

AJB
Heard at Field House
On 14 March 2002

APPEAL NO CC36979-2001
BL (Ogboni Cult - Protection -
Relocation) Nigeria CG [2002]
UKIAT 01708

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

28.05.2002

Before:

**Mr T B Davey
Mr A Smith
Mr P Rogers JP**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

BABATUNDE LEBOHANG

RESPONDENT

Decision: Appeal allowed

Appearances:

For the appellant: Mr C Buckley, Senior Presenting Officer.

For the respondent: Mr N Moloney of Counsel instructed by IAS Liverpool.

DETERMINATION AND REASONS

1. The appellant appeals the determination of an Adjudicator (Mr C P Rushton) who allowed the appeal of Mr Lebohang a citizen of Nigeria, against a decision of the appellant on 14 July 2001 who issued removal directions to Nigeria and refused asylum.
2. Leave to appeal was granted by the Tribunal on 4 January 2002 on the basis that "the determination is somewhat brief, fails to deal with the human rights appeal and to refer to the appropriate burden and standard of proof. The respondent may, however, persuade the Tribunal that it remains salvageable in spite of the various points made by the applicant. However, it is appropriate to grant leave. "

3. The respondent's claim was that, through his mother's family, by culture and tradition, due to inherit the title of Aro. Being an Aro would involve the appellant being initiated into a cult called Osugbo: a demonic cult which uses ritual sacrifice, cannibalism and other rituals.
4. The respondent is a practising Christian, as is his mother, who did not wish to become an Aro. His refusal to become an Aro led to the death of his mother at the hands of cult members and for five days he was held by the cult. During this time he claims to have been tortured by way of having two bags of sand put on his back and then required to do some form of pressups.
5. The respondent was released through the acts of an unknown person in the cult who, with at least one other, took him out of the compound where he was being held and a car was thereafter waiting to take him away. The respondent left Nigeria on or about 3 June 2001 flying to South Africa where he remained for some ten days. Thereafter he flew into the United Kingdom and obtained entry by deception and without making any claim for asylum.
6. The respondent holds a valid South African passport and is a national of South Africa. He was stopped attempting to board a flight to Canada using a forged British passport on 28 June 2001.
7. The respondent says there is nowhere in Nigeria he could go without the cults being able to find him and they would have found him if he had stayed in South Africa.
8. In paragraph 12 of the determination and reasons the Adjudicator said this:

“it is submitted in the refusal letter that the appellant could have sought safety elsewhere in Nigeria and that the police have such activities under control. The population of Nigeria enjoys rights of freedom of movement and just as he could easily travel to other areas of Nigeria so could members of the cult. The activities have been deeply entrenched in rural communities in Nigeria for generations and it is therefore unrealistic to suggest that in such circumstances in a third world country the police would be in a position to intervene.

13. The Secretary of State also submitted that the cults were not agents of persecution. The cults are widespread and organised groups over which the police will not or cannot exercise control. The attacks on the appellant and his mother were a precisely targeted instant. Those concerned are agents of persecution.”

9. The Adjudicator had found that the respondent's evidence was credible and accepted him as a credible witness. Further, the Adjudicator stated that "there is much in the objective documentary evidence which echos the appellant's account of events." However having examined, as we did, all the background material that had been put before the Adjudicator we could not find either in the CIPU Country Assessment 2001, or the US Department of State Country Report for 2000 (dated February 2001), or the 2000 Annual Report on International Religious Freedom for Nigeria produced by the US Department of State, the US Library of Congress Report on Nigeria (which contains some information relating to indigenous beliefs or any of the other documentation) anything which indicated that there was any basis for the Adjudicator's assertions about the level and depth of cult activities being such that the police would not be in a position to intervene.
10. The background material, on the contrary, shows that the Nigerian authorities have been acting against a particularly powerful secret society known as the Ogboni and the general tenor of the background information does not suggest that the government is either unwilling or unable to provide protection, nor that it is unwilling or unable to take steps against cult activities. We cannot find any objective material which supports the proposition that the police will not or can not exercise control. We find that the Adjudicator's conclusion that this cult constituted agents of persecution is simply unsustainable.
11. Further, we note that the Adjudicator did not identify any Convention reason for the conclusion that the respondent faced risk at the hands of the cult. The respondent's case is clearly that he was being pursued because he refused to follow custom and tradition. Mr Moloney was unable to identify any independent objective evidence which supports the respondent's claim that he could not obtain protection from the authorities in Nigeria.
12. The claim therefore of persecution comes from his rejection of joining the cult. The cult is not seeking to persecute him because of his religious convictions or opinions. Albeit his motives for refusal, which were accepted by the Adjudicator, arise from his Christian faith. The respondent's motive has nothing to do with the cult seeking to recruit. We find the conclusions of the Tribunal in the case of Eze (00/TH/01308) of assistance in that there are considerable similarities in the facts of the case albeit a different cult was involved. That Tribunal, as we were, was not presented with evidence from any independent source which supported the respondent's claim. In Eze the appellant had not sought protection claiming that the authorities would not be prepared to protect him and effectively supported the existence of such cults.

13. The Tribunal in Eze found there was an absence of evidence to support the claim that the authorities in Nigeria would not provide assistance and protection. In this case, as in Eze, the point remains that an asylum seeker should exhaust all reasonable avenues within his own country for protection before seeking surrogate international protection. This the respondent did not do, wherever it is he may have been in Nigeria when these events were said to have occurred.
14. Nigeria, with a population of in excess of 100 million, is a very large country indeed. Internal flight is identified in the CIPU assessment as being a real possibility (see paragraph 9.10) and it seemed to us that there was no evidence before the Adjudicator to show that the size of the particular cult was such that it was to be found throughout Nigeria. The CIPU Report identifies that traditional religious beliefs are widespread in Nigeria, but that where these practises may have resulted in criminal activity, the Nigerian police have investigated them. It identifies that there are on occasion isolated reports of ritualistic killings which do not appear linked to organised traditional religious practises, but that such rare events are investigated as crimes and action taken against the perpetrators. There does not appear to be any widespread support for the practices or their perpetrators and they are viewed by society as criminal, investigated and dealt with in an appropriate manner. (see paragraph 7.33)
15. It was said that it would be unduly harsh having to relocate, that is because he is a Christian, secondly his subjective fear of the cult, and thirdly, adverse employment prospects.
16. As to the first of these points, nearly 40% of the population is Christian and about half the population is Muslim mostly living in the north of the country. Whilst a few northern states have adopted Sharia law, there is nothing in general to show that even in states where there is a majority of Muslims over Christians, that Christians cannot live and go about a normal way of life. Thus there is nothing in this point.
17. As to the respondent's subjective fears if genuinely held, that would not be sufficient to constitute matters being unduly harsh for the facts of this case.
18. The respondent's representative did not know what employment the respondent had ever maintained in his twenty-nine or so years in Nigeria. Thus, without knowing what job or skills he may have, it is hard to see how it can seriously be said that his employment prospects are poor particularly when no one apparently knows or could tell us the home area from which he came, and even the job prospects there. There can thus be no assessment of the extent to which situation is materially different such that it would be regarded

as unduly harsh to relocate. On the material put before us, it cannot be said that it would be unduly harsh to relocate elsewhere in Nigeria.

19. The Adjudicator did not address the respondent's claim that return would be a breach of his human rights under Article 3 of the ECHR which were contained within the statement of additional grounds. The claim is essentially the same as that made under the Refugee Convention. Accordingly we take the view that there is nothing that would otherwise be said in relation to Article 3 that makes a material difference to the outcome of this appeal. The matters relied upon being the same, no submissions were made to us as to any material difference to the point, therefore assuming in the appellant's favour as we have done in all respects, that he was mistreated and that such mistreatment crossed the minimum level of severity to engage Article 3, nevertheless we do not find looking at the objective material and taking into account the respondent's claim into his personal circumstances that they reveal that there is a real risk of Article 3 mistreatment on return. Accordingly, although the Adjudicator failed to address that matter, we find that it makes no material difference to the outcome of the appeal.

20. We therefore conclude as follows: First, the respondent faces removal to Nigeria not to South Africa of which he is also a national and passport holder. Secondly, the respondent has not disclosed any Convention reason for the persecution which the Adjudicator found had taken place. Thirdly, published background objective material does not support the conclusion that the police or authorities in Nigeria failed to act against traditional religious cults. Fourthly, the background material does not support the proposition that cults are non-state agents of persecution in that the police or authorities will not or cannot exercise control and/or refuse to investigate or deal with satanic/ritualistic ceremonies which include cannibalism. Fifthly, an Adjudicator's determination should identify the home area so that a proper assessment of the issue of internal flight can be considered if it is established that an appellant has been persecuted or for the purposes for considering under Article 3 ECHR whether there is a real risk of such mistreatment arising either there in the home area or elsewhere within the country. Sixthly, an asylum seeker should exhaust all reasonable avenues within his own country for protection before seeking surrogate international protection. Seventh, an Adjudicator should address the issue of the ECHR claim, even if only to reject the same if that be the case, for whilst as Kacaj (2001) indicates the vast majority of cases will have the same outcome and are both a basis for seeking protection, there is a material difference given the absence of the requirement for a Convention reasons for such mistreatment. Eighth, in this case notwithstanding the Adjudicator's findings in favour of the respondent and his finding that the respondent has been persecuted by agents of persecution, we have not found on

the basis of the submissions and representations made to us, as well as the background information, that there is a real risk of such mistreatment recurring were the respondent to return to Nigeria where he could safely remain.

21. The appeal is allowed.

**T B Davey
Chairman**