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Heard at: Field House  
On: 15 July 2004

AR (Burundi- spoken language-  
Kurundi) Burundi [2004] UKIAT  
00225

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

2004.....

.....18<sup>th</sup> Aug

**Before**

:

**Miss K Eshun (Vice President)**  
**His Honour Judge N Ainley (Vice President)**  
**Mrs R M Bray**

**Between**

**Secretary of State for the Home Department**  
**APPELLANT**

**and**

**RESPONDENT**

Representation:

For the appellant: Miss R Brown, Home Office Presenting Officer.  
The appellant was in attendance but had no legal representation.

### **DETERMINATION AND REASONS**

1. The respondent who claims to be a citizen of Burundi was born on 11 November 1965. She claims to have entered the UK on 19 November 2000 using papers to which she was not entitled and claimed asylum at ASU the same day. On 30 April 2003 the Secretary of State made a decision to refuse her asylum and to refuse her leave to enter and giving directions for her removal to Burundi.
2. The respondent claims that she is a Burundi national of Hutu ethnicity and that she comes from Buyenzi in Bujumbura. She

fears persecution from the Tutsi based Burundi Government and military. She claimed that when she was seven years old she fled with her family to a camp in Tanzania. When the family returned in 1993 she was with her husband. Her parents were then burned alive in an attack by Tutsi soldiers. This resulted in the respondent, her husband and two children returning to a refugee camp in Tanzania.

3. In 2000 her husband and family returned to Buyenzi. Her husband started working as a driver transporting goods between Tanzania, Uganda and Burundi. The government suspected him of being allied with rebel groups. As a result attacks took place on the respondent and her family. The first attack took place in 2000 when she and her husband were badly beaten and she was raped in front of their two children. She was admitted to hospital. Her husband was arrested and detained for approximately three months during which period he was tortured. After his release her husband attempted to recommence work but could not because of threatening letters from Tutsi soldiers. Two weeks later Tutsi soldiers attacked the house again. She was raped and beaten and her husband was taken away. She has not seen him since and does not know what has happened to him. The soldiers set fire to the house. She fled the house with their children. As she was fleeing she lost her eldest child and does not know her whereabouts. She fled to a nearby church where a priest allowed her and her youngest child to stay for three months. The priest sold her pick-up car and the proceeds were used to pay an agent. The agent drove her to Bujumbura Airport where she flew by helicopter to Uganda and on to the UK.
4. In cross-examination she explained that the only language she could speak was Swahili. The people in the market where she sold vegetables spoke Kiswahili. She said that about seven soldiers came inside her house the night she fled. There were others outside. At that time she was only standing about one metre away from the house. Although the soldiers searched for her she was able to escape in the dark. The helicopter trip from Bujumbura to Entebbe took "not many hours, about thirty minutes". The Adjudicator accepted the appellant's evidence as credible and found that she is a national of Burundi. He accepted that she suffered persecution in Burundi because of her ethnicity and because of an imputed political opinion.
5. The grounds of appeal upon which leave was granted submitted that the Adjudicator erred in law by finding that the respondent is a national of Burundi. It was also argued that the Adjudicator's credibility findings were unreasonable particularly in respect of the respondent's journey from Bujumbura to Entebbe, which it was said, could not have taken thirty minutes as stated by the respondent in evidence. Furthermore the respondent's account of her escape from the

house was so implausible that no reasonable Adjudicator would have found the account credible.

6. As already stated above the respondent appeared in Court with her son but without legal representation. We found that she was not prejudiced in any way by lack of representation. The appellant appeared to have a fairly good understanding of the English language, which she also spoke fairly well. When asked, she said that she had acquired her knowledge of the English language since she has been in the UK. She was able to follow the proceedings and had no difficulty finding the citations in the Home Office CIPU Report.
7. In considering whether the respondent was a national of Burundi, the Adjudicator was referred to the CIPU assessment at paragraph 2.1 where it says,

"The official languages of Burundi are Kirundi and French, whilst Swahili is also used in addition to French in commercial circles. All Burundians know Burundi (in our view should read Kirundi) but may speak it with regional variations. Kirundi is closely related to Kinyarwanda, the official language of Rwanda. Swahili is widely spoken in and around the capital, Bujumbura, and is a first language in certain Muslim neighbourhoods whilst Congo Swahili is spoken in Congolese neighbourhoods."

The Adjudicator noted that the respondent claims to be from Bujumbura where, according to the extract from the CIPU assessment, Swahili is a first language in some areas. In the light of the objective evidence before him he found as follows:

"Bearing in mind the low standard of proof I am satisfied that the fact that the appellant only speaks Swahili does not bar her from being Burundian... I am satisfied that it is more than reasonably likely that the appellant is a Burundi national as she claims."

8. Miss Brown referred us to paragraph 2.6 of the Burundi Country Report April 2004, which she said contains additional information to the information in the CIPU Report that was before the Adjudicator. That paragraph states that the office of the UN Commissioner for Human Rights (OHCHR) stated that Rundi, or Kirundi, is the national language of Burundi. It is spoken by the entire population of the country. According to the website of Citizenship and Immigration Canada, Burundi has two official languages: Kirundi and French. Kirundi is spoken by all Burundians, regardless of ethnic background.
9. The respondent told the Adjudicator and repeated the same to us that she could not speak Kirundi. She even told us that she

could not understand the language. The only language she spoke in the market and in her neighbourhood was Swahili. Swahili was also the language spoken by her parents. It was the language spoken by Muslims. Her parents were Muslim. She herself was a Muslim but converted to Christianity when she married her husband.

10. In the light of the objective evidence before us, which clearly states that Kirundi is an official language, which is spoken by all Burundians, we find that the appellant's inability to speak or even understand the language, means that she is not a national of Burundi. We take note of the fact that the respondent who has been in the United Kingdom for only three and a half years can understand and speak English rather well. Yet she cannot understand and speak the language of the country of her claimed birth, where she had lived and worked for over seven years at least. That is certainly not credible. Accordingly we find that the Adjudicator's conclusion that the respondent is Burundian is unsustainable even on the evidence that was before him.
11. We now look at the other credibility findings of the Adjudicator. The appellant told us that she did not know how long it took the helicopter to fly from Bujumbura to Entebbe. She also told us that she did not know the distance she was standing at away from the house when she saw the soldiers entering her house. If that was the case then she should have said so. The Adjudicator was working on the evidence given by her. Miss Brown submitted documentary evidence which states that the distance between Bujumbura and Entebbe is three hundred and eighteen miles. We agree with Miss Brown that unless the helicopter was travelling at six hundred miles an hour, it could not have covered that distance in half an hour. We also find it implausible that the appellant would have been standing one metre away from the soldiers and could have escaped from them. We agree with Miss Brown that the Adjudicator's findings with regard to these two issues were wholly unsustainable. Accordingly, we do not uphold the Adjudicator's determination. The appellant's appeal is allowed.

**Miss K Eshun  
Vice President**