

AJB
Heard at Field House
On 29 August 2002

APPEAL NO HX57811-2001
HM (Mental Health) Sierra
Leone CG [2002] UKIAT 04459

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....30/09/2002.....

Before:

Mr D K Allen (Chairman)
Mrs S M Ward
Mr A Smith

Between

HAJA MANSARAY

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Sierra Leone, who has been granted leave to appeal to the Tribunal against the determination of an Adjudicator, Mr D A Kinloch, who dismissed her appeal against the respondent's decision refusing asylum.
2. The hearing before us took place on 29 August 2002. Mr C Yeo of the Refugee Legal Centre appeared on behalf of the appellant, and Mr A Sheik of the Home Office Presenting Officer's Unit appeared on behalf of the respondent.
3. It was agreed that the Tribunal had jurisdiction and that we could proceed to hear the appeal. Mr Sheik reminded us that the Home Office had accepted what the appellant said that she had been given leave to enter on her own passport which she had subsequently given to somebody else. Hence the refusal under section 69(3) of the 1999 Act. However, as had been pointed out by Mr Justice Sullivan in *ex parte Khaled Ahmed* [2002] EWHC 624 (admin), at paragraph 19,

given the underlying statutory purpose to ensure that persons required to leave the United Kingdom were given an opportunity to appeal and were able to put their case before an Adjudicator, it made no practical difference whatsoever which subsection conferred the right of appeal since the substance of the case put to the Adjudicator would be the same in all cases, that the person's removal would be contrary to the Refugee Convention.

4. Mr Yeo agreed that there would be no problem with proceeding, given that the appellant had had a full hearing of her claim before the Adjudicator and now was exercising her right of appeal to the Tribunal.
5. Mr Yeo argued that the Adjudicator's findings at paragraph 8 of his determination were clearly wrong. They did not fit in with the objective evidence of events in Freetown in 1999. With regard to the point at paragraph 8(v) she had left when she did as she was given the opportunity to do so. He was not seeking to develop the Refugee Convention argument in this appeal but was essentially focusing on Article 3 of the Human Rights Convention. He argued that the finding at paragraph 8(v) was not a good finding in the context of Article 3. Otherwise, the finding at paragraph 8(vi) could not be sustained, since the gradual disclosure was exactly what one would expect from a genuine rape victim. There was no reason to doubt it had occurred. The Adjudicator rejected her reason for not stating this earlier on account of his earlier credibility findings.
6. As regards the Article 3 claim, the finding at paragraph 13 that arguably it would be degrading to return the appellant to Sierra Leone, meant that he should have allowed her appeal. The use of the word "arguably" meant that there was a reasonable degree of likelihood. He was given leave to put in two papers from the UNHCR concerning returns to Sierra Leone. UNHCR did not agree with the Home Office that a case-by-case approach was appropriate, but considered that returns were still not appropriate. Mr Yeo accepted that the peace was holding, but argued that the future was uncertain. The appellant needed treatment but would not get it and the Adjudicator in recommending exceptional leave to remain should have allowed the appeal on human rights grounds.
7. In his submissions, Mr Sheik took us to the UNCHR documentation and argued that it did not show a real risk to the appellant on return. She would be returned to Freetown and there were clearly police on the ground and also there was the UN presence. The appellant was relatively well off and from the capital and had a home to return to. Caution was suggested but the UNCHR were not saying that there was a genuine risk on return. There was no evidence that anti-depressants were not available in Freetown, nor that there was no counselling at all. The credibility findings should be upheld. The appellant had been able to stay in Freetown for two years, which indicated that there was no real risk on return.

8. By way of reply, Mr Yeo emphasised his view concerning the Adjudicator's findings at paragraph 13 of his determination, and argued that this was a finding of fact and there was no cross-appeal and therefore it bound the Tribunal. He did not accept that the appellant had a family home, saying that it had been burned down, and there was no evidence that she was quite well off. She would be returning to a devastated country with little or no psychiatric help. She had an appointment at the Maudsley Hospital and would be receiving counselling as an outpatient. The UNHCR view should be borne in mind.
9. We reserved our determination.
10. Given the very sensible way in which the representatives agreed before us that the main issue in relation to which leave was sought fell away, this appeal is concerned essentially with risk on return to the appellant of a breach of her Article 3 rights. It is of relevance for us to consider the Adjudicator's credibility findings however, we agree with much of what was said by Mr Yeo in this regard. Much of the appellant's evidence was consistent with the objective evidence concerning what was happening at Freetown at the time when she was there and when what she alleges happened took place. We are concerned by the lack of a clear finding as to whether or not the Adjudicator accepted that she had been raped. The general tenor of paragraph 8(vi) of his determination is that he did not accept it, in particular where he stated that to his mind the fact that the claim had changed over time suggested an exaggeration designed to bolster her claim. His specific findings at paragraph 9 however, were that he did not believe that her house was targeted during the attack on Freetown or that her father and husband were killed as she has claimed. Given that she claimed that the rape took place during the attack on her house, and that her husband was killed at that time, it may be said to be implicit in that finding that he did not accept the claim by the appellant to have been raped. Perhaps rather paradoxically, the Adjudicator did however apparently accept the medical evidence. The doctor clearly believed the appellant's claim to have been raped and also that her father and her husband had been murdered. He noted also her loss of chastity according to her perception of her religion, her loss of chances of remarriage, her loss of her house and her lost contact with her daughter as all together making understandable her depression and post-traumatic stress disorder. The doctor recommended anti-depressants and counselling, the latter over a period of 12 months. In addition there was evidence before the Adjudicator concerning the availability of mental healthcare in Freetown. It was said that the Kissy Mental Hospital in Freetown is the only hospital providing mental health care in Sierra Leone, and it is said to be managed by the only Sierra Leonian psychiatrist in the country. It is also in the report (which is entitled War Related Sexual Violence in Sierra Leone: a report by Physicians for Human Rights) that anecdotal

evidence suggests that existing psychosocial services provided almost exclusively by NGOs are proving to be very valuable inside IDP camps in larger towns such as Freetown and Kenema. It is also said that recently the World Health Organisation has begun to assist the government of Sierra Leone in coordinating their mental health response to the crisis. The Report is dated 2002.

11. If we accept that the Adjudicator's credibility findings were flawed, and for the sake of argument we are prepared to do so, then it remains the case, nevertheless, that in our view the appellant has not shown a real risk of a breach of her human rights under Article 3 on return to Sierra Leone. We should say that we do not agree with Mr Yeo's argument that the Adjudicator made a finding of fact in this regard having determined the appeal as regards the Refugee Convention question and the issue of Article 3, in so far as it was founded on a risk of physical harm. He made the point at paragraph 13 that: "It seems to me that, arguably, it would be degrading to return the appellant to Sierra Leone without knowing that she would be able to receive some kind of help for her severe depression". He went on to recommend the grant of one years exceptional leave to remain in order for her to obtain the twelve months counselling and the anti-depressants recommended by Dr Shehadeh. We do not see how this can properly be regarded as a finding of fact. It is in our view, no more than a comment by the Adjudicator in the light of the evidence as he saw it from the doctor and on the objective evidence which we have described above.
12. We also do not agree that the use of the word "arguably" indicates that the Adjudicator found it to have been established to the proper standard of proof in human rights cases, that the claim had been made out. We bear in mind also the high threshold in Article 3 cases, as it has been said to be in cases such as Bensaid.
13. We note that there is some mental healthcare in Freetown, albeit of a limited amount only. There is a psychiatrist there and there is no indication that he or she is not able to prescribe anti-depressants, nor unable to provide counselling. We note that the World Health Organisation has begun to assist the government of Sierra Leone in coordinating their mental health response to the crisis. Even if one accepts the appellant's history as she claims it to be, and as a consequence of which the doctor made his recommendations, we do not consider that the high threshold of Article 3 has been reached in this case. We do not consider that it would be inhuman and/or degrading to return the appellant to Sierra Leone in the light of the diagnosis of the doctor and the recommended treatment. We bear in mind the recommendations of the UNHCR, but we agree with Mr Sheik that what is being suggested is essentially a counsel of prudence and caution, rather than an indication of a genuine risk on return of persecution and/or breach of Article 3.

14. This appeal is dismissed.

**D K Allen
Chairman**