

**Asylum and Immigration Tribunal**

PN (Lord's Resistance Army) Uganda CG [2006] UKAIT 00022

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 January 2006**

**Promulgated  
On 06 March 2006**

**Before**

**Dr H H Storey (Senior Immigration Judge)  
Mr P R Lane (Senior Immigration Judge)  
Mr A A Lloyd JP**

**Between**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Brown, of Counsel, instructed by  
Messrs Parker Rhodes, Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

*There is no current risk from the Ugandan authorities to a former member of the Lord's Resistance Army on return to Uganda. The Ugandan Government's amnesty to members of the LRA remains in place. A person who is at real risk of forcible conscription into the LRA in the north of Uganda may be able to relocate without undue harshness to Kampala. This case confirms and supplements the findings in AZ (Eligibility for Amnesty) Uganda [2004] UKIAT 00166.*

## **DETERMINATION AND REASONS**

1. This is the determination of the reconsideration by the Tribunal, pursuant to an order made on 6 June 2005 under section 103A of the Nationality, Immigration and Asylum Act, 2002, of the decision of an Immigration Judge, Mr E A W Jones, following a hearing at Taylor House on 7 April 2005, to dismiss the appellant's appeal against the decision of the respondent taken on 1 August 2003 to refuse to vary the appellant's leave to remain in the United Kingdom.

### **Nature of appellant's claim**

2. The appellant, born on 12 August 1985, is a citizen of Uganda who arrived in the United Kingdom on 14 May 2003 and claimed asylum on 18 June 2003. Although his asylum claim was refused on 23 June 2003, the appellant was granted discretionary leave to remain until his 18<sup>th</sup> Birthday on 12 August 2003. The appellant applied for further leave to remain on 1 August 2003 but that was refused. The appellant appealed against that refusal on the grounds that his removal to Uganda would be contrary to the United Kingdom's obligations under the Refugee Convention and the ECHR.
3. The appellant's application for asylum was made on the following basis. The appellant said that he found out in childhood that his father attended a church where humans were sacrificed. The authorities took away the father and shot dead the appellant's mother. They also took the appellant's sister. The appellant and another sister were taken by these people, who the appellant discovered were not the Ugandan army but, rather, members of the Lords Resistance Army (LRA). The appellant said that he was punished many times by the LRA and his sister was raped. On one occasion they cut his face with a knife because he refused to kill anyone. His throat was also slit but the wound healed and he did not die. The LRA moved their camp from time to time. The appellant got to know a member of the LRA named Swaleh, who sought to have sex with the appellant. The appellant resisted Swaleh's demands. The appellant and his sister sought to run away from the camp. The appellant, however, was called back to the camp. He then ran away again and found his sister, before hailing passing cars on the highway to stop. Swaleh happened to be driving the car which picked up the appellant and his sister. They then lived with Swaleh and both of them became his sexual partners. This other sister, however, also subsequently disappeared, after which the appellant stayed on with Swaleh, who then made arrangements for the appellant to leave the country. Swaleh, in fact, went with the appellant to the United Kingdom and the two men were together just before the appellant was stopped by the police for suspected fare evasion at East Croydon station.

### **Error of law in determination of Immigration Judge**

4. At the hearing on 7 April 2005, the Immigration Judge drew the attention of the parties to paragraph 353 of the Immigration Rules (HC 395). This provides as follows:

"353. When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. These submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. These submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas."

5. The letter of refusal sent to the appellant in June 2003 observed that the appellant claimed to fear persecution on the grounds that he would be regarded by the Ugandan authorities as being a member of the Lord's Resistance Army (LRA). He also claimed to fear the LRA because he had escaped from that group. The Secretary of State observed that it was reasonable for the Ugandan authorities to track down supporters and/or members of the LRA and he acknowledged that on occasions the security forces "can sometimes be heavy-handed" in doing so. The Secretary of State, however, rejected the assertion that those authorities could be said to be persecuting suspected adherents of the LRA. As for problems from the LRA itself, the Secretary of State took the view that they could not be said to be agents of persecution. The appellant could, it was considered, take advantage of an amnesty offered by the Ugandan authorities to those who had been involved with the LRA.
6. At the reconsideration hearing on 23 September 2005, the Tribunal (Miss K Eshun and Mr P R Lane, Senior Immigration Judges) noted that the appellant did not appeal against the initial refusal of asylum. Although he could have done so under section 65(3) of the Immigration and Asylum Act 1999, that provision had ceased to apply by the date of refusal in June 2003. The position was instead governed by section 83 of the Nationality, Immigration and Asylum Act 2002, which permits an appeal on asylum grounds, where leave has nevertheless been granted, only if that leave (or the aggregate of two or more periods of leave) exceeds one year. That was not so in the present case, which explains why the appellant did not challenge the first decision to refuse him asylum.
7. The latest letter of refusal from the Secretary of State is that dated 19 November 2004. This noted the appellant's original claim to be at real risk of persecution in Uganda. It also noted that the appellant was putting forward essentially the same reasons as before as to why he could not return to Uganda. At paragraph 10 of the letter, it is stated that "consideration has been given to whether the issues raised in your application for leave should be regarded as a fresh application for asylum. The contents of your application have been carefully examined and it has been decided not to treat your representations as a fresh asylum application because the reasons you have given for requesting further leave do not differ significantly from the claims you made when you claimed asylum on 18/6/03".

8. Paragraphs 12 and 13 of the 2004 letter of refusal raised credibility issues regarding the appellant's account of his experiences in Uganda. So too did paragraphs 14 and 15, which noted respectively that the appellant did not leave Uganda until 8 months after he had escaped from the LRA and that the appellant did not claim asylum until after he had been arrested at East Croydon station for fare evasion.
9. In his determination, the Immigration Judge dealt at paragraphs 12 to 15 with the issue of the appellant's credibility. Those findings are, the Tribunal considers, cursory in nature and, as we will shortly state, are otherwise problematic. Crucially, they are sandwiched between paragraphs 11 and 16, which make it plain that the Immigration Judge was at least primarily concerned to determine whether the appellant had established grounds for his latest claim for asylum to be treated as a "fresh claim".
10. In her grounds of appeal, Ms Brown submitted that this approach on the part of the Immigration Judge "suggests a review-based approach to the evidence as opposed to a full merits consideration." The Tribunal agrees.
11. By virtue of section 96 of the Nationality, Immigration and Asylum Act 2002, the Secretary of State has power to certify that a person was notified of a right of appeal under section 82(1) of that Act against an immigration decision, that the new claim or application relies on a matter that could have been raised in an appeal against the old decision and that in the opinion of the Secretary of State there is no satisfactory reason for that matter not having been raised in an appeal against the old decision. Where such a certification is made, an appeal under section 82(1) may not be brought.
12. That is plainly not the position in the present case. No such certification has been made. Accordingly, the Immigration Judge had before him an appeal under section 82 in respect of which the grounds of appeal included the assertions that the appellant's return to Uganda would be contrary to the Refugee Convention and the ECHR. The basis of the appellant's case is contained in the application and accompanying documentation submitted in connection with the appellant's original application for asylum and his appeal against the decision to refuse him further leave to remain, after his eighteenth birthday. By deciding to restrict himself, at least to a very significant extent, to a determination of the question of whether the appellant had "established grounds for [his application] to be treated as a fresh claim for asylum" (paragraph 16 of the determination), the Immigration Judge fell into legal error.
13. The Immigration Judge also fell into error in giving, as one of the two reasons why he refused to place significant weight on the appellant's medical report, the fact that that report had not been produced until two days before the hearing. The medical report dealt with various scars on the appellant's body. With respect to the Immigration Judge, it is difficult without more to see how the lateness of such a report should lead to its being effectively disregarded.
14. None of these errors on the part of the Immigration Judge would, however, have been material unless it could be shown that the appellant would be at real risk on

return, in the event that his story was reasonably likely to have been true. The Immigration Judge dealt with this matter, again in a most cursory way, at paragraph 17 of the determination. Despite the progress made towards achieving a peaceful settlement of the conflict between the Ugandan authorities and the LRA, as evidenced in the documentary materials before us, the Tribunal on 23 September found that the appellant's credibility is of relevance to the assessment of the risk to him on return today to that country. Apart from anything else, if the appellant's experiences with the LRA are true, it may well not be possible for him to return to his home area, insofar as that may be a place where the LRA continues to operate. The issue of internal relocation has not been considered. Furthermore, unless and until the precise involvement of the appellant in the LRA is determined, no sufficiently safe conclusions regarding the attitude of the Ugandan authorities to his return can be reached.

15. For those reasons the Tribunal on 23 September decided that, there being materials error of law in the Immigration Judge's determination, the reconsideration of the appeal had to be adjourned, in order for findings of fact to be made.
16. The Tribunal found that, at the second stage reconsideration, a complete re-hearing of all the evidence would be necessary. All matters were to be at large.

#### **Reconsideration proceedings on 17 January 2006**

17. The second stage of the reconsideration took place on 17 January 2006, when the Tribunal comprised Dr HH Storey, Mr P R Lane and Mr AA Lloyd.
18. The appellant gave evidence in English. He confirmed his name and address and that he had been born in August 1985. He said that he was a Ugandan and a born again Christian. He confirmed the accuracy of his written statements.
19. The appellant said that he was between 12 and 14 years old when he had been abducted by the LRA. He had remained with them for approximately 3 years. Ms Brown asked the appellant about what he was recorded as saying at his Home Office interview at pages I3 to I6, where the appellant, when asked if there were any details he wished to change to his application, described how he had escaped from the LRA camp to a government camp. The appellant said that some 28 LRA personnel walked for a number of hours to the camp of the Ugandan authorities, where they were detained, beaten and put into an enclosure and not allowed to speak to anyone. The leader of their group was taken away after he had told the authorities that the group wished to surrender to them.
20. The appellant said, that whilst in the government camp, the group was constantly tortured. Eventually one of their members, called Peter, began to fight with a guard. Peter told the others to run away, which they did. At that time, there was only one guard supervising the group. Having fled from the army camp, the appellant and his companions returned to the LRA camp, as they had nowhere else to go.
21. Ms Brown asked the appellant about the person known as Moses, referred at pages 4, 7 and 8 of the interview record. In that record, Moses is referred to as one of the

group who went to the government camp. The appellant said that he later met Moses at Croydon, when the appellant went to provide fingerprints for the Immigration Service. The appellant said in oral evidence that Moses had told him in Croydon that what the Ugandan government says is not what it does. The appellant did not know how Moses had left Uganda nor when he had left the rebel camp. The appellant did, however, learn from Moses that the latter had tried to surrender to the Ugandan government on a second occasion.

22. The appellant was asked why he had not sought in Uganda to take advantage of the amnesty offered by the government to those in the LRA. The appellant said that he did not know too much but had enquired about the matter but could not be sure that he could have taken advantage of the amnesty. He had heard that some people had tried to surrender and had been tortured. Examples of this included his own experience and the subsequent experience of Moses. The appellant had no other information about the amnesty.
23. As for his life in the United Kingdom, the appellant said that he knew someone called Sara who came from the same village in Uganda as he did. He was also in a relationship (which had started 19 months ago) with a British citizen (whose name he gave the Tribunal). That lady was half Kenyan and half Ghanaian, having a Kenyan father. She had been raised in the United Kingdom. The couple did not live together.
24. Ms Brown asked the appellant about his music career. The appellant produced a letter (page 72 of the appellant's bundle) dated 21 March 2005 from 'Pijja Records' in which it is stated that the company had examined a demonstration disc recorded by the appellant with the company 'and we have considered you one of our recording artists. We believe that your voice is on the cutting edge of which this is what we are looking for' (sic). The appellant was asked to report to the company's offices in Croydon on 1 September 2005 'in order to meet with the other signed members of the crew and also to go through the procedures of you (sic) recording deal'. The appellant said in oral evidence that he had so far recorded six tracks with Pijja Records of a projected 17 track album. It would take between 18 months and two and a half years to record the entire album.
25. The appellant was asked about his activities with his church. At page 10 of the appellant's bundle, there is a letter dated 22 March 2005 from the Senior Pastor of the Liberty Christian Fellowship of Thornton Heath, in which it is stated that the appellant is an active member of the church, 'is one of a handful of young men who receive very personal mentoring and training directly from me so as to enhance his effectiveness as an emerging key Minister' and that he 'works tirelessly in serving God, the choir and the wider community'. At the hearing on 17 January, the appellant produced a further letter from the same source, dated 5 January 2006, which states that 'since his joining the congregation [the appellant] has been involved in the church as an Assistant Choir Director. He possesses notable music abilities and is a key leader during our worship services, hosting upwards of 700 worshippers'. The appellant said in oral evidence that he was equipping people with skills in music and leading worship during fellowship. He was also studying for a B Tech National Diploma in Sound Engineering at Westminster College. This was a 2 year course which he commenced in September 2005.

26. Asked what would happen to him if he returned to Uganda, the appellant said that, according to what he had heard and based on what he had experienced, he would be taken in for treason. Asked whether he could return to live in Kampala, rather than his home area, he said that he knew nobody in the capital and that his home in North West Uganda is quite a distance from it. The appellant said that he had a dream to let people see the presence of God and he wanted to be useful to the community. Those who were found to have committed treason were subjected to the death penalty.
27. Cross-examined, the appellant said that the plan of the LRA group to surrender to the Ugandan army was conceived by Peter. The group managed to evade the LRA guards. Several of the group approached the government camp carrying arms, although the appellant himself was not armed. On approaching, the group raised their hands. The appellant said that there were approximately ten Ugandan army personnel in the camp. The guards there told the group to put down their weapons and move away from them. The eldest member of the group was then taken away and one guard was left to supervise the remainder. The appellant then said that during the day armed guards, 'a couple say, five' would walk around the group, who were sitting. In the evening, a fire was made and the group were sitting around it whilst the single guard was drinking. Their leader was being mistreated as he would not talk. The authorities thought that the proposed surrender was a trick. Peter began fighting with the guard and told the others to run away, which they did. After the group made its escape, Ugandan military personnel ran after them, shooting, but the group was able to get away as the camp was not fenced, apart from having some poles at an entrance.
28. The appellant was asked why his account of the escape from the Ugandan army camp had not been put in his first written statement, submitted in connection with his application. The appellant replied that he had a solicitor who had prepared that statement by asking the appellant questions. Asked about Moses, the appellant said that he had tried to telephone him on his mobile phone but the number was unavailable. They had, however, met on a subsequent occasion after seeing each other in Croydon, when Moses took the appellant to a rally in Trafalgar Square.
29. The appellant was asked about a question and answer recorded in the Immigration Judge's record of proceedings. Asked if he had surrendered, the appellant is recorded as having replied that he had not. The appellant was asked at the reconsideration hearing what he had meant by that reply. He said that the group had tried to surrender to the government troops but were not given the chance to surrender.
30. The appellant was asked why, after the abortive attempt to surrender, the appellant and others had returned to the LRA camp. He said that he thought it was best to go there and that they in fact had no choice but to return. Asked what he thought might have awaited him by way of a reception, the appellant replied that some things one does one does not think twice about, even though one should have done so. The 26 returnees (Peter and the leader being left behind the government camp) did not enter the LRA camp as a group. The appellant said that there was no other place to run to, as people in the neighbourhood had been given weapons

and told to shoot if they saw a rebel. There were about 700 personnel in the rebel camp. That camp was some distance from the army camp, which had only 10 personnel. That camp, was, however, only a small one. An army main barracks was elsewhere.

31. The appellant said that he was apprehended on seeking to enter the LRA camp and taken to a punishment chamber known as the 'dark room', where he was beaten and a knife put to his throat.
32. The appellant was asked why, after he had finally secured his exit from the rebel camp, he had waited eight months to leave Uganda. The appellant said that a person called Swaleh was a middleman for the rebels and the appellant ran with him to a place that he did not know where he stayed in-doors for eight months. The appellant still did not know where that place was.
33. Asked if there were witnesses that might be used to prove that the appellant was guilty of treason, the appellant said that rebels would get the names of everyone in the LRA camp and then send these names to the government and 'without a shadow of a doubt' the government would apprehend the appellant at the airport, if he were returned.
34. Re-examined, the appellant said that the age range of the group which sought to surrender was from about 10 to 19. The person known as Peter, who had fought the guard, was 18 or 19. Some of those who hesitated in going back to the LRA camp had been shot by the rebels. The appellant was in the 'dark room' for three days. He begged for his life and did not seek to resist his captors.
35. In answer to a question from the Tribunal, the appellant said that he could not remember the year in which he had been taken by the LRA. The oldest member of the group was Opio Vtoko. It was he who had been the first to hand in the guns on the group's behalf. The group had only been left with one guard when they had shown that they did not intend to fight back. The rest of the guards had gone one by one, until there was only one left. The group had been able to hear the cries of the leader, as he was tortured by the authorities in another part of the camp.
36. At the invitation of the Tribunal, Ms Brown asked the appellant about the circumstances surrounding his arrival in the United Kingdom. She did so in order to deal with the issue of whether the appellant's credibility was to be regarded as damaged, by reason of section 8(3)(b) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, given that the appellant's account disclosed that he may have produced to the immigration authorities in the United Kingdom a passport which was not valid for the purposes of that section.
37. The appellant said that Swaleh had produced a passport on the appellant's behalf at Entebbe Airport. The appellant was not at that stage given the passport. However, on arrival at Heathrow, Swaleh handed the appellant a passport and told him to produce it to the Immigration Officer. Swaleh was behind the appellant. The appellant was asked by the Officer how long he intended to remain in the United Kingdom and Swaleh replied for him that it was only for a short time. The appellant said that he did not look inside the passport which Swaleh had given him.



The couple then moved out of the airport and took a taxi to a place whose name the appellant did not know. The following day they boarded a train and, whilst changing trains, they were approached by police. Swaleh kept walking but the appellant stopped to talk to the police. At that stage the appellant did not know how to claim asylum. However, after he had been detained by the police, an Immigration Officer met the appellant and told him that he could claim asylum, which he proceeded to do.

38. The appellant told that Immigration Officer that he had been instructed to call himself by the name of the person in the passport which the appellant had produced. He said that he had come from Uganda, had no family, had been in the LRA and essentially told the Immigration Officer his story.
39. In answer to a question from the Tribunal, the appellant said that, although he had not borne arms whilst in the LRA, he had been involved in the abduction of children to serve in that movement.
40. Being re-examined on the supplementary questions by Ms Brown, the appellant said that, if he had been refused to kidnap the children, he would have been killed. As for the evidence about the group co-operating with the Ugandan military whilst in the army camp, the appellant was asked whether, if he had continued to co-operate, he would not have been beaten. The appellant said that what scared them most was the fact that their leader was being tortured and they heard words like 'after we've done, we are going to come for you'.

### **Burden and standard of proof**

41. The burden of proof is on the appellant, who must show that, if returned to Uganda, there is a real risk that he would suffer persecution for a Refugee Convention reason or that he would suffer serious ill treatment proscribed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. We have applied that standard of proof in the present case. In doing so, we have considered in the round the totality of the evidence before us; that is to say, the appellant's oral evidence, the documentary evidence particular to his case (listed in Annex A to this determination) and the documentary evidence relating to Uganda (listed in Annex B).

### **Tribunal's assessment of appellant's credibility**

42. Both representatives acknowledged that credibility is in issue in this appeal. Mr Deller submitted that the appellant was not credible but that, even if he were, the evidence relating to Uganda does not show that the appellant would be at real risk on return. Even if the appellant were at risk in his home area of North West Uganda, it would not be unduly harsh to require him to relocate elsewhere; in particular to Kampala. Ms Brown submitted that the appellant had given a consistent account of events in Uganda in his screening interview, Statement of Evidence Form, Home Office interview and written statements, and in oral evidence, both before the Immigration Judge and us. There was also medical evidence that supported the appellant's account. That account was consistent with the country information relating to the activities of the LRA and the attitude of the

Ugandan authorities towards that movement and its members. It should also be borne in mind that the appellant was a minor of 17 years when he arrived in the United Kingdom, that he would have been traumatised by his experiences in Uganda and that the appellant should be taken to be telling the truth, as a committed Christian who took his religion seriously.

43. In determining the appellant's credibility, we have had regard to his age; in particular, to the fact that the events which he said happened to him in Uganda occurred during his childhood and teenage years, and that he was some three months short of his eighteenth birthday when he arrived in the United Kingdom on 14 May 2003. It is also the case that his assertion that he was abducted as a child to join the ranks of the LRA is consistent with the information set out at paragraphs 6.96 and 6.97 of the COI report on Uganda (October 2005), quoting the US State Department report for 2004, that the LRA continued to abduct thousands of civilians for training as guerrillas; that most victims were children and young adults whom the LRA forced into virtual slavery; and that more than 85% of the LRA forces were made up of children whom the LRA had abducted.
44. We have also had regard to the medical report of Dr Montgomery of the Eversley Medical Centre, dated 4 April 2005. In this, Dr Montgomery records that the appellant told her that whilst trying to escape from a camp in Northern Uganda he was hit with the butt of a gun on the right side of his nose and had his life threatened with a knife, being told that he was going to have his throat cut. Upon examination, the appellant was found to have 'a straight scar that would be consistent with such an injury (although I would not consider myself an expert in this) of approximately 9 cm in length with some keloid change. The scar is on the left lateral border of his neck above the jugular vessel but seems to have been superficial rather than deep.' The appellant's nose 'does have some slight deviation of the nasal septum which would be consistent with an old injury but any further than that I am not able to say whether this was a direct cause of being hit with a gun as he describes.' Dr Montgomery examined the appellant's legs, which 'have scarring all over the anterior surfaces of both shins, which may have been due to running through bushes'.
45. Taking the evidence in the round, however, the Tribunal does not find that the appellant is a credible witness in respect of the core of his claim. We reach this conclusion for the following reasons.
46. The whole account of the appellant's attempt to surrender to the Ugandan army is absent from the detailed statement submitted by the appellant in connection with his application for asylum (D17 to D20). At the hearing on 17 January, the appellant sought to explain this omission by blaming his solicitor, who he said only asked him questions. We do not find that that is any sense a satisfactory explanation. There is no evidence to show that the person who produced the statement for the appellant has admitted responsibility for the omission. The statement is, on any reading, one that could only have resulted from the appellant being given a full opportunity to tell his story. The appellant has, we find, sought to introduce the story of the attempted surrender in order to enhance his claim, on the ground that he believed that it would go to show why he could not have taken advantage of the

Ugandan government's amnesty to LRA fighters (as to which we shall have more to say later).

47. We find that the appellant has engaged in behaviour to which section 8 of the 2004 Act applies and of which we are required to take account as damaging his credibility. There is no dispute that the appellant, at Heathrow Airport, produced to an Immigration Officer a document which was not a valid passport, as if it were such. Section 8(3)(b) therefore applies. Any resulting damage to the appellant's credibility might be mitigated, were we to find that, in all the circumstances, the appellant had a good reason to make use of the invalid passport, provided that reason is not incompatible with his claim to be in need of his international protection. The appellant attempted to explain that he did not know where Swaleh was taking him and that he just did what the latter told him to do. In the case of this appellant, it is simply not credible that he would have boarded a direct flight from Uganda to London without knowing where he was going. Furthermore, the appellant's account to us was inherently flawed. He said on the one hand that he had not looked at the passport but also told us that he nevertheless knew the name of the person named in that document.
48. In the circumstances, we find that the appellant's credibility is significantly damaged by his production of the false passport. Furthermore, the whole account of his trip to the United Kingdom with Swaleh beggars belief. Swaleh is supposed to be an LRA member who drove the appellant away after his final escape from the LRA camp. The appellant lived for eight months with Swaleh but still has no idea where this was. Whether or not the appellant was in hiding at the time, that makes no sense. Nor is it remotely believable that an LRA member would be able or willing to arrange for the appellant's and his own departure from Entebbe Airport in Uganda and their transiting of United Kingdom immigration controls. Furthermore, it is not believable that the appellant would have been left unaware of his ability to claim asylum in the United Kingdom until after he had been detained in connection with suspected fare evasion at East Croydon Station.
49. It is highly remarkable that the appellant has been unable to say how old he was when he was abducted by the LRA. Notwithstanding his youth, an event of that significance would plainly be of enormous importance to anyone. Yet all the appellant could say that was he was between the ages of 12 and 14 when this event occurred. He could not remember the year in which it happened. The appellant presented as a young man of obvious intelligence. We do not believe that, had the event really occurred, he could be so unclear as to when it happened. The appellant was quite specific in his oral evidence that he could not remember the year and that he could do no more than say that he was between 12 and 14. The Tribunal observes that in the interview record at question 12, when asked 'when were you taken by the rebels?', the appellant replied '1999 I think it was around August 1999. That is when they raid our village'. If the event had really happened, it is incredible that the appellant could have forgotten what he said at that time.
50. As we have already said, we have had regard to the medical report produced on behalf of the appellant. Dr Montgomery was frank in her finding that the scar on the appellant's neck was superficial and that it was no more than consistent with the

description given to her by the appellant of how it came to be caused. Furthermore, she acknowledged that she was not an expert in these matters. Likewise, the deviation of the nasal septum was said by her to be consistent with an old injury but she could not say whether it was the direct result of being hit with a gun. In all the circumstances, the Tribunal finds that, whilst we accept that the appellant bears these marks, they are not reasonably likely to have been caused by the LRA or the Ugandan authorities.

51. Whilst the Tribunal has taken note that the appellant's account is in many respects consistent, as between his various statements, in the major respects we have identified, it is not. In conclusion, the Tribunal does not find that the appellant has told us the truth. We say that notwithstanding that we accept that he regards himself as a born again Christian. All that the appellant has shown to the requisite low standard is that he is a twenty year old man from Uganda.

### **Risk on return to Uganda**

52. In the light of the Tribunal's credibility findings, the appellant faces no risk on return to Uganda. Given his fundamental failure to demonstrate that his account was reasonably likely to be true, he has failed to show even that he is a person who comes from an area where the LRA is active. On our primary finding, accordingly, the issue of internal relocation does not arise.
53. Mr Deller put the respondent's case on the basis that, even if the appellant were credible, he would still not be entitled to international protection. The Tribunal heard full argument on that issue from Mr Deller and Ms Brown, by reference to the most recent available documentary materials relating to the LRA and the attitude towards it of the Uganda Government. We shall therefore deal with position as it would be if, contrary to our findings, the appellant has told us the truth about his experiences in Uganda.

### *History of the Lord's Resistance Army*

54. For some 19 years, the Lord's Resistance Army has been fighting the Ugandan authorities. According to the COI report of October 2005, the seeds of the conflict were sown when Milton Obote and Tito Okello were defeated by forces loyal to Uganda's current leader, Yoweri Museveni. The remnants of the defeated forces fled north, to their home areas. There they reformed and eventually rallied to Alice Lakewanya, a spiritualist. When she was defeated in 1987, a power vacuum was left that was eventually filled by Joseph Kony and the Lord's Resistance Army.
55. According to the BBC, Kony shrouds himself in mystery and seeks to portray himself as a messenger of God. Under his leadership, the LRA has carried out a terror campaign in Northern Uganda. As the Tribunal has already observed, the LRA seeks to abduct children and young adults to serve in its ranks. Kony appears to lack a clear political agenda, at least one that he has seen fit to disclose to those outside the LRA (paragraphs 6.89 to 6.100).

### *Amnesties*

56. Paragraph 6.07 of the COI report states as follows:

"6.07 The USSD report for 2004 notes the following regarding the 2000 Amnesty Act: in December 1999 parliament passed a bill granting a general amnesty to all rebels who had been fighting to overthrow the Museveni Government and who were prepared to renounce rebellion. An Amnesty Act was passed in January 2000 with a date of commencement of 21 January 2000. The Act provided for an "amnesty for Ugandans involved in acts of a war-like nature in various parts of the country and for other connected purposes." The Act was to remain in force for six months and on expiry it could be extended by statutory instrument. The 2000 amnesty law applies to all persons involved in insurgencies since the Movement came into power in 1986. Between January and December, 3,048 former LRA combatants were granted amnesty; 7,613 former combatants have received amnesty since 2000. The amnesty law was extended through December."

57. The COI report continues by noting that the amnesty covers 'any Ugandan residing in or outside of the country' (paragraph 6.8) and that, according to a BBC article of 13 July 2004, entitled 'Former Rebels join Uganda's Army', the amnesty still exists for rebels who escaped or are rescued during clashes with the army, and that the level of forgiveness amongst the civilian population was high.

58. Reference to the BBC report of 13 July 2004 is also to be found at paragraphs 5.78 to 5.84 of the COI report. There, we find that 'thousands of people had turned out to watch, as around 300 former Ugandan Lord's Resistance Army (LRA) rebels marched through Gulu town before heading to a showground for a passing-out ceremony. They were there welcomed into the regular Ugandan army' (paragraph 5.78). The same BBC reported quoted a Ugandan army spokesman as saying that the recruits had received three months' military training and political education and would be going back to fight the LRA, their former allies. (paragraph 5.79). Outside observers, however, were said to have questioned the wisdom of making such fighters part of the Ugandan army, stating that they required a longer period of counselling because many were children who had been abducted and forced to commit atrocities (paragraph 5.80). The same army source, however, was quoted by the BBC as emphasising that a difference should be drawn 'between the misleaders and misled, the ones that have formed the new Battalion are basically the misled' (paragraph 5.83).

59. In **AZ (Eligibility for Amnesty) Uganda [2004] UKIAT 00166**, the Immigration Appeal Tribunal, in a determination notified on 22 June 2004, held that there was no evidence to show that persons who had the benefit of the amnesty were detained on arrival in Uganda. The Tribunal concluded that a person who had been a member of the Allied Democratic Forces (ADF), another Ugandan rebel group, would benefit from the Amnesty and that there was no evidence to show that he would be at risk of re-arrest as a suspected rebel (paragraphs 25 to 27 of the determination).

60. Ms Brown submitted that the July 2004 BBC report regarding former LRA members being taken into the Uganda Army meant that the amnesty operated only to the

extent that a person was willing and able to pass from the LRA directly into the Ugandan armed forces. Such a person could not have the option of returning to civilian life. The Tribunal does not find that there is any merit in that submission. There is nothing in the materials before us to show that the amnesty, as a general matter, only operates in such a restricted way. If that were the case, the Tribunal would have expected outside observers such as the US State Department or the International Crisis Group, which has taken a keen interest in the LRA issue, to have made reference to the matter. There is also nothing in the material relating to the July 2004 incident to show that the 300 former LRA rebels were reluctant recruits to the Ugandan army.

61. Ms Brown further submitted that the evidence from the respondent was that the amnesty law had expired in December 2004. We do not find that to be the case. Paragraph 6.07 of the COI report, drawing on the US State Department report for 2004, makes it plain that the amnesty was extended by statutory instrument at the end of December 2004. Not only is there no evidence before us to show that a further extension or extensions have not been made; such evidence as is before us strongly suggests that the amnesty has been so extended.
62. Paragraph 6.13 of the report quotes the International Crisis Group, in its report of 23 June 2005, as follows:

"6.13 The International Crisis Group's 23 June 2005 report, "Building a comprehensive peace strategy for northern Uganda" states:

'The Amnesty Commission, a statutory government body, is the major player in Kampala on this issue but it has only just begun the attempt to run a comprehensive national disarmament, demobilisation, and reintegration (DDR) program. Since May 2005, when a limited DDR program was formally launched, the Commission has given in-kind and cash reintegration packages to 600 of the 6,000 LRA ex-combatants it has identified as eligible to receive assistance. The program was extended to Gulu on 27 May [2005] and to Kitgum on 16 June [2005]. Once it is fully operational, the Commission will have the capacity to take in 200 ex-combatants daily, some of whom will be referred to specific agencies for psychosocial and other additional support'."

63. There is no suggestion from any of this that the Amnesty Commission, which plainly would appear to have been established by the 2000 Amnesty Act, is dealing only with persons who took advantage of the amnesty before 1 January 2005. Nor is there any such suggestion in the International Crisis Group's latest report of 11 January 2006. Here we find that in October 2005 the International Criminal Court 'unsealed arrest warrants it issued three months earlier for five LRA commanders, including the leader, Joseph Kony'. The fact that the leaders of the LRA are being pursued in this way is in no sense incompatible with the Ugandan government's continued willingness to offer an amnesty to the movement's foot soldiers, including its forced conscripts.

*Peace talks and ceasefire*

64. Although there is plainly some interrelationship, the issue of an amnesty is to be distinguished from the issue of a ceasefire between the Ugandan Government and the LRA. At paragraph 6.111 of the COI report, we find that the government and the LRA were due to sign a ceasefire on 30 December 2004. That hope proved short-lived since, as noted in paragraph 6.112, the government's own ceasefire expired on 31 December 2004, which was the day when "the talks between the government and the Lord's Resistance Army collapsed". On 16 February 2005, the LRA's top negotiator in the recent peace talks gave himself up to the Ugandan army (6.117). On 30 November 2005, the BBC reported that the Ugandan Interior Minister had welcomed a call for peace talks by the Deputy Commander of the LRA, stating that 'the government will seize any opportunity to bring the suffering of people in Northern Uganda to an end'. The LRA Deputy Commander told the BBC's reporter in Uganda that the LRA was ready to talk and that he was speaking with the backing of Joseph Kony. Fighting nevertheless continued between the two sides in late 2005, as is clear from a further BBC report of 27 December. That contained the information that ten LRA fighters, including a Senior Commander, were killed by the Ugandan army over the weekend. In its January 2006 report, the International Crisis Group found that there were credible reports that the Sudanese military were still aiding the LRA, despite what the BBC described as a 'fresh spirit of co-operation between Uganda and Sudan's new government of national unity'. The International Crisis Group, in its latest report, is encouraging the Ugandan army to increase its military operations against the LRA:-

"The psychological impact of three or four sharp attacks on LRA positions would be significant, and many commanders and ordinary fighters would be tempted to turn themselves in. A bounty like that used in conjunction with the International Criminal Tribunal for Rwanda and the former Yugoslavia should be offered to private citizens for capture or assistance in capturing indictees alive'.

#### *Lists of LRA members*

65. The appellant asserted to us that he understood that lists of LRA members were supplied by the LRA to the Ugandan government, and that, on return, he would be detained at the airport and accused of treason. We have not found the appellant to be credible as to his experiences with the LRA. Even if we had done so, however, his evidence as to the existence of such lists cannot be more than mere supposition. Ms Brown informed the Tribunal that she had no documentary evidence to show us that might confirm what on the face of it would be a surprising practice on the part of a group that has been conducting covert operations in Uganda for a number of years, notwithstanding its alleged propaganda value.

#### *Treason*

66. The evidence relating to treason is set out at paragraphs 5.44 to 5.46 of the COI report. There we find the US State Department as stating that some 40 people have been charged with treason over the past two years for collaborating with the People's Redemption Army, an organisation identified by the Ugandan authorities as operating from the Democratic Republic of Congo. Reference is also made to members of an Islamic group known as Tabliq being detained on treason charges.

There is no reference in the report to anyone being charged with treason as a result of LRA membership. Nor did Ms Brown seek to draw our attention to any other evidence on this issue.

#### *Conclusions as to risk on return*

67. Paragraph 3.6.12 of the respondent's Operational Guidance Note on Uganda (13 December 2005) states that active members and supporters of the LRA who are engaged in anti-government activities and who are not willing to surrender under the terms of the amnesty will not be able to avail themselves of the protection of the Ugandan authorities. However, those LRA members and supporters who renounce violence and surrender under the terms of the 2000 amnesty will not face persecution or prosecution by the authorities. On the evidence before us, the Tribunal considers that that continues to be an accurate current assessment of the position. Even if the appellant's account of his experiences in Uganda had been true, he has no wish to continue to support the LRA in any anti-government activities. There is no evidence to show that he would be unwilling to avail himself of the amnesty, either whilst he is still in the United Kingdom or immediately on return to Kampala. There is no evidence whatsoever to show that he would be arrested, detained and ill-treated by the authorities upon his arrival there.

#### **Internal relocation**

68. Were the appellant to have demonstrated a reasonable likelihood that his home is in an area of Uganda where the LRA continues to be active, in particular in enforcibly conscripting young people, we would have found that, despite the Ugandan army's efforts to suppress the movement, there would be a real risk to the appellant of such forcible conscription. Although the Tribunal did not hear argument on the issue, which may therefore require to be authoritatively determined in another case, we would assume for the present that any such persecution would engage the Refugee Convention by reason of imputed political opinion. However, it is manifest that the appellant could relocate to Kampala without real risk of serious harm from the LRA and without undue harshness. There is no evidence that the LRA is active in the capital or that it is able there forcibly to conscript persons to its ranks. As for undue harshness, on the appellant's story, he has no relatives in Uganda with whom he is still in contact. He is, however, a basically fit 20 year old who has demonstrated resourcefulness in gaining entry to the United Kingdom and who, whilst here, has shown educational aptitude and the ability to begin to forge a career for himself as a musician. Those attributes would enable the appellant to make a life for himself in Kampala, notwithstanding any difficulties which the system of land tenure in that city (to which the appellant made vague reference) might give him.

#### **Article 8**

69. Ms Brown specifically put the appellant's case under Article 8 by reference to his private life. That private life included his relationship with a lady, who did not appear or give evidence, who is said to be a British citizen with whom the appellant is not cohabiting. Ms Brown submitted that the appellant had made major achievements whilst in the United Kingdom. She referred both to his recording



contract with Pijja Records and his activities with Liberty Christian Fellowship. No actual contract has been put before us. We are, nevertheless, able to accept that the appellant is in the process of recording an album. We also find that he is pursuing an educational qualification in sound recording and assisting with the Liberty Christian Fellowship, both as Assistant Choir Director and in other ways.

70. As the Tribunal has held in ***MG (Assessing interference with Private Life) Serbia and Montenegro [2005] UKAIT 00113***, sympathy for and admiration of an individual do not as such enhance or otherwise affect that person's rights under Article 8. As is plain both from the opinions in ***Razgar [2004] UKHL 27*** and ***Huang [2005] EWCA Civ 105***, in case such as the present a truly exceptional situation must be identified before removal can be said to be of disproportionate interference of a person's right to respect for his private life. In the present case, no such circumstances exist. Indeed, on the facts, the Tribunal does not find that the appellant has shown that an affirmative answer can be given to the second of the five questions posed by Lord Bingham in ***Razgar***, namely that his removal from the United Kingdom would have consequences of such gravity as potentially to engage the operation of Article 8.
71. What we have said in the two preceding paragraphs assumes that the appellant was able to argue his appeal before the Immigration Judge on human rights grounds. In the light of ***JM (Rule 62(7); human rights unarguable) Liberia \* [2006] UKAIT 00009***, the determination of which was reported after the reconsideration hearing in the present case, we are bound to find that the appellant had no such ability. The immigration decision in this appeal was a decision to refuse to vary the appellant's leave to remain in the United Kingdom. As the Tribunal explains in ***JM***, any removal of the appellant from the United Kingdom by the respondent, if it were to occur, would not be 'in consequence of' the refusal to vary leave (see section 84(1)(g) of the 2002 Act), at least so far as concerns an appeal on human rights grounds. As a result, the appellant will have an in-country right of appeal on human rights grounds in the event that the respondent decides to issue removal directions against him under section 10 of the Immigration and Asylum Act 1999. We note that, as in ***JM***, the appellant can be said to have made a human rights claim to the respondent by reason of having asserted human rights grounds in his notice of appeal.

## Decision

72. The Immigration Judge made a material error of law. We accordingly substitute a decision of our own to dismiss the appellant's appeal.

Signed  
P R Lane  
Senior Immigration Judge

Date

## **ANNEX**

### **LIST OF BACKGROUND MATERIALS PLACED BEFORE THE TRIBUNAL**

Amnesty International Report 2004: Uganda  
Human Rights Watch World Report 2005: Uganda  
United Nations, Report of the Secretary-General on Children and Armed Conflict (Uganda Excerpt), 09/02/2005  
International Crisis Group, 'Peace in Northern Uganda: Decisive Weeks Ahead', 21/02/2005  
United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 'Uganda Humanitarian Update – Feb 2005', 28/02/05  
US Department of State, 'Country Reports on Human Rights Practices 2004: Uganda', 28/02/05  
Integrated Regional Information Networks News (IRIN), 'Uganda: 160 rescued from rebels since January – army', 15/03/05  
HJT Research, 'LRA rebels attack and mutilate women, further attacks feared', 22/03/2005  
Integrated Regional Information Networks News (IRIN), 'Uganda: Children suffering gross abuses in northern conflict', 22/03/05  
Integrated Regional Information Networks News (IRIN), 'Uganda: Health and education suffer as LRA steps up attacks in the north', 25/03/05  
Voice of America News, 'Children traumatised by Rebel Attacks in Northern Uganda', 28/03/05  
Voice of America News, 'Uganda's Lord's Resistance Army Cloaked in Myth, Secrecy', 30/03/05  
Home Office Country of Origin Information Service Report: Uganda, April 2005  
Home Office Operational Guidance Note: Uganda, July 2005  
Home Office Country of Origin Information Service Report: Uganda, October 2005  
BBC News, 'Ugandans welcome rebel overture', 30/11/05  
Home Office Operational Guidance Note: Uganda, 13/12/05  
BBC News, 'Ugandan civilians killed by army', 27/12/05  
International Crisis Group, 'Conflict prevention and resolution', January 2006  
BBC News, 'Sudan military 'still aiding LRA'', 11/01/06