

IN THE IMMIGRATION APPEAL TRIBUNAL

**Decision Number: BM (HIV - Article 8 - Proportionality) DR Congo [2003]
UKIAT 00055**

Heard: 24.07.03

Signed: 25.07.13

Sent out: 28.08.03

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)
and
Mr A Smith

Between:

appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Mr NS Ahluwalia (counsel instructed by Glazer Delmar) for the appellant
Miss K Evans for the respondent

This is an appeal from a decision of an adjudicator (Mr J Bailey), sitting at on 11 October 2002, dismissing an asylum and human rights appeal by a citizen of the Democratic Republic of the Congo [DRC]. Leave was given on the basis that the adjudicator might not have

- a) dealt with part of the appellant's case; and
 - b) taken a proper view of the psychological evidence about him.
2. The part of the appellant's case which it was said had not been dealt with was his claim to be at risk, independently of his experiences in the army, which formed the main plank of it, because of his uncle's association with the *Union pour la Démocratie et le Progrès Social* [UDPS] opposition party. His case on this point was that he had not taken any active part in his uncle's, or the UDPS's activities: in fact (see witness statement § 7) he had taken care to be out while they were going on, in case he got into any trouble which might prejudice his

studies. It followed that he never had got into any UDPS-related trouble before his call-up; but he did claim that he had been victimized while in the army because of his uncle.

3. There is material in the background evidence which suggests that persons known to be associated with the UDPS may in some cases be at risk on return. It is by no means clear that counsel for the appellant before the adjudicator (not Mr Ahluwalia) put this part of his case properly to him. We are inclined to think not, because the adjudicator did deal in some detail at § 11 with possible risk to the appellant as a failed asylum-seeker. However the only findings he made on this part of the appellant's individual case were that he "He would not be a person wanted by or of any interest to the authorities ... he does not have a background in the DRC that will leave him at risk ...". The UDPS case did arise on the individual material before the adjudicator, and in view of the background evidence, it needed to be dealt with, which the adjudicator did not do.
4. That being so, the obvious course, taking this point alone, seemed to us to be to send the case back to the same adjudicator for him to deal with it. Miss Evans agreed to that; but Mr Ahluwalia did not, because of the other point (b), on which leave had also been given. The adjudicator's conclusions on that are at § 9.2:

As to the psychologist [sic] report, the conclusions of that report are based on self reporting by the Appellant. As I found the Appellant's story to be a falsehood I can put little weight upon the report which has in my view been induced by manufactured statements by the Appellant to the psychologist.

5. While the adjudicator would undoubtedly have been fully justified, if the appellant's story about his military imprisonment and subsequent escape had stood alone, in regarding it as so floridly bizarre as to be quite incapable of belief, Mr Ahluwalia is equally right in saying that, so far as his method is concerned, the adjudicator effectively put the cart before the horse. If a report (psychological or psychiatric, or of any other kind) is put forward as capable of affecting the decision on credibility, it makes no sense to reach a credibility decision before dealing with it, and then doing so on the basis that the decision has already been taken.
6. The weight to be given to such a report is quite another matter: since the adjudicator had taken a wrong approach in dealing with this one, we told Mr Ahluwalia that we should consider its merits for ourselves, with a view to seeing whether its conclusions really should have affected the adjudicator's credibility decision. The report, dated 30 September 2002, is by Mr C McNulty MSc: his professional qualifications are as a chartered clinical psychologist, and a member of the British Psychological Society, and he clearly has significant clinical experience.
7. Mr McNulty's findings were as follows: the symptoms the appellant described were consistent with moderate clinical depression and were consistent with the life-history he had given; their onset appeared to coincide with his detention and mistreatment. He also displayed some symptoms consistent with a degree of PTSD [post-traumatic stress disorder], also in the moderate range and consistent with his account of mistreatment. The main conclusion drawn from those findings was that, in the context of the appellant's fear of being killed on return, his mental state would get much worse if he were refused asylum, and he might harm himself. That assumed that the appellant

really did have a fear of that kind; but the findings themselves are capable of being relevant to that question, if only because they are put forward as consistent with the history he gave.

8. As has often been said, the essential feature of any piece of expert evidence is that it should provide the tribunal with some means of assessing its reliability, rather than simply stating the giver's qualifications and inviting whatever he says to be taken on trust. Mr McNulty does this to an extent in giving his conclusions on the appellant's cognitive ability, for which he had used the Ravens Progressive Coloured Matrices (RPCM). He gives a general view of the test's purpose and merits, then concludes

On this occasion [the appellant] made only three errors. This performance is consistent with that which would be predicted of a person of at least low average cognitive ability (IQ) and is not indicative of any significant level of mental impairment.

While it would have been better to explain what mistakes the appellant had made, that does provide some sort of score on a recognized test, and relate it to the normal range.

9. When it comes to the appellant's depressive symptoms, there is no reference to any test at all: yet, as all who are familiar with these cases are aware, they do exist. The PTSD symptoms are described with reference to the DSM-IV criteria, which are attached to the report; yet there has been no attempt to relate each feature to any of the detailed heads of the criteria, let alone to give any score on each, or to relate the result to the normal range. It is quite impossible as a result for the appellate authorities to reach any independent conclusion as to the validity of Mr McNulty's conclusions, so far as they were based (as the adjudicator pointed out) on information related by the appellant himself.

10. Mr Ahluwalia did suggest that these were sufficiently based on Mr McNulty's own clinical observations. He cited what Mr McNulty said about the appellant appearing to suffer from increased levels of irritability and tearfulness. If that comment stood by itself, there might be something to be said for this point; but in fact it comes right in the middle of the appellant's own history of his symptoms. The only part of Mr McNulty's account of the interview between them which clearly stems from his own observations, rather than what the appellant told him, is the first paragraph:

In interview [the appellant] seemed to be trying his best to answer my questions accurately and he was very cooperative. He appeared to have no difficulty in following the translation, which was in his native Lingala.

11. The result is that we do not consider that Mr McNulty's report, if given its proper weight in the right place, ought to have affected the adjudicator's credibility findings. We are conscious that adjudicators are very often faced with such evidence. In our view they simply cannot be expected to spend the time on it in each case which we have done. It is settled law that fact-finders (whether juries or professional judges) do not need, and should not be required to hear expert evidence on the credibility of a witness whose relevant characteristics fall within the normal range. In our view, unless a consultant psychiatrist or clinical psychologist is able to give detailed and objectively verifiable reasons for regarding the appellant as outside the

normal range, and explain how far outside the normal he is, then adjudicators should not be required to take their evidence into account in reaching their credibility decision.

12. Whether that is right or wrong, it is quite clear that the adjudicator's credibility decision on this appellant's history in and after escaping from the army must stand. On his claim, with which the adjudicator has not dealt, to have been associated, if only as a family member and while in the army, with his uncle's political activities, different considerations may arise. It will be for the adjudicator to deal with that on the facts, and to take a view on the consequences on the background evidence of whatever findings he makes. For that purpose only, we make the direction below.

Appeal

Direction for resumed hearing ("remitted", to Mr Bailey)

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

John Freeman (chairman)