

IMMIGRATION APPEAL TRIBUNAL

Heard at Field House

On: 16 October 2003

Determination promulgated: 30 October 2003

Before:

Ms K Eshun
Ms S M Ward

Appellant

And

Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Sierra Leone, appeals with leave against the decision of an adjudicator, Mr K S H Miller promulgated on 24 April 2003 and dismissing her appeal against the Respondent's decision of 5 August 2002 to refuse asylum.
2. At the hearing before us the Appellant was represented by Ms P Ahluwalia and the Respondent was represented by Ms Sigley, Home Office Presenting Officer.
3. The Appellant's claim was that, from 1997 she was a member of the RUF in Sierra Leone. In 1999 she was captured by a rival faction and detained until she managed to escape. She was ill treated. After her escape she was arrested by members of the Civil Defence Force on suspicion of having been involved with the rebels. She escaped from them too. Her husband had campaigned with her for the RUF party but he had been shot dead by members of the Civil Defence Force. Her daughter had been mutilated by the rebels and died. Her son was missing. The Respondent did not believe that the

Appellant had been involved with the RUF as she claimed. He rejected her claim. The Adjudicator, on appeal, found the central aspects of her story to be “wholly incredible” and dismissed her appeal.

4. Before us Ms Ahluwalia submitted that the Adjudicator has been incorrect to go ahead with the hearing after the Appellants representatives had requested an all female court. He had failed to follow the Gender Guidelines, she submitted. The evidence of Dr Turner showed that the Appellant was disadvantaged by not having a female court as she had requested. Furthermore, she submitted, the Adjudicator had failed to cover the rape of the Appellant in his determination. He did not make any findings in respect of this central aspect of her case. He had dealt with her involvement with the RUF but not with what occurred to the Appellant and her family. Importantly he had made no findings in respect of her scarring; this was a significant matter because the scarring was a risk for her on her return. It marked her out as a person who had aided the rebels.

5. Ms Sigley submitted that there was no obligation on the IAA to provide an all female court. Furthermore there was no evidence before the Tribunal to show that the Appellant had been in any way prejudiced by having her appeal heard by a male adjudicator. She had not been questioned about the rape at the hearing and there was no evidence to show that this was because there was a male adjudicator. The Adjudicator had made clear findings about the rape in the course of his determination – paragraphs 15 (iii) through to (v). He had concluded that it was not credible that the Appellant would have joined the RUF if she and her family had been treated in the way she alleged. Dr Turner did not come to any conclusion one way or the other about the rape. He had said in his report that this was a matter for the adjudicator. The doctor’s evidence did not assist the Appellant in this regard. It was clear that, in any event, the Adjudicator had considered the doctor’s report; particularly he made mention of it in paragraph 16. Regarding the scarring, Ms Sigley conceded that the Adjudicator had not set out any conclusions specifically on this subject. However, he had clearly rejected the central plank of her story and therefore the scarring made no difference to the outcome of the appeal.

6. Ms Ahluwalia, in reply, submitted that the scarring was important because it marked the Appellant out as rebel. In response to a question from the Tribunal, however, she said that neither she nor her client knew what the letters “AKK” tattooed on the

Appellant's arm meant. She directed us, however, to page 233 of the Appellant's large bundle which referred to an incident when RUF rebels had rounded up some 40 young people (mostly men) and cut the initials "RUF" into their chests with a razor blade. Girls had suffered this treatment and had been raped by the rebels. Ms Ahluwalia also submitted that it would breach the Appellant's Article 8 rights to return her to Sierra Leone. She had no family there any more and the medical report showed that her health would be prejudiced by her return.

7. We have carefully considered Ms Ahluwalia's submissions and the grounds of appeal and have concluded that there is no merit in any of them. This may be an appropriate opportunity for the Tribunal to set out its views regarding requests for "all female" courts. There is nothing in the Procedure Rules or elsewhere which requires the IAA to accede to requests for an "all female" court simply on the basis of such a request. Nor is there anything in the Gender Guidelines to require the IAA to grant such a request. We should point out too that it is important to consider the practical difficulties involved in acceding to such requests – it can present considerable organizational and administrative difficulties to ensure that the adjudicator, court usher, interpreter and Home Office Presenting Officer are all female. That having been said, we wish to state that there may on very rare occasions be circumstances where there is a real risk of a lack of a fair hearing caused by the gender composition of the persons in the hearing room. However we feel that such circumstances will be rare. In most cases we would expect that even if a female applicant were to be embarrassed about giving evidence regarding a sexual assault in the presence of one or more men, it would usually be possible for such evidence to be given in written form. As regards cross examination in such circumstances, the Presenting Officer may agree not to cross examine the appellant or may agree that questions could be put to the appellant in writing. It will be a rare occasion when justice cannot be served by such procedures. If however a presenting officer insists upon oral cross examination in such circumstances and it can be shown that his/her case would be prejudiced to a material extent without it, he/she should be entitled to do so unless there is credible evidence from a person suitably qualified to give an opinion that the appellant concerned would be likely to suffer some significant adverse effect to her health or well being if questioned in an environment where one or more men are present. Even if such evidence is available prior to the hearing and the personnel involved include one or more men, it does not necessarily

follow that the lack of an all female court should prevent the hearing from proceeding. An adjudicator may in such circumstances continue without cross examination of the witness although the lack of such cross examination would be a matter to take into account when considering the weight to be attached to that evidence.

8. Representatives should not assume that requests for all female courts will or should be met. In any event, anyone making such a request should not do so without cogent evidence provided in advance to the IAA to support such a request. . A simple statement in a medical report that a female appellant might have difficulty in giving evidence without an all female court will not usually be enough. A lot of people, male and female, find giving oral evidence a difficult, embarrassing or stressful experience. That is a matter which can be taken into consideration by an adjudicator when evaluating the evidence before him or her. It is not in itself, in the normal course of events, sufficient to dictate the composition of any tribunal from a gender perspective. An applicant, of whatever gender, must expect to be required to provide details of his or her claim and to have his or her story tested. Whilst it is understandable that an applicant of either gender may find it difficult to relate certain sensitive or embarrassing details of his or her claim, if that person wishes such details to be taken into consideration such details must be related to the tribunal hearing the matter. On most occasions providing such details in written form should be sufficient to overcome such embarrassment.

9. In this case it would appear that the Appellant's representative asked for an all female court but one was not provided. Thereafter the hearing proceeded as normal. There is evidence before us from the Appellant's representative at that hearing in the form of a written statement; however, significantly that representative makes no complaint in that document of any prejudice to her client during the course of the hearing by the male adjudicator. There is simply no evidence before us to show that the presence of the male adjudicator in any way resulted in the lack of a fair hearing for the Appellant. There is no evidence of any kind to show that the representative was in any way hindered by not having an all female court or was unable to ask any particular questions because a male adjudicator was present. Indeed the only evidence Ms Ahulwalia can point to is the statement in Dr Turner's report that "gender sensitivity is crucial for a balanced hearing". His report continues:

“ She seems to have found it hard in the past to talk about the alleged rape....Therefore I would submit that it is particularly important that the setting in which her evidence is to be heard is a setting in which there are no extraneous barriers to disclosure.. In general, however, I think she will find it easier to talk about her experiences in the presence of women rather than men”

Those statements fall far short of providing medical evidence in support of the Appellant's claim that she was prejudiced by the lack of an “all female” hearing. Nor are they of any real use to us without any evidence from those at the hearing (for example, the Appellant and/or her representative) that the doctor's concerns proved to be correct – namely that she was in fact unable to give a full account of her story because she was inhibited by the presence of men. Furthermore, in our view, the Appellant would have to show that having been unable to give a full account of her story in some way resulted in the lack of a full and fair hearing of her appeal. The evidence in this case goes nowhere near demonstrating that. Indeed there is nothing to show that this lady did not get a full and fair hearing or that she felt inhibited by the presence of a male adjudicator from presenting her case.as she would have wished.

10. We are particularly concerned that the grounds of appeal refer to the Adjudicator's refusal of an adjournment as a breach of natural justice. They also allege that the Adjudicator failed to have regard to the IAA Asylum Gender Guidelines. At the hearing Ms Ahluwalia was unable to show us how the lack of an all female court in this instance was a breach of natural justice. Nor was she able to point to anything in the Gender Guidelines to support her claim that the adjudicator should have adjourned to enable an all female court to be composed.

11. Turning to the matter of the Appellant's scars, the only evidence before us was that the Appellant has three letters “AKK” tattooed on her arm. Neither she nor her representative knew what these letters mean. Nevertheless Ms Ahluwalia submitted that there was a real risk that these letters identified her as a rebel supporter, and that there was a risk arising out of this on her return. Without any evidence at all to support this claim, we find there is no merit in it. Who or what AKK is or was we do not know. We

saw evidence that rebels from RUF had been known to cut the initials “RUF” onto the chests of villagers, but in this case the Appellant had not had such letters cut into her. What she had was a blue tattoo with the letters “AKK”. We were also asked to conclude that a scar on her ear was a risk to her. We found the scar almost indiscernible, and there is no evidence that this scar would present a risk that she would be identified as a rebel on her return and subjected to harm as a result.

12. Ms Ahluwalia also argued that this lady’s Article 8 would be breached by returning her. However this was not part of the grounds for appeal and no leave had been sought to amend the grounds either before or at the hearing. In any event, we have concluded that there is no merit in this claim. The medical evidence does not show that her medical condition is such that return would do significant harm to her health which could not be treated in her country. It shows that she has been diagnosed as suffering from Depressive Disorder and Post Traumatic Stress Disorder. However, the doctor’s conclusions are in the alternative in his report. If her story is to be believed, he stated, there may be a significant deterioration of mood with a moderate risk of suicide. If, on the other hand, she is not to be believed, it is likely she would become more depressed on being returned but there would be no severe suicide risk. The adjudicator’s conclusion was that her story was not credible. On that basis, the medical evidence shows no reason to believe that to return her would impact adversely on her health in a way which could not be treated in Sierra Leone and which would make her return a disproportionate response in this case.

13. This appeal is dismissed

Ms S Ward