

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Cassation Court (Sez. VI Civile - 1)			
Date of the decision:	(2013/04/04)	Case number: ²	Ord. 8282
Parties to the case: B.B. vs. Italian Government			
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, please provide the link: http://www.personaedanno.it/index.php?option=com_content&view=article&id=42296&catid=234&Itemid=486&contentid=0&mese=04&anno=2013 (If no, please attach the decision as a Word or PDF file):			
Language(s) in which the decision is written: Italian			
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):			
Countr(y)(ies) of origin of the applicant(s): Democratic Republic of the Congo			
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Italy			
Any third country of relevance to the case: ³			
Is the country of asylum or habitual residence party to:			
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based: Art. 1A	
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No		Relevant articles of the Convention on which the decision is based:	
For EU member states: please indicate which EU instruments are referred to in the decision: - Directive 2004/83/EC - Regulation 2003/343/CE		Relevant articles of the EU instruments referred to in the decision: Art. 4, Directive 2004/83/EC	

Topics / Key terms: (see attached 'Topics' annex):

Credibility assessment/ Burden of proof/ Country of origin information/ Denial of refugee status/ Generalized violence

Key facts (as reflected in the decision): [No more than 200 words]

B.B., a Congolese national, was employed as an *au pair* and then, for the period 1990-2008, as a cook and cleaning lady at an Ambassador's household in Italy. In 1997 she stopped being paid and in 2008 she has been fired. Thus, B.B. turned to the Italian Social Services in order to ask for the amount of compensation she was entitled to for her work. She was then blamed by the Consul of DRC in Rome for having involved Italy in Congolese internal affairs and she claimed to have been threatened not to pursue in asking for any remuneration. For family reasons, B.B. had to go back to DRC and found out there was a government file containing information on her, and in which she had been identified as someone giving her country a bad name; from that moment on, she had to find shelter and then flee the country in order to escape the violence of the military, who also hit her son. B.B. eventually managed to reach Belgium, where she promptly applied for international protection; the application had then been reiterated in Italy in accordance with the Dublin Regulations.

The application was denied by the competent Territorial Commission; B.B. then lodged an appeal and obtained the recognition of subsidiary protection by the Tribunal of Bologna. The MoI appealed against the decision and obtained the withdrawn of the protection. The applicant is here lodging another appeal before the Cassation Court.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original.

B.B. was granted subsidiary protection by the Tribunal of Bologna (judgment no. 25/2012) after the denial of the competent Territorial Commission. The Ministry of the Interior then lodged an appeal against this decision, and the Court of Appeal of Bologna confirmed the MoI arguments on the basis of the following reasoning:

- a) International protection matters require an assessment of the applicant's allegations according to criteria which are different from the general ones concerning the burden of proof;
- b) The reaction of the Congolese authorities to the legitimate request of money put B.B.'s life and physical integrity in danger, considering the situation of the extremely difficult socio-political context in the DRC, those circumstances being confirmed by an **expert** on the situation in DRC. Therefore, all elements as of art. 14 of Legislative Decree 251/07 ("*serious harm*") were subsisting.
- c) The applicant's statement comply with the credibility criteria as set in the Italian law concerning international protection: she has promptly submitted the IP application, to give the elements for the decision at the moment the application was lodged; she has presented the necessary integrations (e.g. medical recordings on her son's hospitalization); she has provided relevant circumstances.
- d) However, the Court of Appeal considered the **credibility** of B.B. irreparably compromised by a **chronological mismatch** between the date of the applicant's son hospitalization certificate and the date the applicant indicated as the day of the aggression. Thus, not only the story but also the fact that the person hospitalized really is the applicant's son and, therefore, the danger the applicant claims to be exposed to would be invalid.

Decisions and reasoning: The Cassation Court states that the granting of subsidiary protection is founded on the positive match of both objective and subjective conditions. The fact that the Court of Appeal doubts that the person who underwent surgery is the applicant's son violates the legal criteria on credibility as set in art. 3, par. 5 of Legislative Decree no. 251/2007 and in art. 4 of the Directive 2004/83/EC. Those regulations, combined with art. 8 of Italian Legislative Decree no. 25/2008, in which it is stated that the judge is subject to a duty to cooperate in the preliminary investigation in order to verify up-to-date information on the applicant's country of origin, constitute the cornerstone of the attenuation of the burden of proof, this principle being the pillar of the exam of international protection applications.

The scrutiny has to be founded on well-defined, non-replaceable legislative criteria, imposing a broad assessment of the applicant's credibility to be founded on a comparative and comprehensive exam of both elements of reliability and critical aspects.

In the specific case, all criteria as set in art. 3 (letter a) to d)) of Legislative Decree no. 251/2007 appear to be fulfilled; moreover, the liability acknowledgement is also coherent with the objective situation in the country of origin. **Therefore, it has to be excluded that the one only mismatching element of chronological nature could twist the comprehensive assessment preceding the exam.** By doing that, the Court of Appeal did not apply the law by assessing the chronological mismatch of the hospitalization record of the applicant's son in an isolated manner, detaching it from the rest of the objective elements and from the subjective assessment on credibility based on the above mentioned criteria.

Outcome: The Cassation Court therefore declares the applicant's right to international protection.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

n/a

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

Please submit this form to:

Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org