FP (Return- Cabinda –Non -Luandan) Angola CG [2003] UKIAT 00204

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 6th February 2003
Date Determination notified:
.....16/07/2003.....

Before:

The Honourable Mr Justice Ouseley (President)
Mrs S Hussain JP
Mr R Hamilton

Between:

APPELLANT

Francisco Pinto

and

Secretary of State for the Home Department

RESPONDENT

For the Appellant: Mr D Williams of Counsel, instructed by Roelens Solicitors
For the Respondent: Mr A Sheikh, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, Mr Francisco Pinto, is a citizen of Angola from the Cabinda enclave where he was born in May 1962. In June 2001 he left Cabinda for Pointe Noir in the Congo from where he travelled to Gabon and on to Paris. He travelled from Paris to London and the next day, he said, a passer-by suggested that he should claim asylum and showed him where to go. In August 2001 his asylum claim was refused and he appealed against that refusal to an Adjudicator, Mr J S Brodwell. The asylum claim was refused because the Secretary of State concluded that the Appellant was not an Angolan national, but was from Congo. The Adjudicator concluded that the Appellant was an Angolan national, born in Cabinda.

2. The Adjudicator was also satisfied that he had been a member of FLEC in 1999. FLEC is an organisation dedicated to obtaining independence for the enclave of Cabinda from Angola. The Adjudicator was also satisfied that it was reasonably likely that the Appellant's father had been a member of FLEC and had been killed. The circumstances of the father's death are not,

however, described by the Adjudicator and no light could be shed on that matter before us. The Adjudicator considered the basis upon which the Appellant said that he had a well-founded fear of persecution in Angola. The Appellant had claimed that he had been accused of embezzling FLEC funds but, notwithstanding that, the political section of FLEC known as FLEC RENOVAD had nonetheless been prepared to send the Appellant to the United States to raise money for FLEC and would pay for him, his wife and his children to travel to the United States. The Appellant claimed that he was on his way to the United States but was let down in his travel arrangements by the agent. He was travelling separately from his wife and children. The Adjudicator found it unlikely that if he had been accused of embezzling he would be funded with his family to make a fund raising trip to the United States. The Adjudicator found it surprising that, if the story were true, the accusation of embezzlement had not been mentioned in the full statement which he gave in connection with his application for asylum. Likewise, he found it surprising that, if the story were true, the Appellant would be dumped and left to his own devices in central London.

3. Accordingly, the Adjudicator said that he was not satisfied that the Appellant had left Angola for the reasons he claimed or indeed that he had necessarily left Angola in the way in which he described. The Adjudicator then said that he was satisfied that the Appellant could safely return to Cabinda because he would not there suffer any problems from members of FLEC. The Adjudicator then said that the Appellant had not suffered any problems with the Angolan authorities in the past and that there was no reasonable degree of likelihood that he would do so in the future. The Adjudicator also expressed satisfaction that the Appellant could safely return to the Democratic Republic of Congo. He had a house in Kinshasa and had travelled freely to and from Congo and Angola over the years.

4. The Adjudicator concluded as there was no reasonable degree of likelihood that the Appellant would be persecuted for a Convention reason if returned to Angola, a return to Angola would not put the country in breach of its obligations under Refugee Convention. On the same basis, the Adjudicator concluded that there was no real risk or substantial grounds for believing that the Appellant's rights, in particular under Article 3 of the ECHR, would be infringed upon such a return.

5. The particular point upon which leave to appeal was granted and which has been pursued before us is related to the return to Angola. The removal directions are to Angola proper and not to the Cabinda enclave. Return to Angola would be effected by return to Luanda, its capital. Cabinda is a small coastal enclave which lies between 250-300 miles north of Luanda and is separated from Angola proper by the relatively narrow stretch of territory of the Democratic Republic of Congo reaching to the Atlantic Ocean.

6. Mr Williams, for the Appellant, submitted that the Adjudicator's decision had ignored the reality of the Appellant's connection with Angola proper. His evidence had been that he had never been to Angola proper and that his connections with Angola only existed through his being a Cabindan. He was not from Luanda and did not speak Portuguese, the language normally

spoken in Angola. He spoke only French and Kikongo and could understand only a little Portuguese. In addition, the Angolan authorities at Luanda Airport would recognise that he came from Cabinda where the conflict between the independence movements and the Angolan government had flared up. He, as a member of FLEC, would be at risk of being identified as a Cabindan supporter of FLEC, and therefore at risk of torture. Even if he were not regarded as a FLEC supporter, the objective evidence showed that the only people who could be returned to Angola were those who had come from Luanda and had connections there, because of the conditions of life in Luanda as the war between the Angolan government and UNITA ended. Accordingly, Mr Williams submitted that both on narrow personal grounds and on wider grounds related to the general conditions for someone who had no connections with Angola proper, let alone Luanda, there would be a breach of his Article 3 rights and a risk of persecution for political opinion were he to be returned.

7. The comment by the Adjudicator that he had not suffered any problems with the Angolan authorities in the past was true, so far as Cabinda was concerned, but did not relate to the problem of someone from Cabinda, being returned to Luanda in circumstances where he had no connection with Luanda and would be identified as a Cabindan. Effectively, the Adjudicator had failed to consider the distinction between Angola and Cabinda from the point of view of this particular Appellant.

8. The Appellant had left Cabinda at the age of twelve and had lived in the Congo and the Democratic Republic of Congo. His money-raising activities for FLEC had meant that he travelled between those two countries and Cabinda on a number of occasions, but there was no evidence he had ever been to Angola proper at all.

9. In our view, the real issue here is how the authorities in Luanda might view the Appellant upon arrival in Luanda. Might they conclude that he was from Cabinda, and if from Cabinda infer that he might be involved with one of the organisations fighting and organising for the independence of the Cabindan enclave? If they reached that conclusion, how would they then react to him? In any event, what sort of treatment and conditions of life would the Appellant face in Luanda upon his arrival and thereafter if he were not detained? Would that, even by itself, breach Article 3? This turns upon an analysis of the objective evidence. The Adjudicator does not deal with the available background evidence in relation to what it might show for someone not from Luanda, or indeed Angola proper, being returned to Luanda.

10. It is necessary to examine the background material from two aspects: first for what it shows is the position in Cabinda itself, because that will provide a guide as to how an Angolan from Cabinda might be received on arrival at Luanda, and second for what it shows as to the general conditions in Luanda for returnees, especially those not from Luanda. Mr Williams submitted that both aspects supported the Appellant's claims.

11. The most useful background document for the first aspect is the October 2002 CIPU Report. It describes, in paragraph 6.40, how FLEC started in 1963 seeking a separate independence from Portugal, but had split into several competing factions; though retaining widespread Cabindan support, they had been marginalised and, following the independence of Angola, remained unrecognised by the Organisation for African Unity as an independence movement.

12. A low level intensity war, accompanied by atrocities on all sides, has endured for many years and is expected to continue. Seemingly hopeful signs in 2001 came to nothing and the CIPU Report states in paragraph 6.48 that in August 2002 any possibility of an immediate reconciliation over the status of the province was ended by a major offensive launched by the Angolan army. The status of Cabinda has become an issue in the peace talks between the Angolan government and UNITA. Those are described in paragraph 4.19: a peace accord was signed in April 2002, the demobilisation of UNITA rebels was complete by the end of July 2002 and a formal agreement on the timescale for discussions on reconciliation and reintegration of UNITA supporters and figures reached in September 2002.

13. There is some later evidence in IRIN news reports of December 2002 and January 2003 that the Angolan army is attacking civilians in Cabinda and abusing their rights, as well as seriously ill-treating former UNITA rebels held in camps. This view of the situation in Cabinda is supported by an Amnesty International report of 13th December 2002 detailing individual arbitrary arrests of civilians, and affirming to an upsurge in fighting, with attacks on civilians, arrests, and rapes. FLEC factions have responded in kind. It may be that the developing peace with UNITA has freed the hands of the Angolan government and army to deal with the independence movement in Cabinda, so as to reinforce its control over the oil-rich enclave.

14. The problems faced by those returning to Luanda, at the point of return, is dealt with in paragraph 6.55. It comments that the Angolan authorities are well aware of the pressures which lead to emigration and that asylum claims are used to facilitate that; the fact of being a failed asylum seeker, if discovered, would not be of any particular interest. However, the controls at Luanda Airport are thorough. Any Angolans who have been deported from abroad, or who lived abroad for many years, would be questioned by immigration and police at the airport with a view to establishing their identities and whether they were of interest to the authorities for political or criminal reasons.

15. The Report describes prison conditions, should someone be arrested and detained, as constituting a serious threat to the health and lives of prisoners; paragraph 5.25 states:

> "There is widespread and generalised abuse of suspects. Security service personnel regularly employ torture and other forms of cruel and degrading treatment including rape. Confessions are regularly obtained this way ... ."

16. Turning to the second aspect of the background evidence, Mr Williams drew on paragraph 6.54 of the October 2002 CIPU Report to show how difficult internal movement in Angola is. It refers to all the problems which existed during the conflict with UNITA, and to the restriction of state control but even if the illegal roadblocks, checkpoints, and hatreds have diminished, landmines remain a prevalent hindrance to travel. None of the background evidence deals with the availability of shipping between Luanda and Cabinda to civilians. An overland journey would appear unlikely to be undertaken.

17. The general conditions of life in Luanda reflect the extent of internal displacement caused by the civil war. 31% of the population, some 4.3 million, were estimated to have been internally displaced with some 435,000 having fled to neighbouring countries. Luanda's population itself has swollen to many times its normal size; some 500,000 war-displaced people live in 20 camps in the Luanda area. In July 2002, the UN's emergency relief co-ordinator described the humanitarian situation in Luanda as critical.

18. Mr Williams emphasised the current policy on removal to Angola. It was only possible to remove people to Luanda and the UK government had agreed, in consultation with UNHCR "*that nobody should be returned to Angola who has not previously lived in Luanda or who does not have close current connections there*". Other, but for these purposes immaterial, categories should also not be returned.

19. Mr Sheikh for the Respondent pointed out correctly that there was no evidence anywhere that Cabindans as such were persecuted or treated worse than any other group. He submitted that the policy on return, which drew upon UNHCR advice, was related to the need for careful phasing of returns to Luanda because of the overload of displaced persons there currently. It did not reflect any acceptance that the conditions of life in Luanda amounted to the level of ill-treatment which would breach Article 3 ECHR.

20. The UNHCR position as at April 2002 seems to us to be predicated on a cautious approach to matters as they then stood: insecurity, human rights violations and the dire living conditions in Angola generally.

21. Mr Williams also referred us to a decision of the Tribunal, Monteiro [2002] UKIAT 01203, heard on 3rd April 2002. This did not concern Cabinda but rather someone who did not originate from Luanda but had lived there for one or two years: he was from Benguela rather than Luanda. He had no well-founded fear of persecution for a Convention reason. The Tribunal concluded that there was a real risk of a breach of Article 3 ECHR if he were returned to Luanda in the light of the UNHCR advice, which the Tribunal referred to briefly as we have set it out above. The Respondent submitted that those circumstances did not meet the Article 3 threshold.

22. The removal directions are not for Cabinda, or Democratic Republic of Congo, or Congo, all three areas with which the Appellant has or had connections and in respect of none of which can it be said that he would be persecuted within them for a Convention reason. Mr Williams did not argue that Article 3

ECHR would be engaged by a return to any of those areas. The removal directions are for Angola and for these purposes that means Luanda which, as was pointed out when leave to appeal was granted, gives rise to the need for a careful examination of the Appellant's position.

23. In our judgment, the background evidence as to movement in Angola means that the Appellant would have real difficulty reaching Cabinda overland at present, or Kinshasa in Democratic Republic of Congo where he had a home. There is no evidence either way about passage by sea from Luanda to Cabinda for civilians with limited resources, and although it would be surprising if there were no shipping routes for passengers between the two, we cannot speculate. We therefore approach the Appellant's future on return on the basis that he would stay, and would have to stay in Luanda.

24. The background evidence also shows that he would be identified as someone from Cabinda, both because of the languages which he does speak and because of his lack of Portuguese. He would be questioned to see if he was of political or criminal interest: his Cabindan origin, with the current upsurge in fighting in Cabinda, would make that inevitable. Although it is only realistic to suppose that he would not reveal his FLEC membership voluntarily, he would have to have a story to explain his departure from Cabinda and return to Luanda which would stand up to thorough and at least suspicious, if not downright hostile, questioning. There is an unknown degree of risk that the Angolan authorities have some knowledge of individuals, perhaps of families, who are FLEC members. There is a risk that, even without such knowledge, they would suppose him to be a FLEC supporter.

25. The abuse of the human rights of those suspected of the political support for a warring independence movement is very probable, whether through the general prison conditions in which a suspect might be detained or the more active brutal attentions which he might attract.

26. His lack of Portuguese and other local connections in an overcrowded city would mark him out as a Cabindan and mean that, even if he passed successfully through the airport, he would be at a rather greater risk than most Angolans of again attracting the attentions of the authorities or of being unable to seek their assistance in the difficult living conditions, for fear of what they might ask. This risk would endure until the position in Cabinda had been resolved.

27. On that basis, we allow this appeal. Taking all those factors in the round, we consider that the enforcement of these particular removal directions would involve a breach of the Refugee Convention and of Article 3 ECHR.

28. We add that insofar as the decision in Monteiro is read as expressing the view that the general situation in Luanda means that to return non-Luandans would necessarily involve a breach of Article 3, we respectfully consider that that goes too far. Even if the situation is unchanged from April 2002, which would not fully reflect the encouraging political signs in the October 2002 assessment, the advice of the UNHCR is primarily, though not exclusively, related to the living conditions in Angola generally, the security and human

rights position generally. Failed asylum seekers can be returned to Luanda if they came from there or have connections there. That is to avoid increasing internal displacement. The stay on the return of others to Luanda is to avoid increasing the already large number of internally displaced persons there. This is to avoid worsening the position and to make it more manageable; as those displaced resettle, others can be returned. This UNHCR statement does not suggest that the return of people to Luanda would breach their Article 3 rights if they came from Luanda or had relatives there, and would only do so if they did not. We do not in general accept that to return someone to live in the conditions in Luanda, wretched though they are for many, which the Angolan government is struggling to improve rather than deliberately imposing, would involve a breach by the United Kingdom and its Article 3 obligations.

MR JUSTICE OUSELEY
PRESIDENT