

LSH
Heard at Field House by
Video Link to Manchester
On 8 June 2004

IMMIGRATION APPEAL TRIBUNAL

RB (Credibility – Objective evidence) Uganda [2004] UKIAT 00339

Date Determination notified:

8 October 2004

Before:

Mrs J A J C Gleeson - Vice President
Mrs J Harris
Ms S S Ramsumair JP

Between

APPELLANT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Mr R O’Ryan of Counsel, instructed by
Parker Rhodes, Solicitors
For the respondent: Mr John Wyatt, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals with leave against the determination of an Adjudicator, Mr J Sommerville, who dismissed his appeal on both asylum and human rights grounds. Leave to appeal was granted on all grounds and in particular on a ground referred to as Ground 5, in which it was agreed at the beginning of the hearing was in fact Ground 4. The numbering of the grounds is not particularly helpful and for the purpose of this decision the Tribunal summarises the grounds as follows:

“1. In relation to paragraph 24 of the Adjudicator’s determination that the Adjudicator’s finding in that paragraph that the appellant gave the impression of being a credible witness is

inconsistent with his later finding that the appellant's account is not to be believed.

2. In relation to paragraph 25 that the Adjudicator was not entitled to make assertions with regard to a theoretical system in place for handling cheques for larger amounts than the limit in question (the passage in brackets not being relied on by Mr O'Ryan) and that this issue was never put to the appellant at the hearing and it was therefore both unreasonable and in contravention of the laws of natural justice.
 3. In relation to paragraphs 26 and 28 of the determination that the Adjudicator misunderstood the appellant's account during his evidence the appellant's account being that the fraud did not reach as high as the Defence Minister but involved a group of people involved including the Commander Cashier who would misappropriate and split the funds. On that basis the Adjudicator was said to have erred in considering that the cheque could simply re-issued as four cheques for 500 million Tomans each available at the relevant time.
 4. In relation to paragraph 29 that given that Uganda is a country where corruption and violence are endemic the Adjudicator's finding that the appellant should have contacted the police rather than taking the safer option and fleeing the country is perverse: the appellant had already spoken to his employers and the police before he was assaulted and matters had clearly already gone far beyond the fact of being unwilling to cash the cheques concerned.
 5. In relation to paragraph 30 of the determination that the credibility finding as a whole is unsafe, the centrepiece of the appellant's story is plausible and internally consistent and consistent with the objective material.
 6. The ground marked ground 3 in the grounds of appeal was not relied on at all at the hearing.
 7. The appellant argues that in dismissing the appeal on the grounds of credibility the Adjudicator failed to consider adequately or at all the objective evidence and background material faced before him or to give due consideration adequately or at all to the appellant's rights under the European Convention on Human Rights in particular to breaches of Articles 2 and 3 and 6".
2. The Tribunal heard submissions from Mr O'Ryan against these headings. Ground 1 paragraph 24: he submitted that the Adjudicator's findings were inconsistent. Ground 2 paragraph 25: the appellant had given a plausible explanation of what he would ordinarily do which the Adjudicator did not mention in his determination (appellant's witness statement, page 13, paragraphs 12 to 13). Ground 3: it had never been the

appellant's case that the Minister was responsible for the fraud, appellant's bundle page 15 to 16, paragraph 19 and Question 26 at C(3). The advice from his superiors was given before the appellant was beaten up and the Adjudicator had misunderstood the evidence. Ground 3: paragraphs 26 and 28 the Adjudicator should not have expected cheques to be re-issued for lesser amounts and the Commander Cashier who was the fraudster could not get a fresh cheque. Ground 4: the appellant did report the problem to the police but the Adjudicator should have had regard to the extent of corruption in Uganda, see ground 7.

At page 45 of the appellant's bundle the April 2003 CIPU report stated:

"5.79 In an effort to tackle corruption and inefficiency in the army the Government raised the pay of soldiers by 5% - to discourage pilfering. The UPDF established a special pay unit to curb fraud and corrupt practices, and will be in charge of procurement of goods and supplies. President Museveni estimated that US \$4.8 million was lost annually through fraud in salaries and food supplies by one division alone."

The Adjudicator should have read this passage and indeed the whole of the CIPU. The Tribunal pointed out that that passage did not appear in the April 2004 version of the CIPU report and could not therefore be regarded as current background evidence. Mr O'Ryan did not comment.

3. Mr O'Ryan then dealt with the detailed arguments under ground 7 in relation to the objective evidence. The Adjudicator should have read the whole of the appellant's 248 page bundle or at least pages 217, 219 and 223 covering the period June 2000 to April 2003 without being directed to do so. At page 245 and following of the Tribunal's current bundle in the 2003 US State Department Report issued on 25 February 2004 the Adjudicator should have considered the question of corruption as therein summarised. Plausibility had therefore been considered in a vacuum and the credibility finding was erroneous. He asked the Tribunal to remit the appeal. He accepted that there was no risk to returning asylum seekers per se and that if the appellant was not at risk as set out in his core account that he could be returned safely.
4. For the respondent, Mr Wyatt took the Tribunal to paragraph 2.51 of the current CIPU report: 2.51 and paragraph 7 of the determination. All the documents which were before the Adjudicator were now out of date, in particular 5.73 of the old report. The Adjudicator did not err at paragraph 25 in considering that the appellant should have considered referring

Commander Cashier's request to a superior officer or discussing it with the Commander and the Adjudicator was entitled to reach the conclusion that he did. The challenge to the appellant's credibility at paragraph 10 of the letter refusal:

"The Secretary of State has carefully considered your claim, made in paragraph 6 of your statement, that you could not cash the cheque, purportedly from the Ministry of Defence, because it is prohibited by bank regulations to cash cheques for such a large sum of money. The Secretary of State is of the view that the Ministry of Defence would be aware of the Regulations surrounding its account with the Central Bank. The Secretary of State therefore does not accept that the Ministry would have sent a cheque for more than four times the money which it was legally able to obtain. The Secretary of State considers that this indicates that your claims cannot be accepted."

This meant that the appellant was on notice of the matters referred to in paragraph 28 of the Adjudicator's determination and in particular that the Ugandan Ministry of Defence could be taken to be aware of the bank's procedures for the encashment of cheques. At paragraph 24 the Adjudicator merely said that the appellant had given the impression of being an implausible witness and then gone through the four facts showing why his account was not in fact credible. The individual aspects of this account did not add up and the Adjudicator was right not to accept the account. At paragraph 29 the Adjudicator considered that there had been no effort to report the abduction to the authorities or indeed to the government's bank which as the appellant was only doing his job seemed unusual. Overall the Adjudicator's finding of fact was one which he was entitled to make and he asked us to dismiss the appeal.

5. Mr O'Ryan did not have anything to add in reply and the determination was reserved for postal delivery which we now give.
6. As the Tribunal observed to Mr O'Ryan at the beginning of the hearing there were two heads of challenge to the Adjudicator's determination: first, that his findings of fact are perverse or *Wednesbury* unreasonable and second that in consequence he fails to give adequate weight to the objective evidence and background material before him.
7. On Mr O'Ryan's account and having regard to the paragraphs relied upon in the appellant's subjective evidence, the core account is this. The appellant worked for the Bank of Uganda from 1993 until December 2002 when he decided to leave Uganda. By that time he was a senior Bank Officer with authority to cash cheques for Government Ministries and departments including the Ministry of Defence up to a maximum

of 500 million Ugandan Shillings. In the appellant's statement, his evidence is that the Commander would frequently withdraw large amounts just under the authorised maximum. Significantly, (paragraph 12 of the determination) there was a procedure for larger withdrawals in other currencies; a 2 billion shilling withdrawal had been made on an earlier occasion. Extra documentation was required on these occasions. Frequently cheques would be returned, represented and cashed, (paragraph 13). Despite his thorough knowledge of the procedures, on the day in question Commander Cashier came to the bank with inadequate documentation (the cheque and the banking voucher) and wanted to be paid only in Ugandan shillings. The appellant refused; he believed that the Ministry of Defence would issue further appropriate cheques which could be cashed, and so initially he did not report the problem to his superiors.

8. If that is the evidence which the Adjudicator is said to have omitted to consider, it is not to the appellant's advantage: the appellant's case as summarised by the Adjudicator is that he had no authority at all above the 500,000 shilling level, whereas it now appears that there was a well known procedure for dealing with larger amounts which required further documentation and for them to be paid at least partly in non Ugandan currencies. It is also quite clear that the procedures were well known to Commander Cashier. This supports the Adjudicator's findings at paragraphs 25 to 28; the Tribunal does not find that the Adjudicator's findings are perverse. Even if there were a problem with corruption in Uganda (as undoubtedly there was) it simply beggars belief that Commander Cashier, who was in the habit of using known systems, would go out of his way where a systems existed for larger payments, would make a request which he must have known could not be met. That is the core of the appellant's claim and it is not sustainable. The Adjudicator's credibility findings are sufficiently reasoned and are sound.
9. On that basis, no consideration of objective evidence would have altered the Adjudicator's core findings which are sustainable on the appellant's own subjective evidence. We therefore return to the detailed grounds which Mr O'Ryan put forward.
10. Grounds 1 to 5 fall at that hurdle; we also note that the record of proceedings reflects that the question of systems for handling cheques for larger amounts was put to the appellant at the hearing, as well as forming part of the appellant's own stated evidence. As we have already stated, Ground 6 was withdrawn.

11. We turn to the question of alleged failure to consider the objective evidence and background material placed before him. We have no sympathy with the suggestion that an Adjudicator faced with a 243 page bundle of largely out of date material is required to read every single page of it in order to determine whether it raises any issue which he should consider, whether or not he has been referred to it. We have considered the skeleton argument upon which the appellant relied at the hearing before the Adjudicator; that contains no specific references to items in the objective evidence bundle. The only other reference in the record of proceedings to objective evidence is a reference to the index provided in the bundle, which sets out the matters which are of interest in the objective part of the appellant's bundle. That index occupies 9 pages and is a mixture of a list of documents and excerpts from the documents themselves. Amongst the excerpts the only matter to which Mr O'Ryan wished to draw our attention appears on page 1 of the index of documents and is an excerpt from page 6 of the CIPU report for April 2003 confirming that bribery and corruption are widespread amongst officers of the lower Courts and that there is a military court system. That has no relevance to the facts of this case.
12. The Tribunal indicated that we were not prepared to be referred simply to "the bundle before the Adjudicator" or indeed the entirety of the bundle before us, which now runs to some 327 pages. We asked Mr O'Ryan to indicate which documents he considered relevant. Mr O'Ryan argued that three press reports which appear in the bundle before the Adjudicator, to which the Adjudicator was not taken, should in any event have interested him because of their titles. The reports all deal with corruption; the first is dated April 2003 and relates to police corruption; the second (dated 30 August 2002) relates to corruption in general and the final document is headlined "Kampala June 2000". There appears to have been no dispute before the Adjudicator, even on the appellant's own grounds of appeal, in relation to the known corruption problem in Uganda. Accordingly, we cannot see why the Adjudicator should be expected to trawl through the back of the bundle to convince himself of that which the appellant asserts he had already accepted; that Uganda had a problem with corruption. None of these documents relates to the banking system.
13. Mr O' Ryan did not rely upon any other document in the enormous Tribunal bundle and had not provided in that bundle (despite its date) a copy of the latest CIPU report. Fortunately, the Tribunal, regarding that report as in the public domain, had brought a copy to the hearing. In relation therefore to ground 7,

the Tribunal is not satisfied that there is any objective material to which the Adjudicator's attention was drawn which he failed to consider. We deplore the practice of filing enormous bundles of irrelevant documents especially in publicly funded cases and there is no authority for requiring the Adjudicator to read the whole of such bundles unless his attention is drawn to them.

14. For all of the above reasons, on both its limbs, this appellant's appeal cannot succeed under the Refugee Convention. The Adjudicator's record of proceedings records that Counsel accepted that the appeal under grounds 2 and 3 of the ECHR would stand or fall with that of the Refugee Convention. In relation to Article 6, we have not heard detailed argument from Mr O'Ryan but we observe that there appears to be nothing with which this appellant would be likely to be charged and therefore that issues of fair trial simply do not arise.
15. **For all of the above reasons, the appellant's appeal is dismissed.**

**J A J C Gleeson
Vice President**

8 June 2004