

Case No: CO/4675/2009

Neutral Citation Number: [2010] EWHC 44 (Admin)

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/01/2010

**Before:**

**THE HON. MR. JUSTICE SAUNDERS**

-----  
**Between:**

<b>R( on the application of Nsona Mazaza)</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>Secretary of State for the Home Department</b>	<b><u>Defendant</u></b>

-----  
(Transcript of the Handed Down Judgment of  
WordWave International Limited  
A Merrill Communications Company  
165 Fleet Street, London EC4A 2DY  
Tel No: 020 7404 1400, Fax No: 020 7404 1424  
Official Shorthand Writers to the Court)

-----  
**Elizabeth Norman** (instructed by **CLC Solicitors**) for the Claimant  
**Steven Kovats** (instructed by **Treasury Solicitor**) for the Defendant

Hearing dates: 15<sup>th</sup> January 2010

-----  
**Judgment**

**The Hon. Mr. Justice Saunders:**

1. As I indicated at the hearing I am going to grant the application sought by the Claimant. I now give my reasons for that decision.
2. The Claimant is a national of the Democratic Republic of the Congo(DRC)
3. She arrived in this country on 9<sup>th</sup> September 2003. She applied for asylum in this country on the basis that she had a well founded fear of persecution because of her political activities in the DRC.
4. Her appeal was dismissed and the Immigration Adjudicator disbelieved the Claimant on the central parts of her evidence. Permission to appeal was refused and her appeal rights were exhausted.
5. She made further submissions in 2006 largely on Article 8 grounds. Those were rejected by the Defendant and there is no appeal against that decision.
6. On 15<sup>th</sup> March 2009 the Claimant made further representation based on her claim that as a result of her activities with an organisation in this country called APARECO UK she would be at risk of persecution if she was to be returned to the DRC.
7. By letter dated 30<sup>th</sup> April 2009 the Defendant rejected this further claim and determined that it did not amount to a fresh claim.
8. The test for a fresh claim is set out in Rule 353 as explained by the Courts. It is a two fold test. Is the claim significantly different from previous claims? If so is there a realistic prospect that it will succeed in front of an Immigration Judge. While the decision is for the Defendant in the first instance and therefore can only be impugned in this court on irrationality grounds, if I reach a different decision on the same facts it is likely that I will find the Defendant's decision to be irrational.
9. It is accepted that the new claim is significantly different from previous claims. The issue is whether it has a reasonable prospect of success in front of an Immigration Judge.
10. The Claimant's case is that she is an active member of APARECO. That is an organisation that campaigns against the present regime in the DRC. Her participation she says goes beyond merely attending meetings, and includes being responsible for recruiting members from the Congolese community in an area of Manchester. She has produced a membership card and also a supporting letter from APARECO which confirms that the Claimant has been involved with recruitment.
11. There is also an expert's report concluding that members of APARECO are at risk if they return to the DRC. The Defendant submits on the basis of the country guidance case of BK [2007] UKAIT 98 that not all failed asylum seekers will be at risk on return but only those who are politically active.
12. In para. 197 of the judgment it is recorded that the regime in the DRC pay close attention to the political activities of DRC nationals in the UK and are able to differentiate between those who are anti-regime and those who are either loyal or apolitical.
13. The issue therefore that I have to decide is whether there is a realistic prospect that her claim that she is political active against the DRC regime in this country would succeed in front of an Immigration Judge. Having considered, in particular the decision of the AIT in Muma and the SSHD 1A/26715/2009 which is an appeal on similar grounds which did succeed then I am satisfied that such a realistic prospect exists. That decision is, I am told subject to an appeal. If that appeal were to succeed then my decision may have been different depending on the reasons but for the time being it remains an appeal on similar grounds which succeeded.

14. I should record that I have been referred by the Defendant to the case of Masengo and the SSHD where a similar case failed. The reason for that was that the AIT held on the facts of that case that they were satisfied that the DRC authorities would not have been aware of the Appellant's political activities in this country. That may well be the result of an appeal in this case but it cannot properly be said that the Claimant does not have reasonable prospects of success.
15. Accordingly the claim succeeds and the decision of the Defendant not to grant a right of appeal is quashed. I have asked the Advocates to draw up the appropriate Order.