GK (Young Female _ Risk on Return) Rwanda CG [2004] UKIAT 00054

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 8th March 2004
Date Determination notified:
25th March 2004

Before:

The Honourable Mr Justice Ouseley (President)
Miss K Eshun

Between:

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

For the Appellant: Miss A Weston, instructed by Elder Rahimi Solicitors
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of an Adjudicator, Mr N W Renton, promulgated on 1st September 2003. By that determination he dismissed the Appellant's appeal against the decision of the Secretary of State to refuse asylum and leave to remain on human rights grounds.

2. The Appellant is a citizen of Rwanda, of Hutu ethnicity, who was born on 19th October 1986 and entered the United Kingdom illegally on 28th February 2003.

3. The core of her claim was that when she was eight in 1994, her parents and other family members had been murdered during the genocide. (There appeared to be some variation in her evidence as to whether she had witnessed the murder or whether she had been at someone else's house at the time.) After the Appellant had been orphaned in the genocide, she had been assisted by Ibuka, which is the Rwandan Genocide Survivors Organisation. They had placed her in the home of an elderly neighbour and had

paid for her education. She started in secondary school having attended a primary school in 2001 but left in 2003.

4. One incident about which the Adjudicator made no explicit finding other than, correctly, that the Appellant's evidence was confused and contradictory, related to whether she had been raped and if so, whether that had taken place in 1998 or 2002. The evidence as recorded by the Adjudicator from the interview, was that the Appellant had been attacked by three men in 1998 because she had accused their father of the murder of her family. Thereafter they had threatened her. In her evidence she said that she had been raped in 1998 by three people, because she had been responsible for their parents going to prison. They had told her they would never leave her alone; subsequently the men had been imprisoned for three years for the rape. At another point in her evidence the Appellant said that this incident had occurred on 8th November 2002 but then again said that that had been at a time when she had hidden in a loft when the men had come looking for her. The position appears to be that if the Appellant had been raped, nonetheless the three men who had been responsible for that had been sent to prison for three years for that offence.

5. The Appellant then said that the men had returned, threatening to continue looking for her in November 2002 when she had been hiding in the loft and had thrown her school books on the floor. She sought protection from the police but they had mocked her. Then she stayed with a member of Ibuka. In 2003 the people whom the Appellant had identified as the murderers of her parents had been released from detention, along with many other members of the Interahamwe. They had then started looking for the Appellant.

6. The Appellant had previously said that she had been raped by the three people because she had been responsible for their parents going to prison. It is not clear from the Appellant's evidence whether or not those people were the ones who had been responsible for the deaths of her parents. Be that as it may, after the incident in November 2002, there may have been two occasions when men had come to the Appellant's home; a senior member of Ibuka suggested that she go to Butare to stay with a friend.

7. The Adjudicator records the Appellant's evidence as being that she had "*not been allowed to register there*" and so had decided to leave the country. The people whom she had identified as the killers of her family had been released by the Government in January 2003. The Appellant left Rwanda for Uganda and did so with the assistance of the son of the elderly neighbour who had been looking after her following the death of her parents. It was this son who advised her that it was not safe in Rwanda and

helped her to leave the country via Uganda, where a priest paid for her journey to the United Kingdom.

8. The Adjudicator concluded that although the evidence about the rape was confused and contradictory, the core of the account, namely that she feared revenge from the two men and all their families, whom she identified as being responsible for the death of her parents and siblings, was consistent and therefore credible. The Adjudicator however concluded that the Appellant did not fear persecution for a Convention reason; those who had sought the Appellant and threatened her safety for identifying them as responsible for the deaths of her parents, were doing so out of a motive of revenge or to avoid successful prosecution. He also concluded that the fears of persecution were not well founded. The Appellant did not leave Rwanda for some 3-4 months after she made the identification and about a month after the men she had identified had been released. It was not clear where the Appellant had lived but the Adjudicator said that she came to no harm at all. He also concluded that there was a functioning police force which had received human rights training and a judicial system now being slowly rebuilt. He had seen no objective evidence to suggest that the RNP was predominantly Tutsi or that Hutus were denied help by the police. He was satisfied that she would have sufficient protection if returned to Rwanda; in particular she would have the help of genocide survivor groups such Ibuka.

9. The Appellant was refused permission to appeal to the Tribunal from that decision of the Adjudicator but statutory review was granted of the Tribunal's decision. Mr Justice Wilson said that by a narrow margin he was satisfied that the IAT may have made an error of law. He particularly referred to the fact that it was arguable that the Appellant's status as a minor without parents or siblings should have made the Adjudicator give independent consideration to her Article 3 rights in the event of a return. The Adjudicator considered Article 3, but as Mr Deller and Miss Weston agreed, he considered human rights in the light of the risk of harm to her and the degree of protection against that harm as a result of being a target. He did not consider any more general human rights grounds.

10. The particular points which have been argued before us relate to the way in which Article 3 in that wider sense has been approached. Although a number of other matters were raised, they were not seriously pursued; and in particular there was no significant challenge to the conclusions reached in relation to targeted persecution or risk under Article 3, as a result of the activities of the men whom she had identified as responsible for her parents' murder.

11. There was a general challenge by Miss Weston to the competence

of the representative of the Appellant before the Adjudicator. This was said to explain why there were deficiencies in the findings of fact by the Adjudicator and areas which he ought to have considered. It is not necessary for us to say very much about that. We do point out that the evidence in support of the claim that there was inadequate representation, is confined to the Adjudicator pointing out in his determination that the adviser had lost the file and wanted an adjournment, which the Adjudicator had rejected. There has been no other evidence as to deficiencies in representation or failures impacting on what the Appellant could say, and the previous representative has not been given, as ought to have happened if such allegations are to be made, the opportunity of responding to it.

12. Miss Weston pointed out that there were a number of areas where the Adjudicator had not made findings of the requisite degree of specificity in order to enable arguments to be pursued in relation to Article 3. For example, there was no finding as to whether the Appellant had been raped, with the implications which that might have for whether her return would be safe, or as to whether the Appellant would stay on the streets if returned or what risks she would face if she did so, or as to why Ibuka had suggested that she move away and what was meant by her not being able to register at Butare.

13. It is right that there are a number of areas of that sort in which the Adjudicator does not make clear findings. He makes the point in relation to the rape that her evidence was confused and contradictory. But the position in relation to that is that even if she had been raped, the Adjudicator points out that those responsible on her evidence were punished by a three year term of imprisonment. On that basis there was protection for her against that particularly unpleasant crime. The other failures in relation to findings relied on by Miss Weston do not amount to failures of such a nature that a proper conclusion cannot be reached in relation to the position as to risk on return, and it is to that issue to which Mr Justice Wilson referred when granting statutory review to which we now turn.

14. The Adjudicator had before him the CIPU Report of April 2003 and referred to some passages from it in his conclusions in relation to the risk of targeted persecution. That Report contains a number of references to the problems which are faced by children and female children in particular in Rwanda. In June 2001 there were 400,000 orphans, some 60,000 children aged 18 or under were heads of household, but the authorities did little to protect children from abuse and exploitation. There were some 7,000 street children in the country. There had been periodical round ups with many forcibly placed in a ministry centre. The girls in that camp especially were vulnerable. There had been a harsh

campaign in 2001 to rid the city of thousands of street children.

15. The Appellant's representative did not refer the Adjudicator to any other background material. Before us Miss Weston has asked us to look at the Human Rights Watch Report of March 2003. This is a Report which could have been and should have been before the Adjudicator if reliance was to be placed on it. It would not normally be right for the Tribunal to examine such material in the light of the recent decision of the Court of Appeal in E & R v Secretary of State for the Home Department [2004] EWCA Civ 49. However, the judgment of the Court of Appeal does not accept that in certain circumstances such material should be looked at. Miss Weston says that it is appropriate for us to look at it exceptionally in the interests of justice and bearing in mind the age and potential risk to the Appellant which she said that Report showed.

16. We take the view that this is a case in which it would be appropriate to look at that Report. It is not just that the Appellant is a minor and the position in the Human Rights Watch Report is relevant and potentially significant, it is that the position of children and a female child in particular was something in the CIPU Report to which the Adjudicator made reference in other contexts and it is a matter which we would respectfully say was something which the Adjudicator ought to have regard to as an obvious point relevant to the Appellant's case, even though it had not been taken in front of him. Had he looked at the position of children, there would have been matters which he would have had to consider carefully. We have had to consider those carefully and as that issue is before us, it is appropriate for us to have the Human Rights Watch Report which provides a greater degree of detail in relation to the position of children. It does not so much contradict the CIPU material as provide a greater degree of detail as to what the position is. We were referred by Miss Weston to a number of passages.

17. The particular emphasis of the passages to which she referred us were the lack of protection available to children who live with foster families or who formed child-headed households, or who lived on the streets. Their vulnerability arose from the risk of exploitation in foster families for their labour and their sexual vulnerability. Those in child-headed households lived a precarious existence without access to education or healthcare. Households headed by girls were most at risk. Sexual exploitation of them was rarely prosecuted and they were at risk of ostracism if they complained. Local governments and local communities had not been able to help. Child exploitation in domestic labour was a particular problem, with girls particularly vulnerable. Girls living on the streets were frequently subject to sexual violence and if they were offered a place for the night it was likely that that would

be a precursor to unwanted sexual attentions.

18. The submission made in the light of that material by Miss Weston is that the matter should go back to an Adjudicator for fuller findings of fact to be made against which conclusions could be reached as to the risk generally under Article 3 to the Appellant returning, not as a target, but as a minor female. Although there may be a Secretary of State policy of not normally returning someone who is a minor to their country or at least not doing so without making special arrangements, it is necessary for us to consider the position without taking that into account. We have to assume for these purposes that if the appeal is dismissed, then the Secretary of State will, or at least will feel free to, return the Appellant. We have not been told clearly that he would not and he seeks the dismissal of the appeal.

19. There are however, some striking features about the position of this Appellant. The Appellant on her evidence became an orphan in 1994 aged eight. She was assisted by Ibuka, she was placed in the home of an elderly neighbour whose son assisted her eventually to leave Rwanda. Although she says that in 1998 she was raped, the judicial system provided some form of protection in that those who were responsible for that act went to prison. She gave no evidence of any difficulties which she experienced between 1994 and 1998. After the rape and the men had been sent to prison, although she said that there had been verbal threats from these men, nothing had happened to her until 2002 when she had been beaten. This may or may not be a separate incident from the time when she was describing the rape as having taken place in 2002. In November 2002 people had come looking for her but she had then been able to go to another part of Rwanda, although she had not stayed there. All the evidence that she gave related to whether she was targeted by persons whom she was seeking to identify. There was no evidence that any of the general matters which were referred to in the CIPU Report in relation to children or in the Human Rights Watch Report in relation to children were matters which she had ever experienced during the course of the eight or nine years during which she had been in Rwanda as an orphan from the age of eight.

20. It is for the Appellant to demonstrate that upon her return she would be at risk of a breach of her rights under Article 3. On the evidence which she has produced as to what has happened to her, she has received assistance from a number of members of Ibuka, both in telling her what she might do, making suggestions as to where she could go and offering her assistance in leaving, police protection through prosecution of her assailants, and she has been able to go to another part of Rwanda and survive there with a friend. It is therefore the case that the material from the Appellant shows that, apart from the risk of being targeted by

those whom she had identified, that there was no additional general risk applicable to her as a returning minor female.

21. If she were returned now she would be just about seventeen and a half years old and would be going back to a country where she had survived as an orphan for many years without experiencing the problems to which HRW refer. It was suggested that the fact that she was targeted meant that she could not seek the normal support which she had had in the past from friends or from those who are members of Ibuka. But the evidence shows, and there was no challenge to this, that there is for the purposes of Horvath and both Conventions a proper degree of protection available. She could seek that support again. Indeed, it would appear from the desire of the Appellant to stay in the United Kingdom that she has no particular interest anyway in pursuing those whom she says she had identified as the killers of her parents.

22. In those circumstances, it is right for the Adjudicator to have focused on whether there would be risk from those groups such as to engage the Conventions. He concluded that they did not. Now we have examined the question of whether there is a more general Article 3 case, we conclude that there is no more general case against returning this minor female. The failure of the Adjudicator to address that latter point does not require the Adjudicator's decision to be remitted for further findings of fact.

23. For those reasons, this appeal is dismissed.

24. On the statutory review, Mr Justice Wilson ordered that the costs be reserved to the Tribunal. The Tribunal has a power to deal with costs under the provisions of Rule 25 of the 2003 Rules. Miss Weston does not seek an order that the respondent should pay the costs of the statutory review, but instead seeks an order for the detailed assessment of the statutory review costs for the purposes of the LSC. Whether sitting in my capacity as President or sitting by a remarkable transformation as a Judge of the Administrative Court, I give the order which Miss Weston seeks, namely that there be a detailed assessment of costs.

MR JUSTICE OUSELEY
PRESIDENT