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Heard at Field House

MP (Risk - MCDDI - Lari
Ethnicity) Congo- Republic Of
Brazzaville CG [2004] UKIAT
00002

On 20 October 2003
Dictated 21 October 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

13 January 2004

Before:

Mr Richard Chalkley (Chairman)
Mrs M L Roe

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Ms J Gasparro, of Counsel, instructed by Irving & Co, Solicitors, appeared on behalf of the appellant and Mr A Hutton, a Senior Home Office Presenting Officer, appeared on behalf of the respondent.

DETERMINATION AND REASONS

1. The appellant, a citizen of the Republic of Congo, Brazzaville, appeals with leave of the Tribunal against the decision of an Adjudicator, Ms A Swaniker, who in a determination promulgated on 24 March 2003, following a hearing at Taylor House on 11 February 2003, dismissed his appeal against the decision of the respondent, taken on 12 January 2001, to direct his removal after refusing asylum.
2. The determination itself refers to a hearing before the Adjudicator having taken place on 11 February 2002. The Tribunal are satisfied by reference to the record of proceedings that the hearing actually took place on 11 February 2003.

3. The grounds of appeal were lengthy. They asserted that the Adjudicator failed to assess the future risk of persecution on the appellant's return to the Republic of Congo. The Adjudicator indicated that internal flight was an option for the appellant and that having failed to assess the issue of returnability, the grounds asserted that the Adjudicator could not have rationally reached this conclusion. They assert that the Adjudicator failed to consider the appellant's initial claim in full and to understand the appellant's role in political activities. His role had always been a very public one and would, therefore, have brought him to the attention of the opposition. She also erred in failing to assess the importance of the appellant's relationship with his uncle, Mr Maboussou.
4. In the bundle of objective material submitted to the Tribunal on behalf of the appellant was a copy of a report by Mr Paul Melly dated 15 July 2002 which had been before the Adjudicator, and a copy of an updated report from Mr Paul Melly of 25 August 2003, which had not been before the Adjudicator. In relation to the report of 15 July 2002, Counsel confirmed that there was no evidence that Mr Melly had given his consent to this report, which had been prepared specifically in relation to another asylum applicant, being used in connection with this appeal.
5. Counsel asked the Tribunal to bear in mind that in relation to the more recent report of Mr Melly it was not disputed that the appellant was a member of MCDDI. The Adjudicator appears to have accepted this at paragraph 21 of the determination. This appellant will be at risk on return because he is of military age, he is a Lerir tribal group member, also known as the Lari and he is a member of the MCDDI. She referred us to Mr Melly's report of 25 August last which showed that fighting between Ninja guerrillas and the government flared up in March and April 2002 and continued until March 2003 and that during 2002 there was a particularly dramatic deterioration in the human rights situation in the country. It was too early to say, according to Mr Melly, whether a new and lasting improvement in human rights was yet underway. The Adjudicator erred by failing to consider Mr Melly's report of July 2002. This showed that a former MCDDI Party opposition activist of Lari ethnic origin is at high risk from the moment of his arrival in Brazzaville. Instead, this Adjudicator relied on the 2002 US State Department Report which was a report on human rights practises during 2001 and was out of date by the time it was considered by the Adjudicator. The Adjudicator erred as a result. On his return, this appellant will be regarded with deep suspicion and his MCDDI membership will place him at serious risk. There is evidence as it appears members have been

tracked down and persecuted. Ninja guerrillas have targeted young men of this appellant's age. He will be known as an MCDDI supporter for two reasons. First because his activities on behalf of the MCDDI were of a public nature and secondly because the MCDDI headquarters was captured by the guerrillas and they will have had access to the MCDDI membership lists. In addition to his MCDDI involvement, the appellant's ethnicity and his age will place him at additional risk.

6. Responding on behalf of the Secretary of State, Mr Hutton drew our attention to the final paragraph on page 64 of the appellant's bundle which said:

"In this situation, a known former MCDDI Party opposition activist of Lari ethnic origin is at high risk from the moment of his arrival in Brazzaville. This is particularly the case for individuals, such as [name deleted] who have already been the target of security force raids and investigations in earlier years."

7. Mr Hutton pointed out that the appellant had not been of any interest in the past, despite his activities. The situation now has clearly improved. This is evident from Mr Melly's most recent report which referred to several hundred Ninja fighters and possibly several thousands, having abandoned the war since March 2002 and referred to significant fighting having stopped, although the Ninja leader has yet to come into Brazzaville from the forest. Mr Hutton submitted that there would be no suspicion of the appellant having been a fighter. In any event, Mr Melly makes it clear that not all individuals with a background of opposition or some connections have been persecuted. In referring to the peace accord, Mr Melly said that it may gradually defuse tensions and improve the treatment of ethnic groups and individuals regarded as sympathetic to the opposition.
8. The Country Information and Policy Unit Report at paragraph 6.27 refers to the fact that Amnesty International said in their April 2003 report that they have received few reports of political prisoners although they believe that arbitrary arrest, unlawful detention and mistreatment in custody did occur, when such incidents happened, the victims were ordinary criminals with no political connections in "virtually all cases".
9. The Country Information and Policy Unit Report at paragraph 6.99 and 6.100 indicate an improved situation. The guerrillas who agreed to end hostilities, disarmed fighters and enabled the state to restore authority in Pool and, in turn, the government have agreed to guarantee an amnesty to rebels, including provisions for integrating ex-combatants into the army. The

International Committee of the Red Cross facilitated an exchange of prisoners as part of the agreement to restore peace for the country. Earlier in the Country Information and Policy Unit Report (paragraphs 6.24, 6.25, 6.26 and 6.27) it was clear that many former opposition political figures have returned to Brazzaville and resumed their political activities. Civil servants who served under the previous regime and supported the opposition groups, were allowed to return to their previous employer.

10. Bearing in mind the Adjudicator's adverse credibility findings and the improved situation in the country, and given the lack of any evidence that the authorities actually do have access to the MCDDI membership list, the Adjudicator's findings are sustainable. The Adjudicator found that he would not be at any risk in the Republic of Congo and could relocate almost anywhere, should he choose to do so. The Adjudicator's findings in respect of the appellant's low level activities were ones which she was entitled to make. He had actually claimed that he was in charge of communication and propaganda among the youth of the party and that his work had been at a national level. His uncle had claimed that the appellant had been interviewed on television but the appellant had never made this claim himself. Mr Hutton invited the Tribunal to dismiss the appeal.
11. In her concluding remarks, Counsel emphasised that she relied on the expert report of Mr Melly and in particular invited us to consider pages 104 to 109. She asked us to note also that the appellant's uncle had met Mr Melly. It was not the appellant's claim that he had been a high level activist but his activities had all been public and, to that extent, he had a high public profile. There will also of course be the association with his uncle who is a bodyguard to former President Lissouba.
12. We reserved our determination.
13. We believe it is unfortunate that the appellant's solicitors sought, at the hearing before the Adjudicator, to rely on an expert's report which had been prepared in relation to another asylum applicant's appeal. There was no evidence before this Adjudicator that Mr Melly had given his consent to his earlier report being used in connection with this appellant or, indeed, that he had been approached. Had he been asked for his consent he would have had the opportunity of updating his report. We are grateful to him for his August 2003 report which we found of great assistance.

14. When giving evidence before the Adjudicator, the appellant explained that he was a member of the MCDDI and that his role was to speak to people and to transmit the feelings of the party to them. He said that his work was on a national level and that he was under the national command. He claims to have ceased his activities on behalf of the party at the end of the war in October 1997. At the hearing he relied on a statement made by his uncle, Mr Maboussou who had been one of the guards to President Lissouba's wife in Congo and was now an adviser to the President. He had been unable to attend the hearing because he had to accompany the President to one of his appointments.
15. During his asylum interview in answer to question 4, the appellant said that his role in the MCDDI was that he was,

"... in charge of communication and propaganda amongst the youth. My country has got big proportion of young people between 15-30 and all in schools and the role I played was that of communication with the youth."

When asked how he carried out the role he said:

"Once I became a member of the party I had to go and talk to my colleagues in schools, talk about the situation, the social and political situation in the country and about what the party advocated in relation to the society"

He agreed that he gave talks and that he ceased to have any political involvement after April 1998. He had joined the MCDDI in June 1996.

16. In a statement submitted with the appellant's statement of evidence form, he confirmed that he became involved with the MCDDI in June 1996. He was involved in campaigning for the Presidential elections. He described his role as follows:

"I would distribute leaflets, put up posters, would speak with other young people about the election. I would do this both in the local area where I lived and also, I along with others in the party, would go out into the countryside to attempt to drum up support. The elections were due to take place in July 1997 but they were cancelled as the result of a civil war which broke out on 5 June 1997.

In August 1997 I joined l'ERDDUN as this was a kind of umbrella organisation for the forces of democracy. I joined along with others from MCDDI and from other parties who wished to see democracy returned to our country.

I was not personally involved in the fighting which took place. I was a singer and was involved in singing in support of our cause, which was to defend democracy."

17. Later in his statement he describes the fighting as having stopped and he said that the victors were looking for people who had been involved in the MCDDI and if the rebel soldiers found such people they were violent towards them. He said:
- “I believe as I have previously only had a low level involvement and because I was no longer involved in politics, I did not initially have any difficulties with the new regime. I had no trouble from the time the rebels took power until April 1998.”*
18. The appellant then described an arrest by Angolan soldiers who were mercenaries. In paragraph 22 of her determination, the Adjudicator did not accept this arrest. She believed that the appellant’s account of this incident was untrue and sets out her reasons for this finding.
19. In paragraph 20 of her determination, Ms Swaniker said:
- “I would say from the outset that I do not overall consider the appellant to be a credible witness. I consider that he has significantly exaggerated and embellished his account of his circumstances in his country and his alleged political involvement. I consider his evidence to be in fear of persecution in Congo to be undermined by inconsistencies and implausibilities ...”*
20. She refers in paragraph 21 of her determination to the fact that the appellant had claimed in his statement that he previously had only low level involvement and was no longer involved in politics, which is why he did not initially have any difficulties with the new regime. However, when interviewed, the appellant claimed to have been in charge of communication and propaganda amongst the youth of his country. In his oral evidence he claimed that his work was at a national level and that he was under the National Command. The Adjudicator found that the appellant had sought to significantly elevate his level of political involvement. She found him not to be a credible witness and while she found that he may have been a member of MCDDI, did not believe that his involvement was, put at its highest, anything other than at a very low level. She did not believe that his activities brought him to the adverse attention of the authorities or their agents.
21. In paragraph 23 of her determination, the Adjudicator records that when asked how the appellant had obtained news from neighbours about the mercenaries going to his home, he said he obtained this news by visiting his neighbours. When asked how often he returned he said “not very often” and when pressed he said it could have been once but he was not sure. She thought it wholly implausible that the appellant would have risked going to his neighbours, if indeed it was the case that Angolan mercenary soldiers were repeatedly returning to his house in an

attempt to arrest him. In any event, she rejected the claim to have been arrested and found that his account was untrue.

22. Paragraph 4 of the grounds of appeal assert that the Adjudicator failed to consider the appellant's initial claim in full (as contained in his SEF statement) and as a result erroneously concluded that the appellant was later attempting to elevate his political involvement, both at interview and at the hearing. It is asserted that had the Adjudicator totally considered closely considered all the appellant's evidence in the round she could not have come to the conclusion that the appellant sought to embellish his case in the manner which she has relied upon in deciding his credibility. We find no merit in this ground. The Adjudicator clearly did consider what the appellant had said in the statement which accompanied his SEF and she compared it with what he said at interview and what he said in giving evidence to her. She was entitled to conclude that having given inconsistent accounts, this appellant was not telling the truth and had sought to significantly elevate his level of political involvement on that originally claimed. The appellant himself had said in the statement that accompanying his statement of evidence form that he had previously only had a low level of involvement and yet, whilst giving evidence, claimed that his work was on a national level and that he was under the National Command.
23. In paragraph 5 of the grounds of appeal it is asserted that given the role the appellant has stated that he performed from the start, it has always been very public and would therefore have brought him to the attention of the opposition. It is claimed that the appellant "has never pitched his case so as to say that he was such a high level member as the Adjudicator had implied". We find no merit in this ground either. The appellant's involvement was between June 1996 when he joined the MCDDI and October 1997. In June 1996 this appellant would have been 16 years of age. Even on the appellant's own account his activities on behalf of the MCDDI caused him no difficulties until April 1999. We do not believe that the low level activities which this appellant was involved in would have caused him to have had a high public profile. We do not believe that, given the Adjudicator's findings, this appellant's activities would have caused him to have been noticed by either the authorities or opposition groups.
24. In relation to the appellant's uncle, the Adjudicator noted that the last contact this appellant had with his uncle prior to coming to the United Kingdom was in 1997, before the outbreak of the war. The Adjudicator placed no reliance on his uncle's witness statement, because he claimed that the appellant was a

prominent member of the MCDDI and went on to claim that he saw the appellant being filmed by television cameras during an interview with the appellant. The Adjudicator did not find it credible that the appellant would fail to mention this interview if indeed it were true, given that it would have been a matter of some significance. The Tribunal finds the Adjudicator was entitled to place little reliance on a statement made by someone claiming to be the appellant's uncle when they had chosen not to attend the appellant's asylum appeal hearing. There had been no application on behalf of the appellant for the appeal hearing to be adjourned in order that his uncle could attend on a later occasion. No application had been made by the appellant's experienced legal advisers for a witness summons to be issued. Mr Mabousou's letter contradicted what the appellant himself had claimed. We do not believe that this appellant will be linked to Jean-Bruce Maboussou, even if this man is the appellant's uncle.

25. Mr Melly refers to the peace accord between the Ninja leaders and the government and says that several hundred and possibly several thousand Ninja fighters have abandoned the war. Since the fighting has stopped. Whilst members of ethnic groups regarded as affording opposition parties are said to remain highly vulnerable, along with individuals who have a history of grass roots political activity, we do not believe that this appellant is likely to be regarded as an individual with a history of grass roots political activity, given his very limited involvement with the MCDDI. Many numbers of the group are said to have been targeted with discrimination or human rights abuse. However, given that the government have agreed to guarantee an amnesty offered to rebels, including agreement for integrating ex-combatants into the army, and given the Minister for the coordination of Government activities actually welcomed a delegation of 100 major militia in Brazzaville in March 2003, (see CIPU 6.94) we do not believe that any serious likelihood of simply being a member of the Lari ethnic group will cause the appellant to suffer persecution or ill-treatment. Mr Melly believes that the appellant's history of activity within the MCDDI and his family connection with someone who was a bodyguard of President Lissouba will increase the risk for him. However, the Tribunal notes that prior to coming to the United Kingdom the appellant had not had contact with Mr Mabousou since 1997, before the outbreak of the war. The Tribunal do not believe there is any serious likelihood that the appellant will be associated with Mr Mabousou.
26. Understandably, Mr Melly has accepted the appellant's credibility. However, he did not have the opportunity of hearing the appellant give evidence and be cross-examined. The

Adjudicator did. Mr Melly said the appellant will not be able to conceal his political background:

“he made no secret he had previously appeared at public events. He may well have been shown on television – which frequently reported on such meetings.”

Mr Melly’s comments are not supported by the evidence. The Adjudicator never claimed to be on television; indeed he claimed his activities were low level. Mr Melly reports that the MCDDI Party headquarters were captured by the Sassou-Nguesso forces in the 1997 war and this means that membership records are almost certainly in government hands. However, the Tribunal find that this is speculation on his part. No credible evidence has been adduced before the Tribunal to show that if there were membership records, and assuming that the appellant’s name was on such a record, no evidence that this actually fell into the hands of those forces. On the other hand, we note that the MCDDI is free to participate in the political arena and won some four seats in local elections in 2002.

27. Our consideration of the objective evidence, including both reports of Mr Melly, leads us to conclude that there is no real risk that on return to the Republic of Congo, the appellant will face persecution for a Convention reason or that his rights on the European Convention for the Protection of Human Rights and Fundamental Freedoms will be breached.
28. We **dismiss** this appeal.

Richard Chalkley
Vice President