

IMMIGRATION APPEAL TRIBUNAL

Heard at: Field House
on: 13 May 2002
Dictated: 28 May 2002

Determination Promulgated
30/07/02

Before:

Mr A R Mackey - Vice President
Mr C Thursby

between

PAUL OWEN

Appellant

and

The Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

Representation:

For the Appellant: Mr E Nicholson, Refugee Legal Centre (London)
For the Respondent: Miss A Green, Home Office Presenting Officer

1. The Appellant, a citizen of Sierra Leone, appeals, with leave, against the determination of an Adjudicator (Mrs C J Lloyd), promulgated 1 February 2002 wherein it was conceded that there was no Refugee Convention reason for an asylum claim and an appeal on human rights grounds was dismissed.
2. Leave was granted on the one point which it was considered may survive the Adjudicator's fairly comprehensive rejection of the Appellant's individual case. That point was whether any home that might otherwise have been available to the Appellant was inaccessible owing to the continued fighting or rebel activity in the Eastern Province of Sierra Leone. The Vice President Mr Freeman went on to state that:-

“Even if he succeeds on this, he will need to show that it would be unduly harsh to expect him to return to the Freetown area, if he is to have any reasonable prospect of success on the appeal as a whole.”

The Adjudicator’s Determination

3. The Appellant had claimed that he was born in January 1980, was from Sierra Leone and that he had been a servant or a house-boy for a family in a village in eastern Sierra Leone. There was no direct evidence produced as to the Appellant’s original family home, apart from the reasonable surmise that it must have been close to his master’s house in the village of Tafoma.
4. The Appellant claimed that his master’s house and Tafoma village came under an attack by soldiers from what were assumed to be rebels of the Foday Sankoh Forces. His master’s wife was killed in the attack but the Appellant and his master had managed to escape. Subsequently the Appellant, helped, he claimed, by a pastor, was taken to Liberia and ultimately was able to make his way to the United Kingdom. The Adjudicator rejected a birth certificate, purportedly from Sierra Leone, which the Appellant claimed he had produced to an Immigration Officer, although this was not mentioned in Home Office papers. In addition, the Adjudicator rejected the method of travel to the United Kingdom as lacking in credibility.
5. In relation to his own family, the Appellant claimed that his father was dead and he did not know the whereabouts of his mother or the rest of his family. He had only heard that his own village had been burnt down. He therefore stated that he would be homeless if he returned to Sierra Leone. The Adjudicator did not accept that he had no family or home. She did accept, however, that the Appellant had visited his mother and brothers some time in July 2001 and that his departure from Sierra Leone had taken place shortly afterwards. In addition, the account of the attack on his employer’s village by soldiers which caused the family to disperse was accepted.
6. On the issue of nationality the Adjudicator found after investigating the possibility of Nigerian nationality that she was prepared to accept the Appellant, who had a reasonable knowledge of Sierra Leone and was an uneducated young man, was from Sierra Leone.
7. On the issue of the Article 3 claim the Adjudicator, after referring to the decision in **Hamid Ali Husain v Asylum Support Adjudicator and Secretary of State [2001] EWHC Admin 852** (an appeal relating to the withdrawal of financial support for an asylum seeker), found that while the country information indicated huge problems because of the sheer numbers of displaced people in Sierra Leone, she was not satisfied there was a real risk to this Appellant if returned. The Adjudicator accepted the generally poor conditions in the country as a whole but given the cease-fire, the efforts to restore stable government and the presence of international agencies and UN Forces, considered there would not be a violation of Articles 2 or 3 of the ECHR.

The Appellant’s Submissions

8. Central to the appeal by the Appellant made under Section 65 of the Immigration and Asylum Act 1999 was the accessibility to a home for this Appellant on return. It was

submitted that if he could not access any form of home then the decision should be decided in accordance with the principles laid down in Husain. This Appellant had left Sierra Leone following an attack by people he thought were rebels from across the border in Liberia. The situation in that part of Sierra Leone where he came from was not markedly changed since he left, in Mr Nicholson's submission. He referred us to a report from "All Africa.com" dated 7 December 2001 which was sourced from the UN Integrated Regional Information Networks relating to disarmament of rebels in eastern Sierra Leone. This reports that the areas of Kenema and Kailahun (a district near where the Appellant had lived) are the last two remaining districts to disarm in Sierra Leone. The UN officials were having discussions with the rebels to try and resolve outstanding difficulties which they hoped would be settled in the future. The report states that some 366 former fighters of the RUF had handed over weapons in Kailahun but the disarmament process had stalled with other rebels refusing to disarm because they were unhappy about a number of issues. We were also referred to an article from the 'Independent' dated 9 December 2001 "Civil War in Sierra Leone is Over". This reports meetings between the Sierra Leone President and the leader of the RUF with the President reporting that he was convinced the war was over. The article, however, goes on to state that the declaration that hostilities are over is no guarantee that they are. The RUF had signed peace accords three times in the past only to resume fighting.

9. Next, Mr Nicholson submitted to us that the Adjudicator had not made clear findings in relation to the Husain decision, which had been submitted to her, but appeared to dismiss the submissions in relation to this point by concluding that she did not believe the Appellant had no family and no home (although no reasons for this conclusion are provided).
10. He stressed that from the objective country information that was known, at least until December 2001, the situation in the eastern area of Sierra Leone, where this Appellant apparently came from, was still one of instability with the RUF still largely in control. He stated, however, that it was not part of the Appellant's case that despite the RUF presence the international organisations were not functioning in the area but that all available country information indicated that the border area between Liberia and Sierra Leone was still unstable and that there were significant problems in returning people to that district. In summary, therefore, he submitted that the Appellant's home district was not an area that should be treated as accessible to this Appellant. Thus consideration had to be given as to whether he could relocate to another part of Sierra Leone and, if so, would it be unduly harsh or unreasonable to expect him to do so. In this regard we were referred to reports on the situation for returnees in transit centres in Freetown. The very extensive global IDP Report "Profile of Internal Displacement: Sierra Leone" compiled by the Global IDP database of the Norwegian Refugee Council (dated 7 July 2001) was also before us. Under a section entitled "Camps Overcrowded as escalated conflict caused IDP influx" (page 82 of the report) it is stated that:-

"The latest situation aggravates an existing problem resulting from many years of destruction and displacement. Over 5000 houses and public facilities were burnt down in the AFRC/RUF invasion of Freetown in January 1999. Hundreds of thousands of Freetown residents were made homeless during the looting and burning. Although shelter reconstruction

programmes were initiated by a number of agencies, the scale of damage meant that opportunity for re-entry into accommodation, whether owned or leased, was limited, leading to an increased and prolonged demand for temporary shelter or assistance.”

Later in the same part of the report it is stated that despite noble efforts from the UN agencies, the International Red Cross and NGOs assisting internally displaced persons (IDPS), the conditions in most IDP camps in the country are deemed sub-human, due to a number of reasons. The reasons are then set out in the report.

11. Conditions in transit centres are covered at page 102 of the report where it states that transit centres in Freetown have reached saturation point and many returnees are reluctant to move on, thereby disrupting the admission of new arrivals. The UNHCR had then organised convoys from Freetown to the provinces to temporary resettlement sites. The report states, however, that the use of camps for temporary resettlement could perpetuate the dependence of returnees and IDPs on outside assistance.
12. It was thus submitted that conditions shown in 2000 and 2001, from which there was no evidence of improvement, established that it would be unduly harsh or unreasonable to expect the Appellant to re-establish himself in Freetown. He would only receive what the agencies could make available to him and it appeared there was no room for anyone more in Freetown. In support of this we were referred to a summary report from "Global IDP" ([www.idp project](http://www.idp-project.org)) published with information as at February 2002. This sets out that many IDPs who returned to areas safe for resettlement found a critical lack of basic community services and infrastructure, causing some drift-back to the major urban centres. It also reports the outcome of the fragile security situation has meant additional internal displacement as well as the return flow of refugees, with many of them ending up internally displaced as their home areas remained exposed to RUF terror.
13. The same report sets out that improvements in the security situation in many parts of the country coupled with, at the same time, insecurity in neighbouring Liberia and Guinea has lead to further movements of IDPs. As a result of this the strategy was now one of trying to assist communities in border areas, who host the displaced, rather than add to over-stretched camps or create new ones. It also states:-

“Overall, shelter remains a priority need, with up to 90% of houses destroyed in many areas (UN-November 2001) the population in general is reported to be the most vulnerable to ill-health in the world, with high levels of malnutrition and wide-ranging needs (UN November 2001; MSF September 2001)”

The same report also sets out extreme difficulties in the delivery of humanitarian aid.

14. We were then referred to a comparative situation between the present United Kingdom policy on extended leave to remain for people from Sierra Leone as opposed to the United States/INS Policy, published in September 2001, which extended the temporary protection status for nationals of Sierra Leone for a further year until 2 November 2002. This report from the INS states that:-

“In the case of Sierra Leone there is still an ongoing armed conflict and, due to such conflict, requiring nationals of Sierra Leone to return home would pose a serious threat to their personal safety.”

15. Mr Nicholson submitted that the application of the current Home Office approach was a mistaken one in the light of current evidence and the implications could be more dangerous than the Home Office stated.
16. In summary, therefore, he submitted that for this Appellant his home area was simply inaccessible and it would be dangerous to attempt to send him there. An internal flight alternative was not available to him in Freetown as it would be unduly harsh or unreasonable for him to be relocated to Freetown given the huge problems that exist there for returnees. Thus, on the facts of this case, this Appellant should succeed and it would be a breach of Article 3 of the ECHR for him to be returned.

The Respondent's Submissions

17. Miss Green requested that we consider up-to-date documentation she submitted to us in the form of a BBC news article dated 9 May 2002 “Election Boom in Freetown”. As this was new information we allowed Mr Nicholson time to consider it. He was happy to do so and reply in final submissions.
18. This BBC report appeared ahead of presidential elections which took place on 14 May 2002. It stated that in driving around Freetown the reporter had seen no war only commerce, and that most Sierra Leonians may still be very poor but the end of the war has given them a chance to change the state of affairs and they were working hard at it. The rest of the report however does not cover issues relating to returnees or conditions in eastern Sierra Leone.
19. We were also referred to the October 2001 CIPU Report paragraphs 5.44, 5.45 and 5.46. These refer to the international assistance being given to Sierra Leone and outline a number of the aid programmes that are now in operation. We were also referred to paragraph 7.18 in relation to freedom to travel and internal flight where it is set out that thousands of Sierra Leonians have returned from Guinea because of attacks and ill-treatment by RUF forces and Guinean forces. The report goes on to state:-

“Some of these IDPs were housed in camps but many live in Freetown. This large influx, together with the lack of resources to deal with them, caused tension between the local residents and returning IDPs.”

20. In relation to the determination, Miss Green submitted that the Adjudicator had accepted the Appellant was from Sierra Leone but had largely rejected credibility in other areas. The directions were given to return the Appellant to Sierra Leone and this would be carried out within operational guidelines of the Home Office. She agreed that the policy granting ELR had ended and that despite a positive outlook to the return of people to Sierra Leone the policy included an exception based on trauma grounds. However this would not apply to the Appellant's situation.

21. She agreed that the prime issue before us was one on the risk of return and then, in the alternative, if the Appellant could not access his home area then could he return to Freetown. Based on information such as the BBC report, it would not be unduly harsh to expect this Appellant to return to Freetown. In her submission, protection was available from international agencies in Freetown and that we should be cautious in considering reports on Sierra Leone as many of these were dated. We were referred to a Tribunal decision in **Kapela [1998] Imm AR 294**. Also she submitted that the decision in **Husain** should be distinguished as the issue before the courts in that case was one of asylum support and not the decision that was before this Tribunal.
22. In his reply Mr Nicholson did not consider the BBC report altered the situation. He agreed that it indicated optimism in the country about the election but it did not cover the situation relating to the Appellant's home town nor his personal situation on return to Freetown. We should therefore refer to the situation in the camps and the problems for not only returnees but internally displaced persons. He submitted that the situation in Freetown was one of saturation and that even attempts to return people to their original homes was not a programme that was working out satisfactorily as they could not access genuine protection. He reminded us of the comments in the UN Report that conditions in the camps were "sub-human" and given this situation and the comments in relation to problems for returnees and IDPs facing the worst health situation in the world, we should find it unduly harsh to expect the Appellant to relocate to the Freetown area.
23. We reserved our determination.

The Issues

24. We found the issues before us to be:-
- (a) Given the country information before us, is it possible for this Appellant to access his home district in eastern Sierra Leone at all, let alone with any degree of safety? In reaching this conclusion it was relevant for us to take into account not only findings of the Adjudicator but also the fact that no reasons appeared to be provided as to why the Adjudicator considered the Appellant had family members and a home available to him in Sierra Leone. We also should be guided by appropriate Strasbourg jurisprudence such as **Hilal v UK (45276/99) ECHR, [6 March 2001]** unreported.
 - (b) If we consider his home area is inaccessible to him, is an internal flight or internal protection alternative (IFA/IPA) available to him within Sierra Leone and in particular would it be unduly harsh or unreasonable to expect him to relocate to Freetown?

Decision

25. In respect of issue (a), we found that the situation in eastern Sierra Leone near the border with Liberia is, from the best country information available to us, still relatively unstable. We assess this at the level of a real risk of him suffering torture, inhumane

or degrading treatment on return. We consider that it would be extremely difficult to achieve in reality, let alone expect this Appellant to return to his home district. This conclusion is reached regardless of determining whether or not he has family members who may make a home available to him in that district. The country information referred to above along with the problems for returnees and internally displaced persons in the border areas does not yet indicate that risks of maltreatment in terms of Article 3 to returnees (from the RUF still in the border areas) are below the level of a reasonable likelihood. In addition it would appear that the likelihood of him finding a home or accommodation or any form of support in this district is highly remote.

26. Accordingly we find that if the Appellant were returned to his home district there is a substantial basis for concluding that there would be a real risk there would be an infringement of Article 3 of the ECHR. We therefore turn to consideration of a possible IFA/IPA.
27. We have closely considered the latest country of origin information available in respect of Freetown, including the latest BBC reports. We also note the Appellant's own personal situation. He is a young, independent and fit man who would be returning to a city that appears to be going through the benefits of a period of peace and growing commercial activity. Set against this he is a returnee with no apparent home to return to or any other family support systems. He would thus be thrown into the general mele of expecting support from international agencies, along with the mass of other internally displaced persons and returnees. He would thus be, at best, placed in a camp where conditions are described as "sub-human" and face medical conditions described as some of the worst in the world. Beyond this the possibility of being relocated to other camps outside of Freetown does not, on the current information, look to be a viable alternative.
28. Given the totality of the situation we find that he would need to be an extremely resourceful young man with considerable resource and intelligence to survive in Freetown at this time. We therefore consider that it would be unduly harsh or unreasonable to expect him to relocate to Freetown at this time. With the improving situation it may be that within a year or so our decision would be a different one, however we must make the decision at this time and we conclude that the risks to him are still real and that relocation to Freetown would not provide him with meaningful protection and it would be unduly harsh.
28. The appeal is therefore allowed.

A R MACKEY
VICE PRESIDENT