Heard at Field House
On 21 September 2004

AG (Returnees – deserters - prison conditions) Rwanda CG [2004] UKIAT 00289

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

28th October 2004

Before:

Mr P R Lane – Vice President
Ms D K Gill – Vice President
Mr M L James

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the Appellant: Mr B. Naumann, Counsel, instructed by Messrs Duncan Lewis & Co Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a citizen of Rwanda, appeals with permission against the determination of an Adjudicator, Mr K Robb, sitting at Taylor House, in which he dismissed on asylum and human rights grounds the Appellant's appeal against the decision of the

Respondent to give directions for the Appellant's removal from the United Kingdom.

2. As the grounds of appeal acknowledge, the Adjudicator has made clear findings about what aspects of the Appellant's case he accepted, and what he did not. At paragraphs 11 to 23 of the determination, the Adjudicator set out his findings of credibility and fact. The Adjudicator believed there to be a reasonable likelihood that the Appellant had joined the Rwandan Patriotic Army in, it would appear, 1990, when the Appellant would have been about 12 years old. Prior to that time, he had been bearing arms in Uganda. The Appellant served in the Rwandan armed forces from that time until his departure from the country in 2003. The Adjudicator accepted that the Appellant "wished to leave the Rwandan army and that he has expressed this desire by his departure from the country" (paragraph 20 of the determination). Although the Adjudicator does not expressly say so, it is plain from his findings that the Appellant has deserted the Rwandan army. There is no suggestion that he had any express or implied permission to remove himself from its service.

3. That is the extent of the Adjudicator's positive credibility findings. He expressly rejected the Appellant's assertion to have been ill-treated by the Rwandan authorities because he was accused in 1999 and, again, in 2003, of spying for the Ugandans. The Adjudicator's determination contains legally sustainable reasons why the Adjudicator found these parts of the Appellant's account to lack credibility.

4. The grounds of appeal to the Tribunal do not take issue with the Adjudicator's findings of fact. They contend, however, that the Adjudicator, having in effect found the Appellant to be a military deserter, should have allowed the appeal on the basis that the objective evidence discloses a real risk that the Appellant would suffer treatment contrary to Article 3 of the ECHR, if returned to Rwanda.

5. The skeleton argument submitted by the Appellant's instructing solicitors in connection with the Tribunal hearing asserts that the Adjudicator was wrong to reject the Appellant's claim to have been ill-treated by the Rwandan authorities in 1999 and 2003 and that the Appellant is entitled to succeed by reference to the Refugee Convention on the grounds that he would suffer disproportionately severe punishment for desertion on account of an imputed political opinion, namely, his supposed sympathies for the Ugandan authorities.

6. At the Tribunal hearing, Mr Naumann did not seek permission to amend the grounds of appeal. Nor did he seek to rely upon so much of the skeleton argument as relates to the matters to which we have just referred. Accordingly, the appeal proceeded before the Tribunal by reference to the Adjudicator's findings of fact, the issue before the Tribunal being whether, on those findings, the Appellant would be reasonably likely to suffer Article 3 ill-treatment if returned.

7. At paragraph 21 of the determination, the Adjudicator considered risk on return. In doing so, he had regard to the Home Office CIPU Report on Rwanda (October 2003) and the British-Danish Fact-Finding Mission Report 2002. Those materials persuaded the Adjudicator that the Appellant "will not be treated any different (sic) from other asylum seekers being returned. He will be asked why he has been absent so long but an explanation of having been seeking asylum appears to be an acceptable explanation. There was no evidence placed before me that the Appellant is now sought in respect of his departure. I find that the Appellant is not reasonably likely to be apprehended on his return because of his desertion from the army".

8. In submitting on behalf of the Appellant that the Adjudicator has misapplied the objective evidence, Mr Naumann relied in particular upon paragraph 415 of the British-Danish Report, the relevant portion of which reads as follows:-

> "415. In the event of a Rwandan having a supervised return to the country or returning to the country without the appropriate travel documentation Rutikanga [Chief Security Officer, Rwanda Airport Authorities] stated that additional questions would be asked. Firstly, the authorities would wish to satisfy themselves that the returning individual is not wanted for suspected involvement in the genocide or any other crime".

9. Paragraph 416 tells us that "all requests for new or replacement passports submitted outside the country are referred to the authorities in Rwanda where records are checked". Mr Naumann accordingly submitted that if, as he accepted was the case, the Appellant, if removed, would return with some form of travel documentation that had been obtained on his behalf by the United Kingdom government in conjunction with the Rwandan Embassy in London, this in itself would be sufficient to cause checks to be made, as a result of which the Appellant's desertion from the army would be discovered.

10. Leaving aside the issue of the Appellant's desertion from the Rwandan army, it is plain from the objective evidence that returning failed asylum seekers to Rwanda are not as such at any real risk of ill-treatment. Paragraph 438 of the British-Danish Report notes Human Rights Watch as having stated in April 2000 "that government officials and leaders of the RPF have for some time shown their displeasure with the flight of Rwandans from the country, particularly when those fleeing are prominent or important politicians, journalists, soldiers or former soldiers. In some cases those who have assisted others to flee are being threatened, harassed or imprisoned". There is, however, nothing in the Report to indicate that returning failed asylum seekers were, even in 2000, at real risk of serious harm. In any event, by the time of the compilation of the Report in 2002, the evidence showed firmly that this category would not be at risk. At paragraph 417, we find a Western embassy in Kigali expressing "a strong view that it was safe for the overwhelming majority of Rwandans outside the country to return home. The source suggested the number of Rwandans – whether inside or outside the country – who are at risk, is minimal 'maybe just 5,000 including all Category One *génocidaires*'. Whilst acknowledging there was no scientific basis to this figure the source stressed that the intention was to illustrate the very small proportion of the population facing a significant risk in a country of eight million".

11. Paragraph 419 records the same source as observing that the "Government of Rwanda is active in encouraging the return of nationals residing in neighbouring countries. The embassy summed up the government's message to its citizens outside the country as 'if you want to come home we will help you'. It was considered that this offer would apply to all but a very tiny group of Rwandans such as the former king, and that all returnees are provided with a modest resettlement package to assist their reintegration into society".

12. At paragraph 422 we find a western embassy source as recalling that many Rwandans who had returned from the Democratic Republic of Congo "said they would have returned much earlier had they been aware of the situation. Many of these people had believed that the RPF murdered everyone when they took power and the country would remain unsafe as long as they were in control. After six months living in rehabilitation camps these people are now living in villages in Rwanda."

13. Captain Rutikanga is quoted at paragraph 427 as stating that "even if the authorities are aware that a returning individual has claimed asylum whilst outside Rwanda this will not result in them

being treated any differently to others returning to the country after a prolonged period. He acknowledged that for some, the motivation for seeking asylum overseas is purely economic. He confirmed that innocent Rwandans who went abroad to 'chance their luck' would be treated no differently to nationals who had been abroad for work or study. He added that those who departed illegally or have other cases to answer will answer the cases and then be integrated into society".

14. This, then, is the clear picture that emerges in respect of "ordinary" returning failed asylum seekers to Rwanda. There is no documentary evidence to which the Tribunal has been referred that refutes the findings of the British-Danish Report. We must now consider whether the Appellant's desertion from the army is such as to place him at real risk on return.

15. As the Tribunal has already observed, the Adjudicator at paragraph 21 of the determination did not consider it reasonably likely that the Appellant would be apprehended on his return because of his desertion from the army. With respect to the Adjudicator, he gives no reason why he reached this view and the Tribunal finds that the evidence before him compels the contrary conclusion. Paragraph 415 of the British-Danish Report states that, compared with a properly documented Rwandan national, those without appropriate travel documentation *or* those "having a supervised return" will be subjected to additional questioning at Kigali Airport. That questioning will be intended to ascertain whether the returnee is wanted "for suspected involvement in the genocide or any other crime". Desertion from the armed forces is, plainly, likely to be regarded by the Rwandan authorities as falling within the category of "crime". Paragraph 5.77 of the April 2004 CIPU Report on Rwanda (repeating material contained in earlier CIPU Reports) states that "Desertion is punishable by 2 months' to 2 years' imprisonment in peacetime". Additional penalties may be imposed in "aggravated circumstances" but there is no evidence to show that these apply in the present case. The Tribunal agrees with Mr Naumann that it is reasonably likely the Rwandan authorities will be alerted to the fact that the Appellant is a deserter, when checks on him are made in connection with the issuing to him in the United Kingdom of a Rwandan passport or other appropriate travel documentation. In any event, even if the Appellant makes his way through the airport without being apprehended, it is reasonably likely that he will subsequently be found to be a deserter.

16. Desertion from the armed forces of any nation is without doubt something that the authorities of that nation are entitled to regard

as sufficiently serious to attract a term of imprisonment. It cannot possibly be argued (nor did Mr Naumann attempt to do so) that the imposition upon the Appellant of a sentence of imprisonment of anything between two months and two years is so disproportionate, relative to the offence of desertion, as to be regarded as inhuman or degrading treatment or punishment contrary to Article 3 of the ECHR.

17. The Appellant's case, however, rests upon the assertion that prison conditions in Rwanda are so grave as to amount to a violation of Article 3.

18. There is no suggestion that, if proceedings were to be taken against the Appellant in connection with his desertion, these would take place anywhere than in a Military Court. Paragraph 348 of the British-Danish Report records the National Human Rights Commission as being "very happy in the way that Military Courts are run... that the courts were very well organised, set a very good standard for human rights and also staff undertook some human rights training. It was also stated that Military Courts were very efficient in providing a verdict within eight days of the hearing". Paragraph 349 cites Human Rights Watch as having reported that the military justice system in Rwanda has "received substantial support from foreign donors like the United States and the United Kingdom".

19. Prison conditions in Rwanda are covered by paragraphs 5.65 to 5.74 of the CIPU Report, Section 1c of the US State Department Report of 2003 and paragraphs 350 to 386 of the British-Danish Report. The US State Department Report for 2003, in common with previous years, describes prison conditions in Rwanda as "harsh and life-threatening". According to paragraph 357 of the British-Danish Report this situation arises from "chronic overcrowding, extremely poor sanitary conditions and a lack of adequate food or medical treatment". There is, however, no evidence to show that there is any widespread practice of active physical ill-treatment of prisoners by the Rwandan authorities. Paragraph 5.73 of the CIPU Report states that the British-Danish delegation received information from three sources, suggesting that torture no longer occurred within national prisons. This represented a change from what a Danish-based NGO had found in 2000.

20. The fact that the US State Department Report describes prison conditions in Rwanda as "life-threatening" is plainly a matter to which the Tribunal must have regard, in assessing whether the Appellant would be subjected to Article 3 ill-treatment. The fact that this description is applied to prison conditions in the Report is,

however, not determinative of the issue. All three of the documentary sources to which we have specifically referred are in agreement that the worst prison conditions in Rwanda are (or were) to be found in "*Cachots*", which are local detention facilities designed to hold people on remand, but which have been used to hold some people for much longer periods (5.74 of the CIPU Report). Whilst, as we have stated, there is no evidence of any widespread active ill-treatment within the Rwandan prison system, paragraph 5.74 notes that "there was also evidence that torture, particularly in the form of beatings following arrest, occurs in the Cachots". Paragraph 374 of the British-Danish Report observes that those held in Cachots are not provided with food, with the result that prisoners must rely upon families and friends for sustenance.

21. It is therefore of particular significance that the US State Department Report for 2003 records that "during the year, the government shut down the Cachots (local detention centers) in all but two provinces in the country, which were considered to have the worst conditions". Whilst the Report notes that the resulting transfer of prisoners to other prisons exacerbated prison overcrowding elsewhere, the government have begun work on new prison construction. Paragraph 5.72 of the CIPU Report observes that IRIN reported in March 2004 that "at least 4,500 common law prisoners had been pardoned and released in an attempt to decongest the prisons. Those released included the elderly and the sick as well as those who had been in prison longer than the sentences they could face."

22. It is also significant that, as a person who is likely to be proceeded against in a Military Court, where justice is speedily dispensed, the Appellant is in any event unlikely to find himself detained at all or at least for any significant period in one of the few remaining Cachots. Indeed, even after conviction, it is by no means likely that he would find himself in a civilian prison. Both Mr Naumann and Mr Deller acknowledged that there is a dearth of evidence on this issue. We have nevertheless approached the matter on the basis that it is reasonably likely that the Appellant would find himself in a civilian prison.

23. The closing of most of the Cachots during 2003 is a significant development in any assessment of whether, as a general matter, the type of prison conditions likely to be experienced by the Appellant would violate Article 3 of the ECHR. It is also, however, of note that – even prior to the closure of the Cachots – there was in fact no consensus that Rwandan prison conditions were life-threatening. Paragraph 360 of the British-Danish Report quotes a

source described as "an informed expatriate in Kigali" as expressing the view that conditions vary greatly between different prisons and that, in summing up conditions in Rwandan prisons, the source "did not consider the conditions to be life-threatening". Paragraph 361 observes that a prominent intellectual in Kigali "indicated to the delegation that overcrowding was not as much of a problem now as it had been in 1994-96. The person in question had been in prison for five years between 1994 and 1999". That source "described physical conditions in prisons [as] harsh, but they vary from prison to prison".

24. If, as a general matter, conditions in Rwandan prisons were so bad as to reach the high threshold required for Article 3, one might reasonably assume that inmates would go to considerable lengths to avoid them, if possible. It is, accordingly, noteworthy that paragraph 362 of the Report quotes a United Nations source in Kigali as pointing out that "there is no violence and few security personnel" in Rwandan prisons and that a United Nations development programme representative visiting the Gitarama Central Prison observed that "a piece of string was tied across the entrance; however, nobody attempted to escape". Paragraph 362 concludes by referring to a representative of an international human rights organisation in Kigali as explaining that the "relaxed security precautions in Rwandan prisons" were due to the fact that Rwandan society is "very transparent and small" and that any prisoner who escaped would be in serious trouble outside the prison. At paragraph 367, a source is quoted as stating that "escapes from Gitarama Central Prison occur at a rate of about one a month, with escapees being punished by being placed in isolation in the Cachot for up to a week, thereafter they are subjected to increased supervision". Despite references to the local population being hostile to an escapee, the overall picture that emerges is one of general acceptance of prison conditions in "ordinary" prisons. With the subsequent closure of the Cachots, there is no longer any realistic prospect of a person being placed in such an institution as punishment for escaping.

25. Finally, the US State Department Report observes that in 2003 "unlike in the previous year, prison deaths did not result from the cumulative effects of severe overcrowding". The connection between this fact and the closure of the vast majority of Cachots is, in the Tribunal's view, inescapable.

26. In conclusion, the Tribunal finds that:-

    (a) a failed asylum seeker is not as such at real risk upon return to Rwanda;

(b) the Appellant, as a deserter from the Rwandan army, is reasonably likely to be identified as such upon return;

(c) he will be proceeded against for the offence of desertion in the Military Courts;

(d) any punishment he is likely to receive for the offence of desertion will not be disproportionate;

(e) conditions in Rwandan prisons are in general not such as to violate Article 3 of the ECHR; and

(f) as a 26 year old young man with no identified medical problems, there is nothing in his own circumstances to show that he would suffer Article 3 ill-treatment by reason of being imprisoned.

27. This appeal is accordingly dismissed.