any adverse attention by the authorities. This assessment is reinforced by the fact that the Appellant on his own evidence was only one of a number of lawyers who advised UDPS, and when asked about the nature of his advice was only able to offer broad generalisations. In asylum interview he did not know the name of the current secretary-general of the party. Even in the UK, the relatively low level post held by him soon after arrival was lost some eighteen months ago and there is real evidence of any continuing activity by him since then of any material significance. This is not indicative that he was a prominent member of party prior to his leaving the Democratic Republic of Congo, but fits well with the Adjudicator's assessment that he was only engaged in low level activities. Moreover such activity as he did undertake for party whilst in the DRC took place some years ago. His only arrest was whilst taking part in an illegal public meeting (illegal because his party refused to register). He was arrested along with a number of other people and the death threat to which he referred at his asylum interview was again, even if true, expressed as general intimidation to all the detainees and he was released without charge. We also have regard to the fact that there are no known examples of failed asylum seekers facing persecution or ill-treatment on return. We conclude from all this that there is no error in the Adjudicator's conclusion that there is no reasonable likelihood that the Appellant, given his profile, will be at real risk of persecution on return.
13. The final ground of appeal raised by Ms Brown is that the Adjudicator gave inadequate attention to the human rights appeal under Article 3. However as Ms Brown acknowledged that the Article 3 appeal stood or fell into line with the asylum appeal, there is nothing of material substance in this submission.
14. For the reasons given above this appeal is dismissed.

**Spencer Batiste
Vice-President**