

Third Circuit Court**Case:** *Toure v. A.G.*, 443 F.3d 310 (3d Cir. 2006)**Date:** April 5, 2006**Panel:** Roth, Aldisert, Rodriguez**Opinion:** Aldisert

Tags: Immigration, asylum, corroboration, adverse credibility determination, substantial evidence rubric, past persecution, well-founded fear of future persecution, similarly-situated family members

Question(s) Presented: did IJ properly consider evidence of past persecution? Did IJ & BIA follow the *Abdulai* Analysis regarding corroboration of the testimony? Did IJ properly support an adverse credibility determination?

Holdings:

- IJ missed the boat on why this was persecution.
- IJ did not apply the three-part *Abdulai* inquiry re. corroboration—vacated and remanded to make it so.
- IJ did not clearly state or support what appears to be an adverse credibility determination—vacated & remanded for this one too.

Facts: Citizen of Cote d'Ivoire entered via NY and applied for asylum / WH / CAT in 2003. Serious upheaval and human rights abuses in Cote d'Ivoire in the early 2000s.

Procedural History:

- **2003: IJ** denied asylum application because she did not find evidence of severe persecution, and he did not provide any evidence that his home was ransacked. Doubtful persecution was for political opinion, or that government was behind it.
- **BIA:** affirmed IJ without opinion. (That means 3d Circuit gets to review IJ's opinion.)

Discussion:

- IJ & DHS had argued that respondent's experiences did not rise to the level of persecution, because after two imprisonments he traveled abroad and then returned to the country. But the third incident, considered in the context of the other two, was the last straw:
 - "We therefore do not think that Toure's return to Cote d'Ivoire and his hope for improved conditions require us to insulate these prior incidents from the ransacking and abduction." 318
- IJ & DHS also argued that since respondent's wife remained behind in that country without incident, he can't have suffered persecution.
 - "we do not agree that this principle has any application where, as here, a petitioner testifies that the similarly -situated family members are *in hiding*. In such circumstances, a lack of continued persecution merely reflects the family members' ability to avoid detection, not the govt's desire, or lack thereof, to further persecute them." 319
- IJ's findings about political situation "are not supported by the facts in the record or the canons of logic." 320

- “It is indisputable that individuals are able to, and do, hold political opinions even if they do not belong to a political party, and that the INA protects individuals who do not belong to a political party to the same degree as those who do.” 320
- “Even if we were to assume that the only risk Toure faces upon return to Cote d’Ivoire is the prospect of lawful prosecution, the Government’s argument would still fail.” 322
 - Generally speaking, lawful prosecution under fair laws doesn’t count as “persecution.”
 - But “this rule does not apply where, as here, a petitioner must necessarily break a law to escape persecution.” 322
- **Adverse Credibility:**
 - “Mere doubts about the plausibility of a petitioner’s testimony are an insufficient basis for denial of an application.” 326
 - Adverse credibility determination needs to come with an explanation WHY. (This one isn’t even explicit enough for Court to decide whether an adverse credibility determination was or was not made.)
- “An IJ must do more than simply list off all the doubts he or she may have about a petitioner’s application in the belief that at least one of them will be sufficient to support the decision.” 327

Commentary:

- **Substantial Evidence Rubric**—for review of IJ’s decision: Court will only disturb it if a reasonable adjudicator would be compelled to conclude the contrary. The IJ is supposed to support her factual determinations with specifics, or her decision won’t pass muster under this analysis.
- **Converse Fallacy of Accident:**
Government’s argument that since SOME criminals pose as military personnel in Cote d’Ivoire, then ALL individuals wearing military uniforms are criminals. “What it does is to anoint isolated incidents with the chrism of generality, and create a general rule from an exceptional circumstance. The fallacy lies in labeling the exception—‘the accident’—as the general rule itself.” 321
- **Abdulai Inquiry re. Corroboration**
 - Identify facts for which it is reasonable to expect corroboration
 - Inquire as to whether this corroboration was present or absent in the record
 - Give respondent opportunity to explain why corroboration is missing if so
- **REAL ID Act**
“We acknowledge that our scope of review of corroboration determinations was recently altered by the REAL ID Act of 2005, which provides that “[no] Court shall reverse a determination made by the trier of fact with respect to the availability of corroborating evidence . . . unless the court finds . . . that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.” 325