

**IMMIGRATION APPEAL TRIBUNAL**

Heard at: Field House  
on: 14 May 2002  
Dictated: 14 May 2002

Determination Promulgated  
.....29.7.2002.....  
.....

Before:

**Mr A R Mackey - Chairman  
Mr R Hamilton**

between

**Tanya DIOMANDE-KANANGILA  
Master Jonathan KANANGILA (son)**

**Appellants**

and

**The Secretary of State for the Home Department**

**Respondent**

**DETERMINATION AND REASONS**

**Representation:**

For the Appellant: Ms R Chapman of Counsel representing Christian Fisher Solicitors  
For the Respondent: Mr M Blundell, Home Office Presenting Officer

1. The Appellant and her son, are citizens of the Ivory Coast who appeal, with leave, to this Tribunal against the decision of an Adjudicator, Mr W F Miles, who had dismissed an appeal against the decision of the Respondent made on 14 February 2000 when leave to enter and an asylum claim were refused. Leave to appeal was granted subsequent to a Judicial Review claim heard before Mr Jack Beaston QC, Deputy High Court Judge on 19 December 2001. The Judicial Review was allowed primarily on the basis that the Adjudicator had relied on an Amnesty International Report completed only three days after the fall of the regime of General Guei and

that such a short time was insufficient to establish a change in country conditions to the extent that the Appellant would no longer be at risk.

### **The Adjudicator's Determination**

2. This was an appeal made under Section 8(4) of the Asylum and Immigration Appeal Act 1993 in respect of the Appellant who was born in February 1970 and her son, born in July 1998. The Appellant had arrived in the United Kingdom on 2 January 2000 using a false Ghanaian passport. Her claim had been made on the basis that following marriage to her second husband in December 1997 she had moved from the Ivory Coast to Zaire to live with him. Her husband was a Zairian national and a member of the political group UDPS. She also joined this party. She claimed that she had been arrested and detained on two occasions because of her political opinions and those of her husband. At the time of the second arrest in November 1999, when she was detained in a hospital with her son, with assistance from her brother-in-law, she was able to bribe the guards and escape to Brazzaville and then move back to the Ivory Coast. She claimed to be related to the wife of the then president of the Ivory Coast Henri Bedie. In anticipation of the overthrow of President Bedie the Appellant left Ivory Coast on 1 December 1999 and travelled to Ghana. There she obtained a Ghanaian passport and ultimately was able to travel to the United Kingdom on 2 January 2000 with her son. Her claim was based on her fear of persecution in Zaire and also her relationship with the wife of the former President Bedie.
3. The Adjudicator heard oral evidence and cross-examination of the Appellant and found that the only possible risks to the Appellant were in the event of her being returned to the Ivory Coast and that as she was not from Zaire there was no risk of her being returned there. The Appellant's credibility was generally accepted and it followed from that that she was related to the wife of the ex-President Bedie of Ivory Coast. However he went on to find that the period of her absence from Ivory Coast made it less likely for her to be recognised as a member of the ex-President's family and that her relationship was not an immediate or close one. She was in fact the niece of the ex-President's wife. This, the Adjudicator considered, decreased the risk of her being identified on return.
4. In considering the objective evidence the Adjudicator noted that following the overthrow, on 24 December 1999, of the former President Bedie family members had been harassed and tortured in a period of disorder that followed. The number of people unlawfully detained following the coup was sufficient to cause concern to Amnesty International who sent a letter to President Guei on 21 January 2000. That letter specifically referred to persons closely associated with the former President Bedie.
5. The Adjudicator found however that the government of General Guei had itself fallen when he had been deposed by President Laurent Gbagbo who was invested as president on 26 October 2000. He then went on to rely on the Amnesty International Report of 29 October 2000 which stated that the election of President Gbagbo had resulted in some street fighting including security forces but this was followed by a joint appearance on television by officials from both parties who appealed for calm

and announced a meeting between the new president and opposition leader. He then concluded that the threats to family members of ex-President Bedie had been significantly reduced, if not extinguished, by the removal of General Guei and thus the Appellant would not be at risk of persecution on return.

### **The Appellant's Submissions**

6. Firstly it was submitted that relying on the Amnesty International findings, which were published only three days after the fall of General Guei, were flawed as insufficient time had elapsed to indicate that changed conditions would be maintained. Ms Chapman submitted that the issue that now should be addressed is the risk of persecution on return at this time. It was submitted that even after the fall of General Guei family members of the ex-president could be seen as being at risk. The finding of the Adjudicator that the Appellant was not a member of the "close family" of ex-President Bedie was seen as irrational given the manner in which extended families are treated in Ivory Coast. She submitted that the Appellant would clearly be seen as part of the close family of the ex-president, even though she was a niece of the ex-president's wife.
7. Turning to the current risk she submitted that regrettably there was no clear focus in country information on the family or entourage of ex-President Bedie, however the Human Rights Watch Report for 2001 and the United States, Department of State Report for 2001 (February 2002) should be referred to. These indicated that some human rights abuses still continued and that there had been reports of opposition parties (RDR) supporters breaking into the homes of supporters of the party the Appellant formerly supported. In addition to this there was an indication of impunity in the activities of the gendarmes under the control of the new President Gbagbo. It was reported, after an inquiry had been made into the death of 57 people, that the gendarmes involved had been acquitted and the new president had not acted.
8. It was noted however that the PDCI (the Party the Appellant had been a supporter of) had recently won seats in the national assembly and was able to operate. This, she submitted, must be balanced against a United Nations Report contained in the Appellant's bundle which indicated that the situation in the Ivory Coast was still fragile and it was still a destabilised country.
9. In summary she submitted that this Appellant was not just a PDCI supporter but she was also the niece of the former President Bedie and thus part of his extended family. Therefore she had a fear both for political and membership of the family group reasons that she would be persecuted on return and given the instability that risk should be seen to continue.

### **The Respondent's Submissions**

10. Mr Blundell referred us to the findings of the Adjudicator in relation to family membership and also that this Appellant had not been previously maltreated. In this regard he submitted the Adjudicator's findings were sustainable and that the Appellant would not be identified as a distant relative of the ex-president. He also referred us to paragraph 15 of the decision of the Court of Appeal in **S and others v Secretary of State for the Home Department**. He submitted that the findings of the

Court of Appeal had now made it clear that the burden of proof in such situations where Applicants may have had a well-founded fear of persecution in the past (i.e. putative refugees) still remained with the Appellant and that the decision in **Arif [1999] INLR 327** was not applicable and the burden did not shift to the Respondent.

11. He then referred us to the US Department of State Report for 2001 which stated at page 2 that the President Gbagbo government had organised a well attended ten week forum of national reconciliation. This paragraph went on to state:-

“Former President Bedie, former President Ouattara, and former Junta leader Guei who had left Abidjan in self-imposed exile in 2000 all returned to the country to participate in the forum. On December 18, President Gbagbo closed the forum promising to continue the reconciliation process through ongoing negotiations with the other three recognised political leaders. He called for a review of the inquiry of the human rights violations of October 2000.”

He submitted that there was no evidence at the present time that members of the PDCI or family members of the ex-president Bedie were at risk. The establishment of the “reconciliation forum” contributed in a significant way to establishing the Appellant’s safety on return, in his submission. The US Department of State Report was, in his submission, the most up-to-date country information and should therefore be relied on.

12. In addition he submitted that references in the Human Rights Watch Report to attacks by the RDR had to be noted in context that these were attacks by another opposition party not by the government and in fact they had taken place in an RDR stronghold. In addition there was no suggestion that this Appellant on return would go to an area of the Ivory Coast where the RDR held a stronghold.
13. In reply Ms Chapman submitted that closeness of the relationship of this Appellant to the ex-President Bedie was the issue on which we must reach our own conclusions. She submitted that in the round there was still a risk to this Appellant and we should accordingly allow the appeal.
14. We reserved our decision.

### **The Issues**

15. We found the issue before us to be:-

Whether, on the facts as found, both subjectively and objectively there is, at this time, a well-founded fear of persecution of this Appellant for a Refugee Convention reason or a risk of a breach of the ECHR on her return? If "yes" the appeal should be allowed. If not it should be dismissed.

### **Decision**

16. It is accepted from the evidence established by the Adjudicator that the Appellant is a niece of the wife of ex-President Bedie and she was associated with the political party PCDI of whom the ex-president was the leader. However the current country of origin information, particularly that identified in the latest US Department of State Report for 2001 (published February 2002), indicates that substantial reconciliation has taken place under the regime of President Gbagbo. Indeed the former presidents including Bedie have returned to Ivory Coast and are participating in the reconciliation. It is also noted that the government was party to the reconciliation forum and agreed to issue a general amnesty for all those responsible for violence relating to the various coup.
17. Assessing this Appellant's situation against the relevant country information and noting the profile of this Appellant and the fact that she has spent little time in Ivory Coast over the past several years we consider that any risk to this Appellant on return either for reasons of political or family association is remote and highly speculative and certainly does not rise to the level of a real risk.
18. The appeal is therefore dismissed. We do not consider that this Appellant can establish a well-founded fear of persecution under the Refugee Convention nor would there be a breach of any obligations on the United Kingdom under any Articles of the ECHR.

**A R MACKEY**  
**CHAIRMAN**

