

JH
Heard at Field House
On 7 November 2002

APPEAL NO HX21529-2002
BK (Risk-Return-General) Sierra
Leone CG [2002] UKIAT 05842

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

24 December 2002

Before:

Mr D K Allen (Chairman)
Mr N Kumar, JP
Mr J B Wilson

Between

Brima Kamara

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Sierra Leone who has been granted leave to appeal to the Tribunal against the determination of an Adjudicator, Mr David Bartlett, who dismissed his appeal against the respondent's decision of 17 November 2001 refusing to grant leave to enter and refusing asylum.
2. The hearing before us took place on 7 November 2002. There was no attendance by or on behalf of the appellant. Ms A Holmes appeared on behalf of the respondent. We are satisfied that notice of hearing, setting out the time, place and date was sent out by first class post to both the appellant and his representative on 29 September 2002, and accordingly consider that it is proper for us to go ahead and hear the appeal.
3. The grounds of appeal take issue with the Adjudicator's credibility findings. It is argued that the findings in paragraph 9 contradict the findings in paragraph 16. In paragraph 9 the Adjudicator accepted the

appellant's evidence as given to the immigration officer which he adhered to in evidence, the effect of which was that he was required under duress to work for a rebel Colonel. At paragraph 5 of his determination he noted the evidence of the appellant during the appeal which in view of the new situation in Sierra Leone his fear was that if he were returned he might be regarded as a person who had collaborated with the rebels and that would result in him being in danger. At paragraph 16, with regard to this aspect of the appellant's claim, the Adjudicator considered his evidence vague, lacking in detail and unconvincing and that he was only able to say that he had heard that a report had been made to the police, but if such a report had been made there was no evidence as to its nature or details or the likely action the police might take. At paragraph 12 the Adjudicator also considered the risk of persecution on account of being regarded as having collaborated with the rebels. The Adjudicator found the evidence in this regard to be improbable and not credible. He noted that the objective evidence showed that a large number of people in Sierra Leone were placed in the same position as that of the appellant, of being required to work under duress for the rebels, but that he had not been shown any evidence indicating that people who assisted the rebels under duress were subjected to any harassment or ill treatment. The objective evidence only indicated that only actual ex-rebels on occasions faced difficulties. The Adjudicator therefore, in our view quite properly, rejected the essence of the appellant's claim as set out at paragraph 5 of the determination.

4. We have read the account of events as given to the immigration officer which at paragraph 9 as indicated above the Adjudicator proposed to accept. Insofar as findings at paragraph 16 are adverse to the appellant's credibility in this connection, i.e. the statement that it was unlikely that the rebel Colonel would have legally held the diamonds nor that he would have changed into civilian clothes, travelled into Freetown and reported the diamond theft, then we consider that there is force in the grounds of appeal. There is a contradiction in the Adjudicator's credibility findings to that extent. However the claimed fear of being regarded as a collaborator with the rebels was not made at interview. As we have noted above we consider the Adjudicator's adverse credibility findings in that regard are sound. Also as regards the claimed risk of arrest on return, that again was not something mentioned by the appellant at interview. When asked there why he was afraid he said that Sierra Leone was not safe as yet. As we have noted we consider that there are contradictions in the regards we have set out in the Adjudicator's credibility findings. These however relate to whether or not the rebel Colonel would have held the diamonds legally and whether or not he would have changed into civilian clothes and travelled into Freetown to report the diamond theft and in our view these are not matters which go to the heart of the appellant's claim. Accordingly though we reiterate our agreement with the criticism of the Adjudicator's findings in this regard, we do not consider that this is material to the determination of the essential issues in the appeal. In this regard we

note also ground 2 which rightly criticises the Adjudicator for employing the wrong standard of proof in his assessment of the likelihood that the Colonel would have gone to Freetown as a civilian to report the theft of the diamonds. Again however we consider that this is not a matter which is material to the essence of the appellant's claim as put to the Adjudicator.

5. The remaining issue is that of risk arguably not addressed by the Adjudicator in his home area of Makeni from RUF rebels. This is ground 3 of the grounds of appeal. The grounds point to aspects of the US State Department Report for 2001 as indicative of the risk on return in this regard. Specifically the claim is that the Adjudicator did not address the risk that the appellant feared in his home area of Makeni from RUF rebels who had previously forced him to work for them and from whom he had then escaped stealing their diamonds. In this regard we bear in mind that the evidence cited in this regard is from the US State Department Report for 2001 which of course significantly pre-dates the subsequent very significant improvement in the situation in Sierra Leone involving such matters as a ceasefire agreed between the government and rebels which came into force, the existence of a large United Nations Peacekeeping Force in Sierra Leone and the presidential elections for May 2002 together with the disarmament and demobilisation and re-integration process. The Adjudicator also noted at paragraph 3 the fact that the government had recently regained control over a number of major towns including the one in which the appellant resided. It is in this context that such matters as the mention in the State Department Report for 2001 and unconfirmed reports in March (2000 as it must be) that RUF fighters forcibly conscripted civilians in Makeni into the PORO society, one of several secret societies in the country tied to native beliefs and rituals, and that civilians reportedly were forced to join the RUF, has to be seen. Likewise the mention of RUF rebels manning roadblocks to extort money and goods from travellers in the area of Makeni has to be seen as being part of the historical background rather than reflecting the situation as of today. There is mention of RUF members killing ex-combatants who had fled the group although the number of reports declined significantly during the year, and similar significant decline is noted in the RUF rebels abuse of civilians. Other matters referred to in ground 3 relate to events in Tongo, Mansumbiri and the Kono district.
6. As against this we have considered the April 2002 CIPU report on Sierra Leone. Among other things this contains a section on the Revolutionary United Front (RUF). We note from paragraph 5.46 that Medecins sans Frontieres were allowed into RUF-held areas in March 2001 and MSF carried out what it described as an "exploratory mission" to, among other places, Makeni and re-started activities at the Makeni hospital in March 2001. The RUF was still reported to use forced labour in the areas it held especially in the diamond mining areas and also to abuse civilians, this again relates back to March 2001. We note from paragraph 5.49 of that report that the fifth tripartite meeting of Sierra

Leone's joint committee on disarmament, demobilisation and re-integration convened in Makeni on 18 September 2001 and that these talks involve the government of Sierra Leone, UNAMSIL (the United Nations Mission in Sierra Leone which is an international peacekeeping force deployed to Sierra Leone mandated by the UN Security Council) and the RUF. This group meets periodically to review the implementation of decisions on the disarmament, demobilisation and re-integration process together with issues hampering its progress and next steps. It is said that the meetings are also reviewing issues related to national recovery and stabilisation and that as a result of this meeting the CDF (the Civil Defence Force which was organised to resist the RUF) and RUF propose to create a conflict resolution committee to be made up of members nominated between the two groups and which will attempt to redress local differences between the two groups and discourage revenge attacks. In the light of this evidence, and in particular in the light of the most up-to-date evidence, we consider that although the Adjudicator did not directly address the risk referred to in ground 3, it has been possible for us to do so and we find that had the Adjudicator considered this properly on the up-to-date objective evidence he would have found that there was no real risk to the appellant in that regard.

7. In conclusion therefore, although we do not entirely uphold the Adjudicator's adverse credibility findings, we consider that those matters which display inconsistent reasoning are not matters which are germane to the central issues in this case and even if one took the more favourable finding with regard to the relevant matters claimed before the immigration officer, these would not give rise to a real risk on return. Likewise we do not consider that the point at which the Adjudicator misstated the proper standard of proof relates to a matter material to his determination and did not flaw the overall sound findings on risk on return. Finally we have been able to address the issue not covered by the Adjudicator set out in ground 3 and have concluded that there is no real risk on return in that regard either.
8. This appeal is accordingly dismissed.

D K Allen
Vice President

