

LSH
Heard at: Field House
On 15 July 2004
Oral determination

LA (Acholi – Gulu detainee –
Returnees) Uganda [2004]
UKIAT 00326

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

05 August 2004

Before

:

Mr G Warr (Vice President)
Mr Andrew Jordan (Vice President)
Mr J G MacDonald

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

For the Appellant: Ms G. Geddes, counsel

For the Respondent: Mr I. Morris, Home Office Presenting Officer

1. The Appellant is a citizen of Uganda who appeals against the determination of an Adjudicator, Mrs A K Simpson, promulgated on 7 January 2004 following a hearing at Manchester, Piccadilly, on 9 December 2003 in which the Adjudicator dismissed the Appellant's appeal against the decision of the Secretary of State to refuse both her asylum and human rights claims.
2. The Appellant claims to have arrived in the United Kingdom at an airport which she did not identify on 4 August 2003. She claimed that she was using a false passport which was provided to her by an agent and then subsequently retained by him. She claimed asylum on 5 August 2003.

3. The Secretary of State made a decision to refuse her asylum claim on 30 September 2003 and gave directions for her removal to Kampala, Uganda. That gave rise to a right of appeal under Section 82(1) of the Nationality Immigration and Asylum Act 2002. The Appellant appealed.
4. The basis of her claim was set out in a statement attached to her application of 19 August 2003. She was born in Kampala on 2 August 1973 and lived in Gulu town. Her father died in 1990. He was a shopkeeper and was a member of the Democratic Party. She recalls him campaigning. After she left school she remained at home until she formed a relationship with her husband who was a wholesaler of general groceries in the area around Gulu. They subsequently married.
5. In about 1992 the Appellant experienced difficulties with the Lord's Resistance Army. As a result, the family fled from what they believed to be an imminent attack. The shop which was being run by her was damaged in the raid. Her mother died in 1993, leaving the Appellant alone. She then married. During the course of her marriage there were various difficulties as a result of the activities of the LRA.
6. It is not necessary to consider the detailed history of the appeal here because the issues centre on events that took place in 2003. In April 2003 UDPF forces came to the house and arrested the Appellant. They accused her of being a collaborator and she was held for 3 days in a police station in Gulu town. She was not questioned but on two consecutive nights she was raped by a police officer. He came into the compound, smuggled her out, raped her and then returned her to the police station. When she was released she was ordered to report to the army camp on a weekly basis and it appears that she complied with those instructions. On 20 June 2003, during the course of another LRA raid, she was asleep in the house when militiamen came. They were ordered out of the house and she was then abused by members of the LRA. However, she managed to escape and remained in the bush for some hours before going to the army camp to report the LRA attack. Unfortunately, she was detained and accused of being a collaborator. She remained in detention for one month. She was not questioned during that period of detention but was raped on about ten occasions by different army officers. Eventually, she came across an army officer whom she knew whose name was Busingye. There was another LRA raid in the vicinity of the army camp. Many of the officers and soldiers went out of the camp. Security was much less tight and officer Busingye managed to smuggle her out of the army camp. He left her in the bush and she ran away. Subsequently, arrangements were made for her to be

removed from Uganda. She went to Kampala, to the house of a friend where she remained for some days before flying out to England.

7. The basis of her claim that was considered by the Adjudicator was whether she was at risk either of persecution or a violation of her human rights.
8. The Adjudicator set out the account that we have set out above. She categorised the Appellant's husband as being a campaigner for Dr Besigye. That appears to be the sum total of the political involvement of either the Appellant or her husband. In the course of the determination the Adjudicator accepted much of what we have set out above. In paragraph 41 she reaches her conclusions and says:

“In light of this objective evidence I take the view that the Appellant may well have been arrested in April 2003 because of her low level support for Dr Besigye. However, having been released on condition that she reported to the army camp on a weekly basis she reported only once. Consequently I take the view that the Appellant's subsequent arrest was a result of her failure to report rather than any real suspicion of being a supporter of the Lord Resistance Army. Indeed, I strongly doubt that even an old friend would have released her had been seriously suspected of support for the LRA, given those atrocities”.

9. The Adjudicator then went on to consider the risk of return. She decided that the Appellant was not politically active and was not a member or a supporter of the Lords Resistance Army. She accepted that there was substantial evidence of human rights abuses in Northern Uganda and that the Appellant herself had been the victim of severe past ill-treatment. She therefore determined that there was a reasonable likelihood of being at risk of which a treatment in Gulu that would violate her rights under each of the Conventions.
10. The Adjudicator then went on to consider whether or not she was at risk as a result of her being Acholi living in Kampala. The Adjudicator noted that there are many Acholi living in Kampala (which she categorised as a multi-ethnic city) and in all areas of Uganda, thereby rejecting the Appellant's claim that she would be at risk throughout Uganda. The Adjudicator took the view that she could relocate in safety in Kampala or other areas in Southern Uganda without any real risk of further persecution. Indeed, she stated the Appellant would not be at risk from the UPDF in any area outside the three distinct areas known as Acholiland. Accordingly, the

Adjudicator dismissed both the asylum and the human rights appeal.

11. We can deal with the position of the Acholi on return to Kampala relatively briefly. In a decision *LN [2004] UKIAT 00107* (Chairman, Mr G Warr) the Tribunal determined that the Acholi are not at risk in Kampala. In paragraph 28 of the determination the Tribunal decided that it would not be unduly harsh for the Appellant in that case to relocate in other areas of Uganda including Kampala. The Tribunal found that the Appellant was able to find adequate protection there. Accordingly it is our view that that case governs the general position of Acholi coming from the Northern parts of Uganda if they seek to relocate in Kampala itself.
12. It was submitted to us by Ms Geddes who appeared on behalf of the Appellant, that the Appellant was at risk as a result of what had occurred in Gulu. As we see the issue it is whether or not the Appellant on return to Kampala would be identified as somebody who has a history of a type that would excite the suspicion of the authorities. It is common ground that there are difficulties and breaches of human rights generally in Uganda. We were referred to the Amnesty International report for 2004 published on 26 May 2004 to the effect that there are widespread abuses of the security agencies in Uganda resulting in torture and death in custody for offences which may only amount to suspicion of political or criminal offences. Suspects are held incommunicado at unrecognised detention centres often referred to as safe houses and official reports indicate security forces frequently extract information through torture and other cruel inhuman or degrading treatment that is sufficient for us to be satisfied that there are breaches of human rights in Uganda. The issue before us however, is whether the Appellant herself is at risk. Ms Geddes pointed out the history of what has occurred to the Appellant in the past. It seems to us that her account of arrest in 2003 as set out in her statement is an account of an informal arrest arising as a result of a suspicion held by the soldiers of the UPDF that she was a collaborator. As is clear from her statement, she was not questioned and it appears that the sole purpose of her being detained in the police station was in order to provide an opportunity for her to be raped. When she was released, although ordered to report to the army camp, there is no suggestion that she was charged. There was no suggestion that she was at any stage going to be put before a court. She was not interrogated. There was no evidence to suggest that she was a collaborator. Indeed, we know that she was not one; nor is there evidence she was perceived to be one.
13. Similar considerations apply in relation to the arrest in June 2003. She was not questioned during that detention. It took

place in an army camp. She was raped on a number of occasions and it appears that the purpose of her being detained was in order to abuse her. The fact that she was befriended by an army officer who then assisted in her escape makes it appear reasonably likely that her arrest and detention would not have been recorded. Indeed, those who detained her were unlikely to want to maintain any record of her presence in the camp. Similar considerations apply in relation to her detention in the police station. In these circumstances it seems to the Tribunal as it must have seemed to the Adjudicator that there was little evidence to say that she was on a list of wanted persons. Although the circumstances of her departure from the camp may arguably give rise to a suggestion that she escaped, there is no credible evidence put forward by the Appellant that her departure from the army camp would result in any criminal charges or other offences. Be this as it may, even if there were a record of her detention in Gulu, the issue then remains as to whether or not it resulted in her name appearing on a list of wanted persons. The logistics of maintaining a list of all those who are unlawfully detained are formidable. Given that if her name was recorded as an official escapee or detainee in Gulu, that information would then have to be transmitted to Kampala. A list would then have to be prepared upon which her name featured so that it was accessible to those making an assessment of returnees to the airport of Kampala.

14. In our judgement there is neither evidence that such a list is feasible nor that, as a matter of fact, it exists in Uganda. Similar considerations apply when one comes to consider the position of the Appellant relocates in another part of Kampala. Where that occurs it may be that she comes into contact with officialdom in registering herself for voting or indeed for local taxation. It is possible therefore that lists will be consulted in relation to criminal convictions or other recorded matters but, in our judgment, there is no credible evidence that, were she to settle in accommodation in Kampala or elsewhere, the events in Gulu are likely to come to the attention of the authorities so as to put her at risk. In these circumstances it seems to us that she is unlikely to come to the attention of the authorities. This is consistent with the information contained in the country report prepared by CIPU and dated April 2004.
15. At paragraph 6.125 under the heading "treatment of failed asylum seekers" we read:

"The Ugandan Department of Immigration confirmed that only failed asylum seekers who have previously committed a crime in Uganda and are on their wanted list would be arrested on arrival in a country. Someone would not be in prison or simply being to Uganda as a failed asylum seeker".

16. In our judgment this supports the view that we have independently formed that there is no reasonable likelihood that the Appellant will come to the attention of the authorities as a result of her activities in Gulu.
17. Accordingly, we find that the Adjudicator reached the correct conclusion when she found that the Appellant would not be at risk. In these circumstances the Appellant's appeal is dismissed.

Decision: The appellant's appeal is dismissed.

ANDREW JORDAN
VICE PRESIDENT

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