

IN THE IMMIGRATION APPEAL TRIBUNAL

VN (Rebel activity: no background evidence) Uganda [2004] UKIAT 00100

Heard: 01.04.2004

Signed: 19.04.2004

Sent out: 22 April 2004

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2002

Before:

John Freeman (a vice-president)
Mrs R Faux JP and
Mr CP O'Brian

Between:

Secretary of State for the Home Department,
appellant

and:

claimant

Mrs L Singh for the Secretary of State

Miss M Plimmer (counsel instructed by Parker Rhodes, Rotherham) for the claimant

DECISION ON APPEAL

This is an appeal from a decision of an adjudicator (Miss DM Lambert), sitting at Bradford on 7 July 2003, allowing an asylum and human rights appeal by a citizen of Uganda. Permission to appeal was given on the basis that the adjudicator had failed to give proper consideration to the internal flight alternative. The vice-president who did so drew attention to the fact that the Lord's Resistance Army [LRA] does not operate throughout Uganda. The importance of this was that the claimant had based her case on serious violence, fatal to her husband, caused by "rebels" in the central part of the country; and the LRA were the only rebel group of whose activities (very serious in the north) there was any current background evidence before the adjudicator.

2. The claimant's case was that she and her husband lived near Masaka, about 75 miles south-west of Kampala. Since 1992 her husband had been involved, as were others in his family, with a rebel group: he eventually admitted as much to her, but would not tell her what it was called. In 2002 she persuaded him to take up a government amnesty by handing in his uniform (which apparently these rebels used), weapons and ammunition; but in October that year the rebels raided their house twice: they only escaped because they were sleeping in the outside kitchen.

The security forces did not arrive till the next day, and they had to flee to Mpigi. As shown on the map helpfully put before us by Miss Plimmer, this is a town between the capital, Kampala, and the international airport at Entebbe, no more than 20 miles from either; so about as central a place as there is in all Uganda.

3. However on 10 October 2002 the rebels raided their house in Mpigi. Both the claimant and her husband were dragged outside, and she was held at gun-point and had to watch him hacked to pieces. She fainted, and later woke up in a clinic without her children, who it seemed had been taken away by her husband's family. The claimant returned home; but after some time she was threatened with death by her brother-in-law. It seemed his family blamed her for her husband's death, because she had encouraged him to take up the amnesty. She sold her land for enough ready money to pay for her flight here. Since she came to this country, she has heard that other friends in the village have been killed by rebels, who were still after her for the equipment her husband had handed in to the authorities.
4. The adjudicator was persuaded by counsel for the claimant, in the absence of any presenting officer on the other side, to accept this account of events, though she herself noted that there was no evidence before her indicating that the LRA or other rebel groups operated at all in the area south-west of Kampala where the claimant lived. The adjudicator was at least realistic enough to point out that her decision might have been otherwise, if the Home Office had played their part in the proceedings by fielding a presenting officer to cross-examine the claimant.
5. The adjudicator reached her conclusions (§ 9.7) on the basis of the background evidence she had referred to at § 9.2. This referred to inability on the part of the government "... to provide adequate security even for so-called protected villages and IDP camps against large-scale rebel attacks". These attacks were of course those of the LRA in the north. That, together with the individual history she had accepted, made it clear to her that "... there is no operative system for protection sufficient to deter the kinds of atrocity feared by this Appellant and that she cannot effectively be protected anywhere in Uganda".
6. Miss Plimmer provided another set of reasons for supporting the adjudicator on the result she had reached on internal flight; but these too depended on the credibility of the claimant's individual account. She was well aware of the difficulties we faced in basing any decision of ours on an account which was completely unsupported by anything in the background evidence; but she stoutly maintained that the adjudicator's credibility decision, not having been challenged by the Home Office in their grounds of appeal, or – at least directly – put in issue by the vice-president who gave leave, could not now be re-opened, without at least an adjournment to allow her to prepare for that.
7. If the Home Office had challenged the adjudicator's credibility decision on the basis of the lack of background evidence of any rebel activity in recent years anywhere within hundreds of miles of Masaka or Mpigi, then we should have had no hesitation in allowing their appeal. The lack of background evidence to support an individual history is of course a question of degree: there may be countries where armed rebel activity, even midway between the capital and the main international airport, may possibly go unrecorded in published or other independent evidence. Given the volume of evidence of that kind which is available on Uganda, we have no doubt that it is not such a country.

- 8.** There is however only a difference in degree between what this adjudicator decided, and acceptance of an account of armed rebel activity, unrecorded in the press or official sources, at – say – Twickenham, or some such spot between central London and Heathrow. She seems not to have been unaware of the potential variance – to put it politely - between what she had decided and the real world. However, from what she said about the possibility of a different result if the Home Office had been represented, she seems to have felt herself constrained by the one-sided nature of the adversarial procedure before her to decide the case in the way she did.
- 9.** That was certainly a mistake – and, if it were necessary for us to reach a view on this, one of law. Adjudicators have a public duty to inquire into the facts before them, and not to accept an account simply because it has gone uncontradicted. This adjudicator’s point (§ 9.4) about the name of the rebel group not being “women’s business” might have had something to say about the claimant’s own ignorance of it; but nothing at all to show that the group had any real existence which had passed unnoticed by the world at large.
- 10.** Even if the Home Office fail to help adjudicators, as all too often, by fielding a presenting officer before them, they too have a duty to do what they can to correct decisions which are askew with the verifiable real world. We should not expect them to seek permission to appeal on mere “cross-examination points” which could have been pursued before the adjudicator (and it would likely be refused, as not raising any question of law); but failure to take account of the background evidence – or, just as important, the lack of any on the point in question, is certainly appealable, and should be directly challenged where material to the decision.
- 11.** The problem with which we are faced is caused by the combined failure of the adjudicator and the Home Office to take proper account of the lack of background evidence to support the claimant’s account. The vice-president who gave leave could not be expected to do more than note, as he clearly did, the effect of that on the internal flight argument. We find it hard to overturn the adjudicator’s decision as a whole, without her credibility findings having been properly challenged on appeal.
- 12.** On the other hand, the adjudicator’s decision on internal flight was challenged, and it was plainly wrong on its own terms, since it depended in large part on the background evidence of lack of protection by government forces for persons displaced by a set of rebels very much more formidable than these (if they existed), hundreds of miles away in a quite different part of the country. Miss Plimmer has invited us to uphold it, for a different set of reasons, but one which in the end depends on our also accepting the credibility of the claimant’s account.
- 13.** That in our view is a different matter. If the adjudicator’s decision could otherwise have been upheld as a whole on its own terms, the Home Office’s failure to challenge her findings on credibility might have been led to their appeal being dismissed. However, asking us to adopt those findings, in order to substitute a set of views on the availability of government protection in central Uganda which we regard as wholly at variance with the background evidence, is in our view a step too far.

14. Miss Plimmer's case on internal flight was that, even if the rebels themselves would not hunt the claimant down, her husband's family would do so – and she could not pass unknown, because of the registration requirement which had led them to find her in Mpigi. The only evidence of lack of protection against either rebels or in-laws – and the only evidence that the in-laws were remotely interested in pursuing this claimant outside their home area – is the attack in Mpigi itself. Miss Plimmer's complaint was that she was not on notice that the credibility of that might be under challenge for lack of background evidence to support it, which she might have been able to produce.
15. We regard this as a somewhat technical point, not to say a disingenuous one for a specialist practitioner of any experience to pursue, since the question of the country-wide existence of rebels had been clearly raised – if only in the internal flight context – in the grant of permission. However, we propose to put Miss Plimmer's position to the test. The adjudicator's decision must in any case be quashed on the internal flight point. Miss Plimmer suggested that the case might be "remitted" to the same adjudicator. We regard that suggestion as hopelessly unrealistic: Miss Lambert would find it hard to extricate herself from her own credibility decision, similarly at variance with reality, so far as the background evidence before her was concerned.
16. What we propose is a fresh hearing before another adjudicator. That adjudicator would be quite free to reconsider the claimant's credibility for themselves. If acceptable published or other independent evidence were put before them to support any significant rebel activity in either the Masaka or Mpigi areas from 2002 to date, then they could disregard our strictures on Miss Lambert's credibility decision, which would be revealed as more prescient than she could possibly have expected. If not, then they might well wish to take our views into account.

Appeal allowed

Direction for a new hearing ("remitted", not to Miss Lambert)

A handwritten signature in black ink, appearing to be 'JLF', written in a cursive style.

John Freeman