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Heard at Field House

DP (Risk – Lissouba Region)  
Republic of Congo Brazzaville  
CG [2002] UKIAT 02773  
HX60021-2000

On 3 May 2002  
Dictated 9 May 2002

## **IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

17 July 2002

**Before:**

**MR H J E LATTER (CHAIRMAN)  
MRS R FAUX**

**Between**

**DIANE PITHER**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### **Appearances:**

For the Appellant                      Mr C Jacobs of Counsel instructed by White  
Ryland, solicitors

For the Respondent                      Mr P Deller, Home Office Presenting Officer

## **DETERMINATION AND REASONS**

1. The Appellant, Diane Pither, a citizen of the Republic of Congo, appeals with leave against the determination of an Adjudicator, Mr D J Dulwich, who dismissed her appeal against the Respondent's decision made on 20 March 2001 giving directions for her removal following the refusal of her claim for asylum.
2. The Appellant claims to have entered the United Kingdom on 24 July 2000, although she could not provide any evidence of lawful entry. She applied for asylum on 25 July 2000. The basis of the Appellant's

claim as set out in her statement of evidence form and subsequent interview can be briefly summarised as follows. The Appellant was born in Pointe Noire in the Congo. In 1994 she won the Miss Congo competition, becoming well known all over central Africa. She then worked for President Lissouba in the Protocol Nationale. She was secretary of the Youth Department of the Union Panafricain de la Democratie Sociale (UPADS) from November 1995 to October 1997. The civil war in Congo broke out in 1997 when a coup took place in Brazzaville. The war was between President Lissouba, who came from the south, and Denis Sassou Nguesso from the north. When the fighting started, the appellant and her family locked themselves in her parents' home for three or four days. The situation deteriorated and on 15 October 1997 the family decided to leave Brazzaville. In the chaos of the evacuation her family were separated. The Appellant decided to make her way to Pointe Noire in the south but there were no trains. She walked to Nkaye and then flew by cargo plane to Pointe Noire, arriving in November 1997. Life was normal there and remained peaceful until July 2000 when the Cobras, President Nguesso's secret police, came to the Appellant's home. They burst into her house, smashed everything and abducted her husband. He was held for a week, tortured and interrogated about the Appellant's activities and whereabouts. The Appellant contacted someone she had known for many years called Colonel Ngomam and asked him if he knew where her husband was being held. He located her husband and had him released. Arrangements were made for both her and her husband to leave the Congo using forged passports. They flew to the United Kingdom, arriving on 24 July 2000.

3. The Appellant's claim for asylum was refused. She appealed and her appeal was heard by the Adjudicator sitting at Hatton Cross on 30 August 2001. He heard oral evidence from the Appellant. She said that as a result of being Miss Congo she was well known by everybody there. She was considered to be an icon and regarded as someone who was well off and successful. She had appeared in national and international magazines. When she became secretary of the Youth Party in 1995, it was reported in the media. Due to her profile as Miss Congo, she had a good image and the party thought that she would be the best person to project the party's image and message to young people. In this capacity, she addressed two or three meetings a month. There would be thousands of people present. The meetings were reported in the press. During the Lissouba years in the Congo, UPADS was the largest political party and everything involving it had a high profile. As a result of her political work she was on television about two or three times a month.
4. The Appellant obtained her job in the Presidential Protocol as a result of her uncle's influence, who was the Chairman of the Presidential Cabinet. The Appellant had assisted in two presidential trips abroad in 1995 and 1996, one to China and one to France. During the coup in 1997 some people who had worked in the protocol were arrested and

others were killed. Three of her colleagues were killed, two had been doing the same job as her. With the outbreak of the war all those who had worked for the Lissouba regime were being sought. This is why she escaped to Pointe Noire. She claimed that if she returned to the Congo, she was at risk of being killed because she had served under the Lissouba regime. It was true that some former ministers had returned to the Congo but they were from the north and were people who had served under Nguesso before he was president. The Adjudicator also heard evidence from the Appellant's husband.

5. Having reviewed their evidence in the light of the submissions made on the Appellant's behalf, he did not find them to be credible witnesses. He said that the only thing he did believe about the case was that the Appellant had been Miss Congo in 1994, but that did not have any political significance. He did not believe that the Appellant had been the secretary of the youth section of UPADS. He did not believe that as Miss Congo she would be known throughout central Africa, nor that she had been known even in the whole of the Congo for this reason. He commented that despite her celebrity status the Appellant had been able to live in Pointe Noire from November 1997 to July 2000, apparently without being recognised either in her own right or because of her husband who she claimed was a well known businessman. He noted that ex-ministers under the former President Lissouba had returned to the Congo. One of those named, M. Poignet, had in fact come from the southern part of the Congo, not the north. The Appellant's children had been left behind in the Congo when she and her husband fled. He also noted that in the screening questionnaire, the last address given in the country of origin was Brazzaville. For all these reasons, the Adjudicator came to the view that the Appellant did not have a well founded fear of persecution in the Congo and dismissed her appeal.
6. The grounds of appeal are lengthy. They seek to attack the Adjudicator's findings of fact and credibility. They assert that the findings are unreasonable and, in more general terms, that the findings are against the weight of the evidence. It is further asserted that the Adjudicator has acted in breach of the Surendran guidelines as approved and set out in MNM [00/TH/02423\*].
7. At the hearing before the Tribunal, Mr Jacobs produced further evidence relating to the Appellant's uncle, who had obtained her post in the Presidential Protocol. The first document is an attestation in which Martial De-Paul Ikonga, certifies that the Appellant was one of the first employees of UPADS and served in the Presidential Protocol. Mr Ikonga's passport is produced. It is a diplomatic passport describing him as a minister. There are also documents showing that he has been granted refugee status by the Republic of Benin. He now holds a Convention travel document issued for all countries save for Congo Brazzaville. There is also a letter from the UNHCR certifying that Mr Ikonga is recognised as a refugee.

8. Mr Jacobs said that his instructing solicitors had been making continuous efforts to try and discover from the Secretary of State who the legal representatives were for President Lissouba, who was believed to be in the United Kingdom. He produced a bundle of correspondence showing what efforts had been made, although there had been no response from the Secretary of State. This matter had in fact been raised when the appeal was listed for hearing on 28 January 2002. On that occasion the appeal was adjourned for two reasons. The first was to enable the Appellant's representatives to obtain further evidence and the second to give the representatives an opportunity to pursue the issue of the identity of President Lissouba's representatives. At that hearing I had indicated that I was not prepared to make a direction that the Secretary of State disclose the identity of President Lissouba's representatives. In my view, it fell outside my jurisdiction and in any event would not be an appropriate order to make. No further steps have been taken in the meantime to seek any remedy elsewhere. Although Mr Jacobs tentatively raised the issue of a further adjournment, the Tribunal was satisfied that there would be no justification at all for yet another adjournment.
9. Mr Jacobs submitted that the Adjudicator had accepted that the Appellant had been Miss Congo. There was now evidence to support her contention that an uncle who had been a minister in the Lissouba government had used his influence to obtain her an appointment in the Presidential Protocol. It would not be unreasonable to assume that the Lissouba government would have taken advantage of the Appellant's status as a celebrity to appoint her to the youth wing of UPADS. She had a high profile. She had travelled with the presidential party to France and China. She was someone who was linked closely with the Lissouba regime. It may well be the case that an ordinary UPADS member or supporter would not be at risk but there was still a real risk for those with close political connections with President Lissouba.
10. Mr Deller submitted that there had been very little evidence of substance before the Adjudicator. The additional evidence provided some support for a contention that the Appellant might be linked in the eyes of the current government with the former Lissouba regime. However, it was difficult to see that she would be treated as being on the same level as former ministers in the Lissouba government.
11. The Tribunal have not found this an easy appeal to determine. The Appellant gave oral evidence at some length before the Adjudicator. Her husband also gave oral evidence. The Respondent was not represented and there are limits to the extent to which the Adjudicator can question evidence, which gives him cause for concern. He is constrained by the guidelines set out in MNM although these must now be read in the light of the comments of the Court of Appeal in Maheshwaran [2002]. One of Mr Jacobs' original complaints was that the Appellant gave evidence at length, adopting her interview and

written statement. She had given a consistent account and there was no adequate basis for the Adjudicator's adverse credibility finding. However, the Tribunal do not feel that there is any proper basis for criticising the way the Adjudicator conducted the hearing. Looking at the record of proceedings, he raised matters which concerned him. He noted Mr Jacobs' submissions, which inevitably were focussed on seeking to persuade the Adjudicator that the Appellant was a credible witness. For the reasons which the Adjudicator set out at some length in his determination, he rejected her evidence. On the basis of the information before him, it is clear to the Tribunal why he reached those views.

12. However, there is additional evidence before the Tribunal which puts the Appellant's evidence in a different light. At the heart of her claim is her assertion that she was actively involved in the youth section of UPADS and was a member of the Presidential Protocol. There is now evidence from the Appellant's uncle who has been granted refugee status in Benin, which supports the following contentions: he was a minister in the Lissouba government, he has been granted refugee status and the Appellant was indeed a member of the Presidential Protocol. The fact that he has been granted asylum in Benin provides some support for the submission made by Mr Jacobs that ministers and those closely linked to the Lissouba regime may have a well-founded fear of persecution.
13. The Tribunal also have a witness statement by Michel Mboungou. He confirms that he knew the Appellant as the Youth Secretary of UPADS. He knows this because at conferences this is how she was introduced, but he also recognised her as Miss Congo. Mr Mboungou had been the Sports Secretary of UPADS in the region of Bouenza. Although he did not know the Appellant personally in the Congo, he met her subsequently in the United Kingdom. This additional evidence is documentary rather than oral, but the Tribunal see no reason to doubt the truth of the contents. Bearing in mind the relatively low standard of proof in asylum claims, the Tribunal are satisfied that the account the Appellant gave of her political activities in the Congo is true, or at least might be true.
14. This leads to the issue of whether it would now be safe for the Appellant to return to the Congo. It is accepted that some members of anti-government groups supporting President Lissouba or his prime minister, Bernard Kolelas, have been permitted to rejoin their previous employers, for example in the Ministry of Interior: US State Department Report 2001, page 1. It is also reported at page 4 of this report that in 1999 President Nguesso signed a law implementing regulations to grant amnesty for acts committed during various civil conflicts including those of 1997, and 1998 – 99, but this amnesty does not cover the political "authors" of those conflicts. In 2000, the former Prime Minister, Kolelas was tried, convicted and sentenced to death in absentia on charges of having maintained private prisons in which opponents were

tortured during the 1997 war. In 1999, a court convicted and sentenced to twenty years imprisonment former President Lissouba and three other government officials on charges of having conspired to kill President Nguesso in June 1999. It is clear from an article produced on behalf of the Appellant from Africa International, May 2001, that former President Lissouba has no intention of being reconciled with the present authorities in the Congo. He still considers himself to be the constitutional president.

15. Looking at the Appellant's background and circumstances in the light of the evidence relating to the situation in the Congo, the Tribunal are satisfied that there is at least a serious possibility that the Appellant would be at risk of persecution were she now to return to the Congo because of the particular nature of her close links with the Lissouba regime.

16. Accordingly, this appeal is allowed.

**Mr H J E Latter**  
**Vice President**