LSH

Heard at Field House

On 7 March 2002

AA (Risk-Return-Luandan)
Angola CG 2002 UKIAT 01518
HX11625-2001

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

14/05/2002

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Before:

Mr J Barnes
Mrs A J F Cross De Chavannes

Between

ALICE DA CONCELCAO GARRIDE TORRES AMARO

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Ms L Veloso, of Counsel, instructed by Figueiredo & Bailey
For the respondent: Mr C Trent, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Angola who was born on 29 December 1971. She claims to have arrived in the United Kingdom illegally on 17 August 1999 and applied for asylum on 2 September 1999. Although she appears to have submitted a self-completion questionnaire dated 25 April 2000, she did not subsequently attend at interview as requested and the Secretary of State refused her asylum application on 8 February 2001 without giving substantive consideration to what was claimed in the questionnaire. On 13 February 2001 he issued notice of his decision for her removal to Angola as an illegal entrant after refusal of her asylum application. She appealed against that decision on asylum grounds only. Her appeal was heard on 9 August 2001 by a Special Adjudicator, Mr F

R C Such, and at that hearing she raised claims that her removal would be in breach of her human rights under Articles 2, 3 and 8 of the European Convention on Human Rights incorporated into English Law by the Human Rights Act 1998. For the reasons which he explained in his determination, promulgated on 12 November 2001, the Adjudicator rejected her claims of the rape of her mother and sister in 1993 or that she had been accosted and kidnapped at or about the same time with a view to her being raped. Nor did he accept her claim that the family, who were otherwise supporters of the MPLA, were regarded as Unita supporters because of an uncle who supported that party. The Adjudicator's conclusions are then set out at paragraphs 15 and 16 of his determination as follows:

> "15. For the reasons set out in paragraph 14 I find that the appellant has set up her account to obtain asylum. She and her family have lived for many years in Luanda and the appellant went to school and worked there. I do not believe the story of the raid on her parents house or the story of the uncle coming over just prior to the elections in 1992. I do not believe her account of being accosted by two plain clothed men. The appellant is now nearly 30 and whether she is within the category of suitable people to return to Luanda is up to the Secretary of State. I am satisfied that there is no real risk that the appellant will be persecuted for a Convention reason should she be returned to Luanda.
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> 16. She will be in no better position than the ordinary citizens living in Luanda, which is relatively peaceful in contrast to the Unita held area. I find that there is no real risk the appellant will be treated in breach of Articles 2 and 3 of the Convention on human rights. She is not wanted by the authorities so the question of a fair trial does on arise. Article 8 is of course qualified and every state is entitled to enforce an immigration policy. The case on Article 8 is that there will be no protection of her physical and oral integrity. My assessment is that there is no real risk she will be targeted by MPLA or Unita forces and therefore it will not be disproportionate to deport the appellant."

2. In granting leave to appeal to us, the Vice President of the Tribunal said that the Adjudicator did not find the appellant credible and gave his reasons for that conclusion. He said that the Tribunal would be loathed to interfere in conclusions reached after hearing oral evidence but that the appellant now referred to a considerable amount of new evidence post-dating the hearing and that leave was granted solely to consider that new evidence and its possible impact on the position of the appellant.

3. Before us Ms Veloso accepted that she was not able to argue the Adjudicator's findings of fact to be unsustainable and that the approach would be taken in the present appeal was to consider the appellant as a returned failed asylum seeker who was not subject to any past adverse interest on the part of the state or any non state actors. She was to be regarded as a single mother, originating from Luanda, and now being threatened with removal there in company with her very young son. In the course of her oral submissions Ms Veloso confirmed that it was her case that any female Angolan citizen would be at serious risk of treatment contrary to her human rights on forced return to Angola.

4. Although Ms Veloso sought to maintain that return would be in breach of the Refugee Convention, the only reason which she sought to advance in this respect was imputed political opinion and, having regard to the factual findings of the Adjudicator, we can see no basis on which this can be successfully argued. She did not suggest that the appellant might be regarded as being a member of a particular social group, wisely in our view, since again we see no basis on which such a proposition could be realistically put forward on the background evidence. At the conclusion of her submissions, we indicated to the parties that we were not persuaded that any claim under the Refugee Convention could arise on facts.

5. Otherwise Ms Veloso's submissions were directed to the claim other that return would subject to the appellant to inhumane or degrading treatment contrary to Article 3 of the European Convention, or to a breach of her rights to physical and moral integrity contrary to Article 8 of that Convention.

6. She submitted that the appellant would be questioned on her return to Luanda and referred us to paragraph 8.33 of the Home Office Country Information and Policy Unit Assessment on Angola for April 2001 (the CIPU assessment). This records that any Angolan deported from abroad would be questioned by Immigration and police at the airport in order to establish their identity and whether they were of interest to the authorities for political criminal reasons. The fact of applying for asylum would not, if discovered, be of particular interest. Ms Veloso conceded that there was no evidence of any sexual assaults at the airport. Since this appellant is not of adverse interest to the authorities in Luanda but was born and brought up there until her departure fro Angola, having at least her mother still resident in the city and an MPLA supporter, it does not appear to us that the identification of the appellant at the airport is reasonably likely to lead to any breach of her human rights.

7. Ms Veloso next relied on the fact that there was, as she claimed, a prevalence of rape and sexual assault in Angola, particularly on the part of the MPLA for the purposes of extracting information. She referred us to paragraph 7.47 of the CIPU assessment which

recorded allegations of rape by government forces in the central highlands as having increased during the year 2000. She drew our attention also to a reference in the Freedom of the World Report for 1990-2000 which reported serious human rights abuses by both government and rebel security forces as being widespread, and including torture, abduction, rape, sexual slavery and extrajudicial execution. A similar general reference appeared also in the US State Department Report for 2000, which also regarded the government's human rights record as poor, although there had been improvements in a few areas. She submitted that any woman returned to Angola after absence from the country was subject to a serious risk of treatment in violation of her human rights. She pointed out further that there was evidence of a high proportion of internally displaced persons in urban areas which the Norwegian Refugee Council had estimated in its report of 25 October 2001 to amount to an average of 30,00 persons for each month in 2001, the total number of displaced persons throughout the country being some 3,000,000. She placed particular reliance on the fact that at the meeting of the UN Security Council on 13 February 2002 the United Kingdom representative was recorded as saying that the humanitarian problems in Angola were one of the worst in the world and that the situation required the concentrated attention of the International Community and the Angolan government. We note also that he laid particular emphasis on the minimal concern for humanitarian effect of his operations which were shown by Unita, the rebel organisation.

8. We do not doubt that general conditions in Angola are a matter of international concern and that the government has a poor human rights record. What we have to be concerned with is whether there is a reasonable likelihood that if this appellant, who comes from Luanda and has family still resident there, is now returned she will suffer treatment which reaches the high threshold necessary to engage Article 3 or Article 8 of the European Convention.

9. Ms Veloso was quite right and perfectly entitled to draw our attention to the fact that the Home Office policy had been to suspend returns to Angola in the past. That is not, however, the current policy which is set out in Bulletin 2 of 1999 issued by the Home Office and containing advice to immigration officers on dealing with Angolan cases. This makes it clear that the general temporary suspension on removals to Angola, which had been in place since August 1998, had been removed with the publication of that Bulletin. It emphasised that there should be careful and full assessment of the risk to individuals on the basis of the latest country information and made it clear that rejected asylum seekers should be removed only to Luanda and then only if they had previously lived there or had close contacts there. The Home Office specifically recognised the extent of problems in other parts of Angola, the dangers of potential call-up by the government for

males between the ages of 18 and 45. It was noted that UNCHR had expressed concern about a heightened level of risk for young men aged between 15 and 25 at risk of forcible conscription and for young women living outside Luanda who were at risk of abduction as sex slaves for soldiers. It remained the position of the Secretary of State, however, that in the absence of circumstances giving rise to a well-founded fear of persecution for a Convention reason, removal to Angola was now appropriate.

10. Ms Veloso accepted that the UNCHR did not say that those in the situation of the appellant should not be returned to Luanda once there had been a full consideration of the basis of their asylum claim.

11. Whilst we have carefully considered the background evidence to which Ms Veloso referred us, and taking due account of the fact that the appellant is to be viewed as a mother with a young child to be cared for, we are not satisfied that looking at the latest evidence, the conclusion of the Adjudicator was unsustainable.

12. In reaching this conclusion, we have taken into account the press briefing on Angola by the UN Department of Public Information of 14 February 2002 but it is clear that it is the issue of internal displacement, which on the evidence particularly relates to those areas where Unita remains active, which is perceived as being at the root of the humanitarian problems.

13. What is recorded by the United Nations Department in that press briefing is, we agree, alarming. It is said that life expectancy is 44 years, that 33% of all households live below the poverty line and that 30% of all children die before they reach the age 5 while one third of the total population is displaced. Displacement is a continuing problem for two reasons: First the actions of Unita which were forcing people to move, and secondly military "cleaning" operations, which again made people decide to leave their places of origin. The UN representative said that it was difficult to be specific as to who was most to blame and continued:

"We are basically trying to deal with the consequences of actions taken by both Unita and the government and it is very difficult to say how many people are on the move as a result of one or the other. Activities by both entities resulted in increased numbers of displaced people. The problem was widespread and not limited only to certain provinces or areas of the country."

14. We asked Ms Veloso what evidence there was to show that this appellant, coming from Luanda and with family still there, would be exposed to the real possibility of such treatment but she was unable to assist us beyond a reliance upon the grave general situation

which, as we say, appears to be particularly related to those who are internally displaced.

15. We note from the latest information from the United Nations Report that the recent death of Jonas Savimbi, the former Unita leader, is seen as possibly creating new opportunities for making peace in Angola by international organisations generally. Whilst we accept that it is too early to be sure how matters will progress internally, there is little doubt that the prospects are better than they have been for a considerable period and that Luanda itself remains and essentially stable area, with the major difficulties recorded as taking place in other parts of the country.

16. For all these reasons, we are not satisfied on the evidence either before the Adjudicator or that additional evidence placed before us that there is a reasonable likelihood that the appellant will suffer treatment in breach of her human rights if now returned to her home city.

17. therefore for all these reasons, it follows that we dismiss this appeal.

18. Nevertheless, we recognise that the appellant is more vulnerable with a young child to care for than would be the case if she were on her own. It is therefore our recommendation to the Secretary of State that any removal of the appellant and her child should be carried out in conjunction with the UNHCR or some other responsible international organisation with a presence in Luanda who will be able to make appropriate arrangements for their initial reception and contact with the appellant's family.

J Barnes
Vice President