

ASYLUM AND IMMIGRATION TRIBUNAL

MM (State persecution?) Democratic Republic
of Congo [2005] UKAIT 00162

THE IMMIGRATION ACTS

Heard at: Glasgow Hearing Centre
2005

Date of Hearing: 28 October

Promulgated On: 22 November

2005

Before:

Mr C M G Ockelton (Deputy President)
Ms A C McGavin (Immigration Judge)

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Bryce of Brown & Co

For the Respondent: Mr B Craven, Home Office Presenting Officer

The fact that pre-June 2003 DRC documents have a heading suggesting some official authority cannot, in the absence of other evidence, be taken as implying that they derive from the organs of the state as now constituted.

DETERMINATION AND REASONS

1. The Appellant is a citizen of the Democratic Republic of Congo. He apparently entered the United Kingdom illegally on 22 July 2003 and claimed asylum a couple of days later. On 4 October 2004, the Respondent served him with a decision that he should be removed as an illegal entrant having refused him asylum. The Appellant appealed. His appeal was heard by an Adjudicator, Mr J G MacDonald, who, in a determination sent out on 23 December 2004, dismissed his appeal on asylum and human rights grounds. The Appellant sought permission to

appeal to the Immigration Appeal Tribunal. Permission was refused and the Appellant thereupon sought Statutory Review of that refusal. In an interlocutor dated 18 March 2005, Lady Cosgrove granted Statutory Review. We should set out the material parts of the note to the interlocutor in full:

"I have considered the papers and productions in this case and have reached the view that the petitioner's application for leave to appeal against the adjudicator's decision should be granted.

It appears from paragraph 46 of the adjudicator's determination that he excluded certain documentary productions because the documents put before him were translations and not originals or copies. The affidavit now lodged from the petitioner's then solicitor indicates that the failure to lodge the documents was entirely his fault. It also appears that this failing was not brought to the attention of the Tribunal when leave to appeal was sought.

From the information available to me it seems that these documents *may* be relevant to demonstrate that the agent of the petitioner's persecution was the State which would be of significance in respect of the adjudicator's findings as to the possibility of internal relocation to Kinshasa (paragraph 44). In these circumstances I find that the Tribunal has erred in refusing to grant leave to appeal."

2. Following the commencement of the appeals provisions of the 2004 Act, the grant of leave to appeal to the Tribunal arising from the success on the petition for Statutory Review operates as an order that the Tribunal reconsider its determination on grounds limited to those on which permission to appeal to the Immigration Appeal Tribunal was granted.
3. The Adjudicator largely accepted the Appellant's account of his background, history and experiences. The Appellant's difficulties began in 2001. He was a university student in Bukavu, a town at the far eastern end of the Democratic Republic of Congo. He was a member of a political movement called Mudundu 40. There was an event which appears in some sources to have been a battle between student demonstrators and the de facto forces in the area controlled by the Rwandan-inspired RCD-Goma. The Appellant said that as a result he had been detained by RCD-Goma for a month, during which period of time he had suffered ill-treatment amounting to torture. He was released, however, after a month's detention. On 6 April 2002, according to the Appellant's original account, there were further difficulties and the Appellant, fearing for his safety, left home. He was subsequently told by his brother that there was a summons for him to present himself to the authorities of the Sixth Brigade. There is some doubt about the date, because in other evidence before the Adjudicator and before us the date of the summons appears to be in the spring of 2003. No point on this was taken before us, and we think that the truth of the matter, as accepted by the Adjudicator, is that the Appellant's most recent difficulties arose in 2003.

4. As we have said, the Adjudicator accepted the Appellant's history. In doing so, he declined to consider at the hearing certain documents which the Appellant's agent proposed to put before him in the form of translations only. As indicated in the note to the interlocutor which we have set out above, the fault may well have been that of the agent.
5. The Adjudicator's conclusion was that the Appellant did indeed have a well-founded fear of persecution and of treatment contrary to Article 3 in his own home area in the far east of the Democratic Republic of Congo, around Bukavu. The Adjudicator held, however, that the Appellant could readily obtain protection and would not be at risk in Kinshasa. Kinshasa is of course the capital: it is at the far west of the Democratic Republic of Congo, some 1,000 miles away from Bukavu. Further, the objective evidence demonstrates that the government in Kinshasa is and always has been opposed to RCD-Goma and, indeed, the Appellant's own faction Mudundu 40 is itself recognised as an opponent of RCD-Goma.
6. As is apparent from what we have set out above, the grant of Statutory Review was on the basis that the Adjudicator's decision not to look at the translations he was offered was something which, in Lady Cosgrove's view, might have affected his decision on the viability of internal relocation. That is because internal relocation is likely to be much less viable if the persecution feared by the claimant is persecution which derives in essence from state authorities. A number of documents were produced before us. It is not absolutely clear which of them are the documents which the Adjudicator was offered in translation. We have no reason to suppose that they were not all available to the Appellant's agent at that time and for that reason, although we saw originals of only two of them and photocopies of the others, we have taken them all into account in making our determination. As we pointed out to Mr Bryce, who represented the Appellant before us, a number of them have features which might cause some doubts about their reliability. Putting those doubts aside for the moment, we are concerned primarily with two documents which the Appellant refers to his detention and subsequent summons by the authorities in his home area. Each of them is headed "*Republique Democratique du Congo, Armee Nationale Congolaise, 6è [sic] Brigade/Bukavu, Etat-Major Commandement, Section 3*".
7. The first of them is dated 25 August 2001 and is the record of the Appellant's release on bail following his detention for a number of matters including spying. The second is headed "*Convocation*" and is the 2003 summons to which the Appellant referred as the approximate cause of him leaving his home country.
8. Our task in this reconsideration is primarily to determine, on the basis of the grounds upon which Statutory Review was granted, whether the Adjudicator made an error of law which was material in the sense

prescribed by Rule 31(5). We are content for present purposes to assume that the Adjudicator erred in declining under any circumstances to consider the translated documents. We then go on to decide what the position would have been if he had had before him the documents that we now have: the question we ask ourselves is whether those documents would have led him to the view that the authorities the Appellant feared were in truth authorities motivated by the state.

9. Mr Bryce's submission was that those documents were headed with the description of an official arm of the state's forces: on their face they appeared to demonstrate that the Appellant's troubles had indeed the Congolese State as their source, not merely that of a faction operative in the far east of the country. Looked at on their face alone, that may be so: but it would of course have been quite wrong for the Adjudicator to have looked at those documents in isolation from the rest of the evidence in the case. As we have indicated, the Appellant's account was that his troubles stemmed from RCD-Goma. The documents to which we refer are documents which reinforce his account of what happened to him. It appears to us that any Adjudicator who had looked at those documents would necessarily have reached the view that the apparently official letter heading on those documents was the façade under which the RCD-Goma faction operated in Bukavu at the times in question. Mr Bryce confirmed that there was nothing in the evidence before the Adjudicator to suggest the contrary. Nor do any of the other documents to which we made reference earlier in this determination, and which are merely personal to the Appellant, lead to any such conclusion. The objective evidence, however, tends to confirm the view we adumbrate. The CIPU Report (the October 2004 version was before the Adjudicator) indicates that before 30 June 2003 the country was essentially divided into three segments. Kinshasa was in one and Bukavu in another.
10. Looking at the matter as a whole, even if we were to accept that the Adjudicator made an error of law, there is nothing which begins to persuade us that if he had seen these documents he might have held the view that the Appellant was in truth sought by the government or would be at risk in Kinshasa. Indeed, such a conclusion would have been in contradiction to much of the evidence the Adjudicator accepted from the Appellant about his history and the source of his troubles. In the context of this case, the heading on these documents does nothing more than give some local colour to the Appellant's story.
11. Any error of law made by the Adjudicator was accordingly not material. We therefore affirm his determination dismissing this appeal.

C M G OCKELTON

DEPUTY PRESIDENT

Date: