

CH  
Heard at Field House  
On 17 July 2002

APPEAL NO HX50090-2001  
FH (HIV/AIDS-Medical Facilities)  
Sierra Leone CG [2002] UKIAT  
03905

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

20.08.02

**Before:**

**PROFESSOR D B CASSON (CHAIRMAN)  
MRS S I HEWITT  
MS S S RAMSUMAIR JP**

**Between**

**FATIMA BINTA HAMID**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**DETERMINATION AND REASONS**

1. This is an appeal by a citizen of Sierra Leone against the determination of an Adjudicator (Mr C J Hodgkinson), dismissing her appeal on asylum and human rights grounds against the decision of the Respondent on 11 January 2001 to give directions for removal to Sierra Leone.
2. Before us, the Appellant was represented by Miss C Simpson instructed by Kibedi & Co. The Respondent was represented by Mr S Bilbe.
3. There is no record of the Appellant's lawful arrival in the United Kingdom. She claimed asylum on 9 January 2001 and said she had arrived on 22 December 2000 by air in possession of a forged passport arranged by an agent. She said she had left Sierra Leone in mid-May 2000 and had travelled to Guinea, where she had stayed before travelling to the United Kingdom by air via Banjul (the capital of the

Gambia). She gave her last address in Sierra Leone as a road in Freetown. The basis of her claim for asylum was that, in January 1999, following the rebel attack in Freetown, she was abducted by the rebels and taken to the bush. She stayed with them until Ecomog forces freed her. On returning to Freetown, she said she was branded as a rebel by the civilian population and that the Kamajors continually harassed her. The CIPU report before us describes the Kamajors as another name for the Civil Defence Forces (CDF), a coalition of militias that supports the government of Sierra Leone and is based on traditional hunting society. The CDF are normally under military discipline and, although independent, are responsible to the government. The Appellant said she feared the rebels and the Kamajors and claimed that after "the May 2000 incident when Foday Sankoh was arrested", anybody who was suspected of being a rebel would be harassed and arrested. She said her home was visited and destroyed by the Kamajors. Her father and brother were murdered; it was only then she decided to flee from Sierra Leone. She said there was no part in Sierra Leone that was safe for her to live and that the rebels were everywhere in Sierra Leone. In the "further information" section of her statement of evidence form, she disclosed that she had been raped; that she no longer had any close relatives to live with in Sierra Leone; that there are no bright prospects for a young girl like herself in Sierra Leone, and that there is "every likelihood that I will again be abducted and raped by the rebels".

4. The Appellant gave evidence before the Adjudicator at the hearing of her appeal on 8 March 2002. The Notice of Appeal to the Adjudicator had stated that the Appellant was HIV positive following her rape by rebel soldiers. She was pregnant, traumatised and psychologically humiliated as a result of the rebels' actions. There was before the Adjudicator a copy letter from Guys Hospital dated 15 June 2001. Her representative requested an adjournment because no Home Office Presenting Officer was present, and because the representative understood that the Home Office had an HIV policy which might not have been considered. Further, the representative said that the Appellant had suffered significant psychological effects from learning that she suffered from the HIV virus and it was desired to obtain a psychiatric report. The Appellant had brought her child with her to the hearing. The Adjudicator refused the request for an adjournment and said he did not consider a psychiatric report to be necessary, as he accepted that the Appellant would have suffered psychological trauma from learning that she had contracted the HIV virus. The appeal proceeded and the Appellant gave evidence.
5. In reaching his decision, the Adjudicator noted from background evidence, that serious human rights violations by rebels in the areas held by them and by the government-supporting CDF in government areas continued. Many of the violations were committed with impunity and there were numerous instances of sexual assaults by the Kamajor militia. There were citations of civilian massacres and various abuses

including the rape of women. Abduction of women by rebel forces was well documented. There appeared to be little government monitoring of human rights abuses.

6. Against that background, the Adjudicator found the Appellant's account of her history of events as credible, and he accepted it. He did not regard credibility as an issue since the Respondent in the reasons for refusal letter "does not appear seriously to question the Appellant's account of events". The Adjudicator found, however, that the Appellant had not shown that she would be at risk for a reason within the Refugee Convention, if she were returned to Sierra Leone now. He accepted that she had suffered significantly and was deemed to be a collaborator following her release from rebel custody; and he noted that her ill-treatment was not at the hands of government forces. Although she had said that she had no home in Sierra Leone and that it would not be feasible for her to live in any government-held region of the country, the Adjudicator did not accept that she would be at any greater disadvantage if she were to be returned than any other citizen in a similar position. She did not, therefore, have a well-founded fear of persecution in Sierra Leone. As to the human rights claim, the Adjudicator noted that the Appellant was now receiving a high standard of care for her HIV condition, which might not be available in other parts of the United Kingdom. There was no documentary evidence before him regarding the availability of treatment for HIV sufferers in Sierra Leone. The Adjudicator assumed that, at the very best, the level of medical care in Freetown was unlikely to meet the standard currently being received by the Appellant. He noted that in June 2001, the only treatment the Appellant was receiving was folic acid while she was pregnant. The HIV virus currently appeared to be well suppressed with no symptoms. The Adjudicator was satisfied that there were no substantial grounds for believing that there would be a breach of Article 3 or any other article of the Human Rights Convention if the Appellant were to be returned to Sierra Leone at the present time. He expressed his sympathy with her because of the very traumatic events that had occurred in her life.
7. The grounds of appeal to the Tribunal are carelessly and repetitively drafted. Ground 7 states: "The Special Adjudicator seemed to have concerned himself solely with the issue of the Appellant's HIV virus and failed to consider the important issue of whether or not the Appellant suffered harassment and persecution for a Convention reason and whether or not her life would be in danger if she returned to Sierra Leone." The grounds are concerned solely with the asylum claim. Despite that, Mrs Simpson indicated that she wished to address us on the medical aspects of the case. Very properly, Mr Bilbe, for the Respondent, objected. We indicated that we thought it right to hear Mrs Simpson on the human rights aspect, although we acknowledge that our decision put Mr Bilbe at a disadvantage in that he was clearly not prepared to deal with that aspect of the appeal.

8. In relation to the asylum appeal, Miss Simpson drew our attention to passages in the US State Department report on human rights practices in 2001 of continuing human rights breaches. The report states that, unlike the previous year, there were no reports that SLA forces committed extra-judicial killings; however, there were reports that forces operating in support of the government committed such killings; reports in the first half of the year of CDF forces summarily executing suspected rebels and rebel collaborators were made but it was difficult to gather detailed information or to corroborate reports. There were allegations that CDF members killed indiscriminately, resulting in civilian fatalities. In June and July, RUF carried out retaliatory attacks against villagers thought to be sympathetic to CDF. There were credible reports that CDF forces operating on behalf of the government beat and otherwise abused persons, and the government had not acted to curb these abuses or punish those responsible. Rebel forces used rape as a terror tactic. Miss Simpson correctly submitted that it is imputed political opinion which matters: The Appellant's claim was that she had been persecuted because it was thought she was a rebel supporter.
9. Mr Bilbe for the Respondent submitted that, contrary to ground 7 of the grounds of appeal, the Adjudicator had clearly considered the asylum claim: he had found at paragraphs 48 to 52 of the determination that the Appellant would not be at any greater disadvantage than any other citizen in a similar position if she were to return to Sierra Leone. The Appellant was not a CDF member; her village was not sympathetic to CDF, so that extracts from the State Department report to which we had been referred were irrelevant. The report showed an improvement in the security situation, which was confirmed by the CIPU report. Paragraph 4.31 reported an upsurge in violence for most of the year 2000, but noted an improvement following the Abuja ceasefire agreed in November 2000, so that rebel groups had shown an increased willingness to advance the peace process and to cooperate with the disarmament, demobilisation and reintegration process (DDR). Paragraph 5.1 of the report, headed "Overview" stated:

"The present Sierra Leonean government has generally respects (sic) human rights, and attempts to abide by the safeguards within the Constitution. Where these rights are curtailed, it is usually been (sic) because of security considerations, or because of a lack of funds or trained personnel to ensure that they are respected. However, the government appears to be responsive to representations made to it, and has attempted to address the issue of human rights, and abuses when these have been reported to it."
10. The June 2002 CIPU bulletin on Sierra Leone reported that parliamentary and presidential elections were held on 14 May 2002 and were conducted in a peaceful atmosphere, with a few incidents of violence. The elections appear to have been generally free and fair. Opposition parties were considering their position in light of the results,

and while they had expressed reservations, they had not formally challenged the outcome. Mr Bilbe submitted that the Adjudicator had considered the asylum claim, contrary to the grounds of appeal, and that the evidence showed that the situation was continuing to improve since his considerations.

11. We accept Mr Bilbe's submission in relation to the asylum matter. The current reports, to which we have referred, satisfy us that there is now a greatly improved security and human rights situation in Sierra Leone. Whether or not the Appellant would, on return to that country after her absence, be considered to be someone who had collaborated with the rebels, we find that she fails to demonstrate that she would be exposed to a real risk of persecution because of imputed political opinion, or for any other reason within the United Nations Refugee Convention, or that the authorities would be unable and unwilling to offer protection to her. We agree with the Adjudicator's conclusion.
12. As to the human rights claim, Miss Simpson drew our attention to various documents, including a statement of Home Office policy on HIV, a Foreign and Commonwealth Office report from Freetown, dated 19 November 2001 and a paper by the Terence Higgins Trust. We have considered these documents, but in our judgement, the most important document before us is an up to date medical report by the Appellant's Consultant Physician at Guys and St Thomas' Hospital Trust dated 27 May 2002. The report states that the Appellant received anti-retroviral therapy in pregnancy, which was discontinued after the pregnancy as her own surrogate markers were good. The baby is well and HIV negative.
13. The report describes the Appellant's blood test results as "very favourable" and states that she does not require anti-retroviral therapy for herself at the present time. The report states:

"With regard to her prognosis, it is always difficult to comment on how long somebody will remain well, but in view of her good CD4 count reflecting a healthy immune system and a low viral load, she should not require any retroviral therapy in the immediate future and should remain well for several years. There will come a point after a variable period of time that the CD4 count declines and the viral load increases. This varies from patient to patient, which is why we monitor people every three or four months to check that all is well. At some point, her results will change and she will require anti-retroviral therapy."

The Consultant goes on to state that he does not have specific details on the availability of anti-retroviral therapy and HIV care in Sierra Leone. A copy letter from the Entry Clearance Manager at the British High Commission in Freetown dated 19 November 2001 is included in the Appellant's bundle. It states that there are no anti-retroviral drugs programmes in Sierra Leone. The Ministry of Health runs an Aids control programme and provides symptomatic management and

treatment for some of the opportunistic infections associated with Aids. Viral and CD4 count tests are not available in laboratories in Sierra Leone. Symptomatic management of patients will cost about £15 monthly (which is clearly very high by local standards). Being an HIV positive patient in Sierra Leone carries some element of stigmatisation, discrimination and sometimes isolation. Some communities and family units are supportive and caring towards HIV and Aids patients.

14. In his submissions, Mr Bilbe for the Secretary of State asked us to note that no formal request had ever been made for the Home Office to consider this aspect of the case; the grounds of appeal, far from stressing the point, complain that the Adjudicator had spent too much time on the HIV issue.
15. We have considered this aspect of the appeal with some concern. We acknowledge that facilities for treatment in Sierra Leone are less satisfactory than in this country. On the other hand, the medical report as to the Appellant's current position (and that of her child) is happily so favourable that she does not currently need treatment and it is speculative at what stage treatment may be desirable. In these circumstances, we are unable to accept Miss Simpson's submission that the Appellant's return to Sierra Leone would expose her to a real risk of breach of her protected human rights under Article 3 or any other article of the European Convention on Human Rights.
16. The appeal is dismissed.

**D B Casson**  
**Acting Vice President**