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Heard at Field House

AL (Documentary Evidence –
UNHCR - Peaceholding) Angola
CG [2002] UKIAT 06429
HX50946-2001

On 6 December 2002

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

7 February 2003

Before:

**Mr G Warr (Chairman)
Mr R Baines JP**

Between

Aguinaldo Simao Tomas Lunguieki

APPELLANT

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a citizen of Angola, appeals the determination of an Adjudicator (Mr C P Rushton) dismissing his appeal against the decision of the Secretary of State to refuse his application for asylum.
2. Mr R O'Ryan, of Counsel, instructed by Rochdale Law Centre appeared for the appellant while Mr M Davidson represented the Secretary of State.
3. The appellant arrived in this country on 29 September 2000. He made his application for asylum on arrival. He and his family had been directly involved in the civil war in Angola and both his parents had been killed by government agents in 1993. Prior to his death, the appellant's father had been detained and tortured. In consequence,

the appellant had become involved with the UNITA opposition and in 1997 he had secretly joined the party. He had obtained employment in the Ministry of Agriculture despite his sympathies and had represented his department in various international organisations. The appellant's father had worked as a journalist and the ruling party considered that he had assisted the UNITA leader to escape from the country. In spite of the appellant's employment with a government department, the security forces began to show an interest in him, suspecting him of sharing his father's views. He had always kept secret his own membership of UNITA. From 1998 until his departure from Angola in September 2000 the appellant had been subject to harassment by the security forces and had been interrogated on many occasions as the government believed that he had sensitive documents passed on to him by his father. He had been severely ill-treated while in detention and was placed on trial and detained pending sentence. In August 2000 his brother had been murdered because of the family connection.

4. While awaiting sentence, the appellant escaped from custody and contacted a UNITA agent who arranged his departure.
5. The appellant accepted in his evidence before the Adjudicator that there had been a significant change in the position in Angola following the assassination of the UNITA leader on 22 February 2002. The Adjudicator noted that some six weeks had elapsed since the signing of the peace accord between the government and the remaining UNITA command structure. There had been no reports of the agreement breaking down. While the appellant was emphatic in his oral evidence that there was no certainty that the peace agreement would not, like the ones which had preceded it, break down the Adjudicator could not accept that the agreement was likely to fail. The Adjudicator did, however, accept the appellant's oral evidence that in consequence of both his family history and his own covert support for UNITA he was regarded by the Angola regime as an opponent. Absent the peace agreement, the appellant would have had a well-founded fear of persecution. The Adjudicator considered that the peace accord would now prevail and consequently dismissed the appeal.
6. The Adjudicator heard the appeal on 18 April 2002 and on 26 April 2002 the UNHCR issued a statement as follows:-

"Whilst we consider this (the ceasefire agreement) to be a welcome and potentially far reaching development, our view at this stage is that it should not warrant an immediate or radical change to UNHCR's existing position regarding the assessment of refugee claims... UNHCR believes that a cautious approach is justified because it will take some time for the new development to filter down to the rank and file of the protagonists to the conflict... UNHCR believes that the situation in Angola has not sufficiently consolidated to justify the return of individuals whose claims for asylum have been unsuccessful..."

7. It was this statement by the UNHCR which caused the Chairman to grant leave in this matter. Counsel submitted that it was illogical for the Chairman to grant leave on this issue and artificial. He drew our attention to the operational guidance note issued by the Home Office and reminded us that the appellant had been in custody and had escaped and had a history of detention and mistreatment. While it was accepted that the UNITA fighters had been demobilised and that several hundred thousand were dispersed in camps there was no evidence of large scale releases where individuals had been detained after the ceasefire. Counsel drew our attention to Amnesty International and US State Department Reports in the bundle about the position prior to the ceasefire. The Human Rights Watch Report indicated that the Angolan Police Force might have strong internal disciplinary structures but violation of the rights of citizens are not targeted systematically from the top down. Counsel acknowledged that the report mentioned that human rights awareness had been developed to a considerable degree in Luanda (where the appellant comes from) although there had been very little impact in the provinces. Counsel accepted that the passage in the Human Rights Watch Report to which he referred us was somewhat obscure.
8. The Home Office operational guidance note in respect of Angola dated October 2002 emphasised that fighting had not completely ceased and that there was still fighting between the Front for the Liberation of the Enclave of Cabinda (FLEC) and the government. While the guidance note stated that the majority of UNITA cases were not well-founded there might be exceptions. While it was not suggested there was any reverse burden on the Secretary of State, the case of Arif was analogous to that of the appellant.
9. Mr Davidson submitted that the UNHCR had been contacted to update their position in the light of the statement referred to in the grounds of appeal which had caused the Tribunal Chairman to grant leave. In October 2002 the UNHCR had stated that their current position on returns to Angola was as follows:

"As far as individuals originating from Luanda are concerned, we believe that they should only be returned if, firstly, this will not result in them living in a situation of internal displacement, and, secondly, any family members residing there have been identified and so notified. As regards individuals from the provinces or those who do not have relatives in Luanda, we believe that their return to Angola should be avoided, if they increase the already large number of internally placed persons."
10. Also, the UNHCR had written specifically about the appellant on 15 July 2002 noting that following the ceasefire "no serious security incidents have been reported" although the humanitarian situation

continued to be alarming. It was premature to assume that the security of returned asylum seekers could be guaranteed.

11. The ceasefire and other developments had demonstrated that the Angolan authorities did not pursue former UNITA fighters and indeed many former rebels have been recruited to join the military. There would be no interest in prosecuting the appellant and it would be speculative to assume that he would be of interest because of his escape.
12. We reserved our determination at the conclusion of the submissions. We do not consider that it was artificial for the Chairman to grant leave on the point identified by him. The peace deal was still comparatively young and the UNHCR statement was issued within a few days of the Adjudicator's determination. We now have the benefit of up-to-date information from the UNHCR together with a letter written specifically concerning the appellant. The October 2002 gives the following summary concerning the ceasefire agreement which it may be helpful to reproduce here:
 - "Following the death of Jonas Savimbi in February 2002, UNITA and the FAA agreed to a ceasefire. The subsequent peace agreement, signed on 4 April 2002, established the organisational framework for the full demobilisation of UNITA forces, and arrangements for their reintegration into civilian life. The accord was based on the principles of the Lusaka Protocol of 1994.
 - The Joint Military Commission (JMC) formally began the demobilisation process in June 2002. In order to support the JMC's work, the Government established the National Commission for the Productive Social Reintegration of Demobilised Soldiers and Displaced People (NCPSRDSDP) to provide administrative assistance in the reintegration process.
 - At the end of June 2002 over 85,000 (and over 300,000 family members) UNITA rebels had been registered in quartering camps across the country, and nearly 31,000 weapons had been handed in. On 15 July 2002 the FAA began recruiting 5,000 former rebels to join the military and police in the final stage of the demobilisation process. Though reports from various provinces on 22 July 2002 indicated that the ex-rebels were still armed, the completion of the demobilisation process at the end of July 2002 symbolised the formal end of the civil war.
 - In April 2002 UNITA began the process of redefining its mandate by establishing a Reconciliation and Reunification Commission to support and monitor the peace process and encourage a move toward unifying the movement. On 17 May 2002, the UN Security Council decided to suspend the travel restrictions imposed on senior UNITA officials for a period of 90 days. On 16 June 2002,

the UNITA leadership announced that a new party leader and political framework would be agreed at a Party Congress in 2003.

- UNITA's military wing was disbanded following the completion of the demobilisation process. The organisation's various factions were formally unified on 10 October 2002 when 18 working groups were established in order to shadow the Government. UNITA-R ceases to exist. The UN Security Council has decided to lift the travel ban (temporarily suspended since 17 May 2002) on senior UNITA officials as of 14 November 2002."
13. The Home Office concluded that following the ending of the civil war and the subsequent peace process in most cases applicants who expressed a fear on the basis of membership or association with UNITA were unlikely to have a well-founded fear of persecution although the threshold may be passed in individual cases.
 14. The United Nations Report dated 26 July 2002 reproduced in the appellant's bundle notes that the chances for a sustainable peace are higher than at any time since Angola became independent but that there was nevertheless a humanitarian crisis. While it appears from the material in the appellant's bundle which is up to date, that some four million Angolans, a third of the population, have been displaced, the general picture is one of difficulties relating to malnutrition, lack of food and health issues. Counsel drew our attention to a part of the Human Rights Watch Report which he accepted was not entirely clear but none of the material before us appears to indicate that the peace process has broken down or threatens to break down. The appellant comes from Luanda and in Luanda it is stated that human rights awareness has been developed to a considerable degree.
 15. The UNHCR on 15 July 2002 responded to a request to comment on the appellant's individual circumstances. The UNHCR stated that they could not produce a statement of fact on an individual case and whether or not the Angolan Government would persecute the appellant as an individual due to his connections with UNITA. The UNHCR gave general guidance and referred to the signing of the ceasefire agreement and referred to the fact that no serious security incidents had been reported.
 16. The emphasis of the UNHCR in that letter appears to us to be on the humanitarian concerns and the need to avoid unplanned or premature returns which would put additional strain on the infrastructure. The situation had not sufficiently consolidated to justify the return of unsuccessful asylum seekers.
 17. We can quite understand why the UNHCR would wish not to encourage returns to a country which is facing problems of health and nutrition and recovering from years of war.

18. Of course no guarantee of safety can be given to any individual. However, it is necessary for the appellant to demonstrate to the required standard that returning him to Angola will expose him to a real risk of harm or ill-treatment or persecution. The evidence before us does not show that. It shows that the peace accord is holding although there are serious problems of a humanitarian nature to overcome. Counsel acknowledges that there is no reverse burden of proof in this case, the burden remains on the appellant, light though it is. On the material before us, he has not discharged that burden. The UNHCR has clarified the position which moved the Chairman to grant leave. The Adjudicator was right to dismiss this appeal.
19. We dismiss the appeal and affirm the Adjudicator's determination.

G Warr
Vice President