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Heard at Field House
on 19 December 2003

MG (Desertion- Punishment)
Angola CG [2002] UKIAT 07360
HX/65386/2000

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....21 March 2003.....

Before:

Professor D B Casson (Chairman)
Mrs E Morton
Mr A A Lloyd JP

Between

Secretary of State for the Home Department

APPELLANT

and

Mateus Gonzaga Da Rocha Guimaraes

RESPONDENT

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the determination of an Adjudicator (Mr A A Wilson) allowing, on asylum and human rights grounds, an appeal by the respondent, a citizen of Angola, whom we shall refer to as "the claimant", against the decision by the Secretary of State on 3 November 2000 to refuse to grant leave to enter the United Kingdom. Before us the Secretary of State was represented by Miss D Prentice, Home Office Presenting Officer. The claimant was represented by Mr P Walse instructed by Henry Hyams & Co., solicitors.
2. The claimant arrived in the United Kingdom at Gatwick Airport on 11 February 2000. He claimed asylum and said he had travelled to this country by air from Luanda via Rio de Janeiro. He had travelled from Angola on what was described as a "service passport" used by government employees, the name on which had been slightly amended. At an asylum interview held on 23 May 2001, he said (B10)

that his wife and child had arrived in the United Kingdom six months previously, that he was unaware of their arrival details, and that his wife intended to claim asylum.

3. The claimant gave evidence at the hearing of his appeal before the Adjudicator, but the Secretary of State chose not to be represented. In his determination the Adjudicator summarised the claim in the words: "He was targeted for conscription within the Angolan Army by reason of his political activities. He refused the call up and was detained by military police and was able to escape during a battle with UNITA forces." In the refusal letter the respondent had specifically challenged the claimant's allegation that he had been targeted for conscription because of his political activities. The claimant told the Adjudicator that, having completed a university career, he would normally be exempt from conscription. The Adjudicator expressed his conclusions in paragraph 15 of his determination as follows:

"The appellant claims he fears persecution by the state insofar as he has been targeted for conscription in war time against an internal enemy that he is sympathetic to ideologically and has relatives involved in that part of the country. Insofar as the state is engaged in that war and has the right therefore to call available citizens to its defence that in itself would not normally amount to a fear of persecution. I do accept however that he has been targeted for that conscription for political activities due to his earlier political position and indications that he was not willing to be a servant of the state. The position of the appellant as a deserter is potentially dire having regard to the nature of detention and the fact that civil liberties are not respected in any systematic manner in the state."

4. The Adjudicator found that the claimant had established a well-founded fear of persecution for "political activity"; that internal flight "raises particular problems within that country"; that his removal would expose him to a real risk of breach of Article 3 and Article 8 of the European Convention. The appeal under Article 8 was allowed because the Adjudicator found: "that it would not be necessarily detrimental to the state by the allowing of the appellant and his immediate family into the UK. It therefore follows that the removal from the UK would involve a real risk of a breach of Article 8." The Adjudicator considered it appropriate to conclude his determination with the words: "I would therefore have directed the appellant be granted exceptional leave to remain had I not also determined the appeal in his favour under the 1951 Convention."
5. In his submissions to us Mr Walse for the claimant raised a preliminary point inviting us to find that the Secretary of State's application for leave to appeal to the Tribunal was out of time. We rejected that submission. In our judgment, the decision by the Vice President to grant leave to appeal clearly indicated that he had decided to exercise his discretion under rule 18(3) of the Procedure Rules to extend the

time limit. We are aware that differently constituted panels of the Tribunal have so decided in other cases.

6. On the substantive issues, Mr Walse conceded paragraph 2.5 of the grounds of appeal, and accepted that he could not support the Adjudicator's decision to allow the appeal under Article 8 of the European Convention. In our judgment Mr Walse is right in his concession. The Adjudicator's decision to allow the appeal under Article 8 is unsustainable. It is inconsistent with the evidence and with relevant authorities, and is simply wrong.
7. Miss Prentice for the Secretary of State submitted that the background evidence before us did not support the claimant's assertion that he would normally be exempt from conscription because he had completed his university course. Paragraphs 4.26 and 4.27 of the April 2002 CIPU Report made it clear that Angola had conscription for all males between 20 and 45 years of age and that service can be postponed if the person was still in full time education. There is no suggestion of exemption for students. We accept that submission. Insofar as the Adjudicator appears to have accepted the claimant's allegation that he was exempt from military service, that finding is unsustainable.
8. Mr Walse submitted that the claimant would be regarded as a deserter in Angola and as such would face treatment which would constitute a breach of Article 3 of the European Convention. Mr Walse submitted that the claimant was known to the authorities in Angola; that he was known to have deserted; that, as a deserter, he faced a long term of imprisonment; that prison conditions imposed a credible threat to health and life; that the right to receive family visits for prisoners was denied; and that in practice there were long pre-trial delays. By agreement, we considered both the April 2002 CIPU Report and the October 2002 Report in support of the submissions. Mr Walse also referred us to a summary of the decision of the European Court of Human Rights in Kalashnikov v Russia, which we have considered, but which we do not find of assistance in the determination of this appeal.
9. The reports to which we have been referred described prison conditions in Angola as constituting a serious threat to the health and lives of prisoners. The reports must, however, be read in the light of the Adjudicator's observation, which we set out below as it is typed at paragraph 12 of the determination:

"Although the Appellant did not claim any direct torture or violence or threats of violence against him he indicated that he only been arrested (sic) he was able to shortly afterwards escape during an attack by Unita and he escaped in the confusion. I broadly accept his evidence as credible and falling in line with the background information supplied. It therefore forms the factual basis of my decision."
10. The Adjudicator described the claimant's position as a deserter as "potentially dire having regard to the nature of the detention and the

fact that civil liberties are not respected in any systematic manner in the state". The Adjudicator found "on the facts as described above" that the claimant had established a well-founded fear of persecution and of treatment in breach of Article 3. The Adjudicator does not appear to have been referred to the decision of the Tribunal in Fazilat [2002] UKIAT 00973. The Tribunal was there concerned with prison conditions in Iran. The background documentation described prison conditions in that country as harsh and reported that some prisoners are held in solitary confinement or denied adequate food or medical care in order to force confessions. Female prisoners, reportedly, have been raped or otherwise tortured while in detention. Prison guards reportedly intimidate family members of detainees and torture detainees in the presence of family members. There were numerous reports of prisoner overcrowding and unrest. The judgment of the Tribunal was given by the President. At paragraph 15 he said:

"We do not doubt that prison conditions in Iran are far from ideal. We do not doubt that they may not measure up to what is expected in this country, or perhaps in any country which is a signatory to the European Convention on Human Rights. As the Court at Strasbourg has recognised, it is not for signatories to the Convention to impose the standards of the Convention on all the world. Recognition has to be had to the situation in individual countries and to the standards that are accepted, and expected, in those countries. Of course in relation to Article 3, there is a line below which the treatment cannot sink, if we may put it that way. That is to say that it is always possible that the sort of treatment that may be routinely expected in prison in a particular country falls so far below the standards that would be expected in a civilised country, that it could properly be said to amount to inhuman or degrading treatment. But, as again the Court in Strasbourg has indicated, the threshold has to be a high one because, otherwise, it would be, as one recognises, quite impossible for any country to return to a non-signatory an individual who faces prosecution, rather than any sort of persecution. The conditions may well be regarded as harsh. That is a value judgment and there is no sufficient indication from the material before us that this respondent would run the risk of facing treatment which amounted to a breach of article 3."

11. That is the approach we follow in this case. We are far from persuaded that this claimant has shown a reasonable degree of likelihood that he would be treated as a deserter on return to Angola at the present time. Even, however, if he would be so treated, we are not satisfied that the punishment to which he would be subjected would be such as to constitute a breach of his rights under Article 3 of the European Convention. The Adjudicator's conclusion that the claimant had been targeted for political reasons is, as we have indicated at paragraph 7 above, based upon a misapprehension of the background evidence. That conclusion cannot stand. Similarly, we are clearly of the opinion that the Adjudicator's conclusion that the claimant has established a real risk of treatment contrary to Article 3 is unsustainable and is based

upon an incorrect legal and factual analysis. The claimant's appeal should have been dismissed under both Conventions. It remains to be observed that the Adjudicator's statement that he "would have directed" that the claimant be granted exceptional leave to remain is nullified.

12. The appeal by the Secretary of State is allowed.

D B Casson
Acting Vice President