

(Risk- Mixed Ethnicity, Tutsi) Democratic Republic of Congo CG [2002] UKIAT 03061

## IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 3 May 2002

Date Determination notified:  
25 July 2002

Before:

**Mr H J E Latter (Chairman)**  
**Mrs R Faux**

Between:

**PITSHOU EKENGA SASI**

**APPELLANT**

and

Secretary of State for the Home Department

**RESPONDENT**

### **Appearances:**

For the Appellant Mr P Gunasekara of Counsel, instructed by Shanthy & Co,  
Solicitors

For the Respondent Mr P Deller, Home Office Presenting Officer

### **DETERMINATION AND REASONS**

1. This is an appeal by Pitshou Ekenga Sasi, a citizen of the Democratic Republic of Congo (DRC), against the determination of an Adjudicator (Mr J H Bryan) who dismissed his appeal against the Respondent's decision made on 16 August 2001 giving directions for his removal following the refusal of his claim for asylum.
2. The Appellant claims to have entered the United Kingdom on 1 June 1999, using false documents. He claimed asylum on 8 June 1999. He says that he

left the DRC on 18 December 1998, crossing the river to the Republic of Congo, where he stayed until 31 May 1999, spending all but a few days in the port of Pointe Noire. He then travelled to the United Kingdom with a 30 minute transit stop in France.

3. The Appellant based his claim for asylum on a fear of persecution because of his perceived political opinion and his ethnic origins. He maintained that his father was Rwandan, but had grown up in Kinshasa and as a result, had acquired DRC nationality. He said that his problems started following the overthrow of the Mobutu regime in which Kabila was assisted by Rwandan soldiers. After he came to power, President Kabila ordered the Rwandan soldiers to return home, but many refused and a rebel faction was formed. After the rebels entered Kinshasa, the appellant's father was accused by the DRC authorities of assisting, or being a spy for, the rebels. In September 1998, he and his family were subjected to harassment. His father was killed and the Appellant was detained for a further 2½ months and mistreated. His release was obtained because his mother managed to bribe the guards. He travelled with his mother first to Kourka, but when he was advised by relatives that it was unsafe for him to remain in the DRC, he left for Congo Brazzaville.
4. His claim for asylum was refused by the Secretary of State for the reasons set out in his decision letter dated 9 August 2001. The Appellant appealed on both asylum and human rights grounds and his appeal was heard by the Adjudicator on 2 January 2002. The Adjudicator heard oral evidence, both from the Appellant and from a witness, Ndombasi Luntadila. In the Appellant's oral evidence, he described the death of his father in 1998. Following the fallout between Kabila's supporters and his former allies from Rwanda and Uganda, there was a call to persecute people living in the western part of the country who were ethnic Tutsi Rwandans. His father was suspected by the regime of being a spy for the rebel forces. He was taken from his home, publicly burnt to death by having tyres fastened over his body which were then ignited. The Appellant witnessed this spectacle when he

was returning home. He sought to remonstrate with his father's assailants. In doing so, he was knocked to the ground unconscious. When he came round, he found that he had been arrested. He was detained for approximately 2½ months before being transferred to a military hospital in camp Kokolo where he remained from 8 to 19 December 1998.

5. The Appellant is recorded as having told the Adjudicator that he did not fear persecution by virtue of being half-Tutsi because he did not look like his father, but rather he looked Congolese like his mother. He did not believe that his father had been arrested and killed simply because he came from Rwanda, but rather because the authorities believed him, incorrectly, to have been an enemy agent. He feared that he would be re-arrested and imprisoned were he returned to the DRC. He would be subjected to human rights violations of a very serious kind.
  
6. Having reviewed the evidence, the Adjudicator was satisfied that the Appellant had given a credible account of what had happened both to his father and to himself. He accepted that the Appellant had been through the appalling trauma of seeing his father burnt to death by security forces in the DRC. It was the Adjudicator's view that the evidence against the Appellant's father was trumped up and that his arrest and death were brought about on the tide of xenophobia raging in Kinshasa at a time when the rebel forces were very close to taking the city. The Adjudicator was also satisfied that the Appellant was likely to have been tortured, maltreated and kept in inhuman surroundings whilst in detention. He found that the Appellant had not been arrested because of any political opinions or because of his ethnicity, but because he was enraged by the treatment of his father. He did not believe that the Appellant had been interrogated, but considered that he had been detained purely as a punishment for his actions on the day his father was killed. He accepted that the Appellant had a subjective fear of persecution and that at the time it had been well founded. He had been able to find security in Congo Brazzaville.

7. The Adjudicator went on to consider whether the Appellant would have a well-founded fear of persecution for a Convention reason were he now to return to the DRC. He noted that in his evidence that the Appellant had produced two arrest warrants, but the Adjudicator was not satisfied that they were genuine. For the reasons which he gives in paragraph 27, he felt that it was “less than likely” that the documents were genuine. He found that, as the authorities had released the Appellant in December 1998 on payment of a bribe, this indicated that they could not have had a serious continuing interest in him. He felt that with the passage of time it became less likely that he ran the risk of any further enquiries being made. He noted that the Appellant’s family had been able to settle in another suburb in Kinshasa. The Adjudicator’s view was that the Appellant would not be in danger of arrest should he be returned. He found that the Appellant was unable to show a continuing fear of persecution and that, in any event, he would be unable to show that his fears arose for a Convention reason. He dismissed both the asylum and human rights appeals.
8. In substance, the grounds of appeal assert that, in the light of the Adjudicator’s findings of fact, it followed that the Appellant would be at risk of persecution on return. The risk to the Appellant was that he would be seen by the authorities as the son of a suspected Tutsi spy, who himself had been arrested, detained and tortured as an anti-Kabila man. Leave to appeal was granted by the Tribunal (Mr J Barnes, Vice President) in a determination notified on 11 March 2002, on the basis that it was arguable that the Adjudicator had not given adequate consideration to the risks faced by those of Tutsi origin.
9. At the hearing before the Tribunal, Mr Gunasekara adopted the grounds of appeal. He referred to the background evidence and in particular to 1A18 at page 183 referring to the call for the slaughter of the Tutsis in August 1998. He referred to the letter from the UNHCR (2A10, 51-2) which referred to the overall security situation in the DRC being volatile and the fact that people of Tutsi ethnic origin were known to be among the targets of extreme human

rights abuses in DRC amounting to persecution. It reports that Tutsis, and those perceived to be Tutsis, have been subjected to arbitrary detention and ill-treatment and in certain instances have been tracked down and killed in Kinshasa.

10. Mr Deller drew the Tribunal's attention to the fact that the Adjudicator had recorded that the Appellant had not expressed a fear of persecution by virtue of being half-Tutsi. However, the Adjudicator had accepted that at the time the Appellant left, he had a fear of persecution. It must be for the Tribunal to assess, in the light of the background evidence, whether the Appellant could properly be regarded as still having a well-founded fear of persecution for a Convention reason or being at risk of such severe treatment as to engage the United Kingdom's obligations under Article 3.
  
11. The Adjudicator believed the Appellant's account of what had happened to him and his father in the DRC and his account of his reasons for leaving. It is clear from the background evidence what a troubled country the DRC is. According to the US State Department Report 2001, government forces continue to control less than half of the country. Various rebel groups control the remaining territory with the active support of the Rwandan and Ugandan governments. The human rights situation in both government and rebel held areas is poor. There is clear evidence that in government controlled areas, those of Tutsi ethnic origin have been subjected to extreme violence and persecution. It is recorded that the government no longer follows a policy of arresting and detaining members of the Tutsi ethnic group without charge merely on the basis of their ethnicity. However, it also reported that about 30 Tutsis arrested in 1998 have remained in detention in Makala prison at the end of 2000, largely because of their ethnicity. In the letter from the UNHCR (2A10), it is reported that persons of Tutsi ethnic origin are known to be the targets of extreme human rights abuses because Rwandan supported forces are prominent among the armed elements ranged against the Kinshasa authorities.

12. In his oral evidence, the Appellant attributed the death of his father to the fact that he was suspected by the regime of being a spy for the rebel forces. The Tribunal find it impossible to discount the likelihood that the fact that he was a Tutsi, who had originally come from Rwanda would have played a large part in generating this suspicion. The hostility of the Kabila regime towards Tutsis is all too clear from the report in *The Times* dated 14 August 1998 (1A183). The Appellant's father was killed in the response to government broadcasts which, according to the report in *The Times*, were a chilling echo of broadcasts that inspired the genocide of one million Tutsis in Rwanda four years previously.
  
13. The Tribunal have come to the view that, in the light of what has happened in the past, we feel very uncertain about the Appellant's safety were he now to return to the DRC. He is the son of a Tutsi who was murdered because of his perceived support for the rebels. The Appellant may only be half-Tutsi and according to him, looks Congolese like his mother, but the fact remains that he is the son of a Tutsi father. In the light of the reports about continuing violence towards Tutsis, the Tribunal have very real doubts about the Appellant's safety were he now to return to the DRC. It follows that there must, at least, be a serious possibility or a real risk of persecution or severe ill-treatment contrary to Article 3 were he now to be returned to the DRC.

14. In these circumstances, it follows that this appeal must be allowed.

**H J E Latter**  
**Vice President**