IN THE IMMIGRATION APPEAL TRIBUNAL

TM (Home office Conviction - Consideration of) Congo- Democratic Republic of [2004] UKIAT 00025

Heard: 02.02.2004
Signed: 25.07.2013
Sent out: 13/02/2004

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2002

Before:

John Freeman (chairman)
and
Colin Thursby

Between:

appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Miss M Canavan (Refugee Legal Centre) for the appellant
Miss C Hanrahan for the respondent

This is an appeal from a decision of an adjudicator (Ms PS Wellesley-Cole), sitting at Taylor House on 28 May 2003, dismissing an asylum and human rights appeal by a citizen of the DRC [Democratic Republic of the Congo]. Permission to appeal was given on the basis that the adjudicator's findings, or lack of them, on article 8 were open to challenge.

2. Chronology

01.06.94	appellant arrives in this country
2.6.94	claims asylum
15.11.96	TC ♀ born to SC (British citizen) by appellant
3.2.97	asylum first refused
28.02.97	marries SC
early '99	separates from SC
06.05.99	first appeal hearing
27.05.99	Home Office decision treated as withdrawn by adjudicator
10.99	sent to prison for robbery
05.01	released and interviewed on asylum claim
summer	takes up with PL (citizen of Angola)
26.10.01	representations on Human Rights Convention
15.12.02	fresh refusal

17.01.03 DL ♀ born to PL by appellant: PL later gets ILR
28.05.03 second appeal hearing
16.06.03 decision under appeal sent out

3. The adjudicator took account of the situation, so far as the appellant's family life with his Angolan paramour PL was concerned, and there is no particular complaint about her finding that PL and their small child DL could perfectly well go and live with him in the DRC. However her elder child R does see his father here, so there would be some interference with family life there. What is more, though the appellant no longer has any family life to be interrupted with his British still-to-be-ex-wife SC, he not only sees the daughter (TC) he had with her, but gets a good report from SC (letter 16 April 2003) from the help he gives with TC. So interruption of that relationship would be a serious interference with family life.

4. The adjudicator did not give any particular weight to these points, on the basis that the appellant has not been with PL very long (though she did note they had already had a child together); and there was no evidence of any financial support from him for either of his children. They are perfectly valid points; but not the whole story. On reflection, Miss Hanrahan did not feel able to argue that permanent return of this appellant to the DRC would be a proportionate response to the needs of immigration control; so the argument came down to whether it would now be reasonable to require the appellant to return to the DRC to apply for a visa to rejoin PL as his unmarried partner.

5. Some considerations put forward against that can at once be excluded. No difficulties in the appellant getting DRC travel documents are relevant, even if those mentioned in Home Office bulletin 1/2003 apply to those returning voluntarily (at least to speed their reunion with their loved ones back here). That is because, as should have been obvious, removal was not likely to happen in the first place without those travel documents. Nor are any likely difficulties in getting a visa, once back in the DRC, of any particular relevance: see *per* Lord Phillips MR in **Amjad Mahmood [2002] Imm AR 229**.

6. Others are slightly more ingenious. Various Home Office policies are relied on, from the one which it is said would normally have ensured the appellant got exceptional leave to remain as an unaccompanied minor, from the time when he made his claim till his 18th birthday (now long past), to the "10-year policy" which allows to remain those who have been here that long: he has not, and it only applies to those who have been here legally throughout; others must wait for 14 years. None of them would have let this appellant stay, either at the date of the decision or now. All they do is show that lengthy residence may mean that removal is no longer considered essential to immigration control, which is a basic enough point for us to accept without being referred to Home Office policies which do not apply in the individual case. Such policies should not in our view be referred to, unless the individual's own situation actually brings him within them.

7. What this case is now really about is whether, after this appellant has spent 9½ years in this country, it would serve any useful public purpose to require him to go back home and get a visa to return to the family life he has built up here. We can see that, where there is a relatively short time in this country, with a correspondingly new relationship to be considered, not requiring such a return would be allowing the claimant (see **Mahmood**) in effect to "jump the queue" by

achieving a result which those who did things in an orderly way might have had to wait some time for.

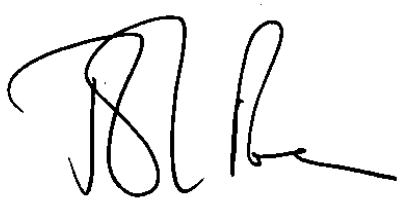
8. We have to take our own view of the situation, for the reasons given at **3-4** above. The time in our view has long past where any question of "queue-jumping" might apply in this case. This appellant, who has served a sentence of imprisonment for robbery, is far from the most desirable of prospective residents of this country. As Miss Canavan reminded us, that also applied to **Boultif [v Switzerland (2001) EHRR 50]** and **Moustaquim [v Belgium (1991) 13 EHRR 458].** Those rather unsavoury individuals, however, had much more long-standing connexions with their adoptive countries, on which they succeeded in their applications to the European Court of Human Rights.

9. What the Swiss and Belgian authorities had done in those cases was to take a view that the subjects ought to be excluded, because of their criminal convictions. That could have been done by the Home Office in this case: by the time they got round to drafting their refusal letter of 15 February 2002, this appellant had already served his sentence. There is however no mention of it at all. (There is one paragraph setting out his claimed history in the DRC, then a long passage of standard material about that country, then five lines claiming that "careful consideration" has been given to the effect of the Human Rights Convention, but without any reasons at all to show that was so.)

10. In our view the way the Home Office dealt with this case was little better than a mockery of the public interest. If they had taken a point on the conviction properly (and attached the relevant material, in particular a transcript of the judge's sentencing remarks), then it might well have been open to the adjudicator, and to us, to uphold it as a reasonable response (see **Edore [2003] EWCA Civ 716**) to the balancing exercize required by article 8.2 of the Human Rights Convention, whatever the appellant's family situation; but there is no sign of them conducting any such exercize at all. They ought in the public interest to have considered this case, including the effect of the appellant's criminal conviction, while he was in prison between October 1999 and May 2001.

11. Taking our own view, as in this case we must, of the rest of the situation, we have no doubt that at this stage it would be disproportionate to the legitimate purpose of immigration control now to require this appellant to return to the DRC and get a visa to come back here. This is not to be taken as any kind of a green light for anyone to remain who has spent any lesser time here than the ten or 14 years referred to in the Home Office policies, if only they have some extant family life in this country. If the Home Office give sensible consideration to future claims of this kind, they are likely to be upheld under **Edore**. If adjudicators have to take their own view of them, then there should be no challenge to where they strike the balance, so long as they give reasonable weight to all the relevant factors.

Appeal allowed



John Freeman (chairman)