Case No: (1) C5/2007/0575
(2) C5/2007/1735

Neutral Citation Number: [2007] EWCA Civ 1390
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: (1) AA/03321/2005; (2) AS/13449/2004]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 13th November 2007

Before:

LORD JUSTICE WARD
LORD JUSTICE LAWRENCE COLLINS
and
LORD JUSTICE TOULSON

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Between:

(1) SA (SYRIA); (2) IA (SYRIA)	**Appellants**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Ms M Plimmer (instructed by Messrs Jackson and Canter) appeared on behalf of the **First Appellant; Mr N Stanage** (instructed by Newcastle Law Centre) appeared on behalf of the **Second Appellant.**

Mr M Barnes (instructed by The Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Toulson:

1. These two appeals have been heard together because there are parallels between them. They are appeals from the decision of the Asylum and Immigration Tribunal, brought in each case by the permission given by Sir Henry Brooke.

2. The appellants, SA and IA, both come from Syria and are of Kurdish ethnicity. Kurds are the largest non-Arab ethnic minority in Syria, comprising approximately 10 percent of the population of 18.5 million. Many are denied Syrian nationality by the Syrian government. The appellants are both stateless, and unable to travel to obtain travel documents for travel outside of Syria.

3. SA arrived in the UK on 22 March 2005, and claimed asylum the next day. His application was refused. He appealed to the AIT, which dismissed his appeals. He claimed to have taken part in anti-government activities and to have fled from Syria when he knew that security forces were on his track. His account of those matters was disbelieved by the AIT, and there is no appeal against that finding. The basis of his appeal, in summary, is that the tribunal failed to deal with properly with the risks that he would face on return as a Kurd who had left Syria unlawfully and made an unsuccessful claim for asylum.

4. IA arrived in the UK on 11 February 2004 and claimed asylum five days later. His claim was rejected, and he appealed. He claimed that he had been threatened by officials of the Ba'ath Party with torture unless he joined that party. Under threats, he agreed to report on the activities of fellow Kurds in the area, but instead he fled the country. At the first hearing of his appeal, this account was rejected and the appeal was dismissed. Reconsideration was ordered because the tribunal had failed properly to consider the risk to him on his return as a failed asylum seeker.

5. A further matter was raised on the reconsideration. From 2005, AI took part in a number of anti-government demonstrations outside the Syrian Embassy. It was argued on his behalf that this would heighten the risk to him if he were returned to Syria. The AIT on reconsideration dismissed his appeal. The basis of his appeal to this court is that the tribunal failed to deal properly with the risk that he would face on return, both (as in SA's case) as a Kurd who had left Syria unlawfully and made an unsuccessful claim for asylum, and also on account of his political activities in the UK.

6. There have been two recent country guidance decisions which are relevant. SY (Syria) v SSHD [2005] UKIAT 00039, and AR (Syria) v SSHD [2006] UKAIT 00048. In the first of those cases, the tribunal concluded in summary that failed Kurdish Syrian asylum seekers were not as a class to be regarded as at risk, on return, of ill-treatment such as to require international protection under the Refugee Convention or such as to contravene Article 3 of the Human Rights Convention. The situation would be potentially different if the person concerned had a "political profile" giving cause for the Syrian

authorities to take a hostile view of them. That approach was reaffirmed in the second of the two country guidance cases.

7. The proper approach to country guidance cases was considered by this court in R (Iran) & Ors v SSHD [2005] EWCA Civ 982. At paragraph 26, the court approved the following passage from a judgment of the IAT presided over by Ouseley J in a previous decision, NM (Somalia) & Ors v SSHD [2005] UKIAT 00076:

> "CG cases…should be applied except where they do not apply to the particular facts which an Adjudicator or the Tribunal faces and can properly be held inapplicable for legally adequate reasons; there may be evidence that circumstances have changed in a material way which requires a different decision, again on the basis that proper reasons for that view are given; there may be significant new evidence which shows that the views originally expressed require consideration for revision or refinement, even without any material change in circumstances. It may be that the passage of time itself or substantial new evidence itself warrants a re-examination of the position, even though the outcome may be unchanged."

8. SA relied on two sources of evidence to try to persuade the tribunal to take a different view from the previous country guidance cases. One was a letter from Amnesty International dated 4 October 2006. The other was an expert's report from Ms Sheri Laizer. The letter from Amnesty International addressed the position of Kurds in Syria in general terms, and continued as follows:

> "Amnesty International can confirm that any Kurdish person who is perceived to have a political profile at any level or to be an associate or relative of a person with a political profile would face a serious risk of persecution from the Syrian authorities on enforced return.
>
> Risk on Return
>
> Syrians seeking political asylum abroad are perceived to be sympathetic to movements opposed to the Syrian authorities. The act of leaving the country to seek asylum abroad is imputed to be a manifestation of opposition to the Syrian government. According to Amnesty International's information, asylum applicants who have left Syria in an illegal manner are also at risk of arrest,

> detention and torture on their return. This applies to the following three categories of returnee.
>
> (a) Those who departed Syria without official authorization. Government employees are required to obtain permission to leave the country. Men who are leaving the country have to show that they have completed military service or if not, that they have permission to leave.
>
> (b) Those who have used/are using false documentation. [I omit the next few words].
>
> (c) Those who are not in possession of a valid Syrian passport."

It is accepted in this case that SA and indeed IA both fall into categories (a) and (c).

9. Ms Laizer is a writer and broadcast journalist, specialising in Middle Eastern affairs. There is no challenge to her independence and integrity. In her report she addressed in some detail the risks to Kurdish Syrians being returned after unlawfully leaving the country and making a failed asylum claim. She expressed the view that as an undocumented failed asylum seeker, SA would be detained at the airport, and would face a higher risk of being subjected to ill-treatment during questioning. It was likely, in her view, that in the present climate he would be accused of agitating against the government prior to his departure and possibly also abroad. He risked being unjustly accused of support for outlawed Syrian Kurdish groups, and would not be able readily to prove his innocence. His illegal departure from the country would raise suspicion in the timing of his flight.

10. Ms Laizer acknowledged that she did not have any access to any reliable statistics on returnees to Syria, as this was an issue which no independent Syrian-based NGO could monitor effectively, and reports emerge at random on a one-by-one basis. She went on to refer to her own experience of observing the procedures at Damascus airport when Syrians are returning.

11. She concluded that SA's absence from Syria, since he left the country at a time of increasing ethnic and political tension between the authorities and the Kurdish population, would raise questions about his pro-Kurdish involvement at home. The manner of his return would make it clear that he was not returning voluntarily. Questioning by officials at the airport would, in her view, swiftly establish his Kurdish origins, owing to his lack of nationality, lack of passport, accent, birthplace and probably also his appearance and bodily language. The political opinion likely to be imputed would be one of opposition, given the collective impact of those factors and the timing of his departure.

12. The tribunal dealt with the Amnesty International letter and the report of Ms Lazier on this issue in brief terms. It said:

> "The letter dated 4th October by Amnesty International concludes that any Syrian Kurd who has left the country illegally faces a real risk of torture and imprisonment. We have no evidence from them other than the three page letter to support this. It is not sourced and it is not in our view a point we can accept. In effect it would be saying that all Syrian Kurds who have left the country face a risk on return. We believe that this is a very wide statement and we believe that there are cases which on individual facts may give rise to a risk on return, but on the basis of one piece of evidence which was un-sourced and which is contrary to the current country guidance case, we are unable to come to the conclusion that the Appellant simply being a Syrian Kurd with no political profile would be of risk [sic] on return. According to Sheri Lazier she does not have access to the human rights abuse statistics on return to Syria. In other words there is no hard evidence to support the conclusion she makes."

For those reasons, the tribunal concluded that it should not depart from the country guidance authority.

13. Ms Plimmer, on behalf of SA, submitted that the tribunal's approach was seriously flawed. In relation to the Amnesty International letter, she submitted that it was wrong to dismiss this evidence on the basis that it is unsourced. On the contrary, Amnesty International is a reputable organisation, which derives its information from a variety of sources. She referred to the judgment of Buxton LJ in Reg. v Immigration Appeal Tribunal [1999] EWCA Civ 2066, in which he observed that:

> "Amnesty International is recognised as a responsible, important and well-informed body. Immigration Tribunals will always give consideration to their reports, even though they are in report form and not in the form of evidence from someone present to be questioned."

14. In relation to Ms Lazier's report, Ms Plimmer submitted that the tribunal was altogether too dismissive in disposing of her opinion in two brief sentences referring merely to the absence of human right abuse statistics on return to Syria, and therefore absence of hard evidence to support her conclusion. Ms Laizer had herself drawn attention to the absence of statistics, but also given a

reason for it. It is in the nature of things that statistics are not going to be able to be kept reliably on mistreatment when persons return to a regime such as Syria. That is a reason for examining carefully the material which exists to support an opinion by an expert about what are the risks to a returnee. It is not a reason for rejecting the opinion without consideration.

15. Mr Barnes, on behalf of the Secretary of State, submitted that while the conclusions of the tribunal were brief and their expression allowed room for improvement, nevertheless they did consider the evidence relied upon on behalf of SA, and reached a conclusion which cannot be stigmatised as perverse. He submitted that although the tribunal referred to the Amnesty International letter as being unsourced, and this was not strictly accurate, nevertheless they did consider the substance of that letter, and were entitled to conclude that it was insufficiently detailed to cause the tribunal to depart from the current country guidance.

16. In relation to Ms Lazier's report, the tribunal in his submission considered the content of the report, as evidenced by other parts of the determination where they referred to other sections of her report; in effect, their words should be interpreted as meaning that they found that there was insufficient substance to support her opinion to cause them to depart from current country guidance. This, it is submitted, was an evaluation of the evidence which the tribunal was entitled to make.

17. IA sought to distinguish the country guidance cases. He relied on a report by Dr Alan George, another journalist and broadcaster specialising in Middle-Eastern affairs, who is again accepted by the respondent as an honest and well-qualified witness. In his report, Dr George spoke of the surveillance of anti-Syrian demonstrations in the UK by the Syrian authorities. He expressed the view that IA's participation in the demonstrations outside the Embassy would in all likelihood have come to the attention of the authorities. He went on to give his reasons for forming that view. In part, this was based on a number of interviews which he had conducted. In part, he relied upon a report by the Canadian section of Amnesty International in January 2004, which referred to the work of Syrian Secret Service Agents working abroad, with the task (among other things) of monitoring the Syrian community and opposition abroad. He accepted that there was no way of knowing precisely how Syrian security services identified individual anti-regime demonstrators who have been photographed or filmed, but he went on to make suggestions how this is likely to be done, and gave his reasons for advancing those suggestions.

18. His reasoning led him to the conclusion that it was reasonable to suppose that the Syrian authorities would use their photographic and film records for checking out undocumented individuals being returned, and that it would be a relatively easy matter for them to establish whether a particular individual had taken part in an anti-regime demonstration while in London. He also went on to address the likely risk to IA on return as a Syrian Kurd who failed in an asylum claim, and concluded that he faced significant risk of ill-treatment. IA also relied on a letter from Amnesty International in the same terms as the letter relied on by SA.

19. In its judgment, the tribunal dealt with the potential risk arising from IA's activities outside the Syrian Embassy as follows:

> "The evidence available to Dr George is far from establishing a risk to everyone who appears in front of the Syrian Embassy with a placard. There is no evidence that the Syrians do photograph such demonstrations aside from the belief of the Appellant's friend, but even if it were assumed they do there is no evidence that they are interested in people who do not have political profile or how they would in fact identify those and thereby raise their profile. An observer of such a demonstration could not tell whether the participants were in fact Syrian without more. In the facts of this case checking the Appellant's picture against known political activists would lead to a negative result on the findings of Mrs Bircher. Further, despite the claims of human rights organisations and persons claiming humanitarian breaches there seems to be no evidence of this happening in any particular case. The views of Dr George on the possibility of monitoring are regarded as speculative within Paragraph 92 of AR."

In relation to the Amnesty International letter, the tribunal said:

> "There is a letter from Amnesty International suggesting categories of persons who would be at risk. They are Government employees (there is no allegation that the Appellant is such an employee), those using false documentation (the Appellant suggests he has never had any documents) and lastly those who falsify Syrian Official documents (again the Appellant has never claimed to have any) although the last category is confusingly under the title "Not in possession of a Syrian Passport" it clearly refers to alterations of official documents. Thus that letter does not assist the appellant."

20. Mr Stanage, on behalf of IA, submitted that these passages from the judgment contained demonstrable errors. In relation to Dr George, it was incorrect to say that there was no evidence that the Syrians photograph demonstrations, apart from the belief of a friend of the appellant. There was evidence in the form of Dr George's report, which in this regard consisted not merely of assertion, but of the reasons for him forming the view which he expressed. In relation to the Amnesty International letter, the tribunal simply misread it. On

a proper reading of the letter, it is clear that IA does fall within the categories to which the letter was referring.

21. Mr Barnes, on behalf of the Secretary of State, accepted that as in the case of SA, the phraseology used by the tribunal might have been improved. He accepted in relation to Dr George's evidence that there was evidence to support the proposition that IA's activities were likely to have been monitored by the Syrian authorities. He submitted that the tribunal, in substance, was evaluating the strength of that evidence, and concluded that it not was persuaded that it gave rise to a real risk in the case of IA. He accepted that the tribunal fell into error when it said that the letter from Amnesty International did not assist the appellant; but he submitted that, in substance, it did not advance IA's case to any significant degree, for reasons similar to those which he argued in relation to SA.

22. I am troubled by the points raised by both appellants, and I regret that the respondent has not been able to put those troubles to rest, in my judgment. In relation to SA, I accept that there is substance in both the main criticisms advanced by Miss Plimmer. To treat the Amnesty International letter as if it were simply a letter written with no identifiable foundation was not a satisfactory way of approaching the document. Amnesty International is a body of high repute, and the document did indicate, in broad terms, its sources of information.

23. Inevitably, in the area that such bodies are investigating, there may be difficulties in obtaining evidence from fully identifiable sources, but Amnesty International are well aware of that. It does not follow that a tribunal is bound to share their opinions on any particular matter, but the substance of that report did require the tribunal properly to engage with it. The way in which the determination dealt with the report of Miss Laizer was so cursory as not in substance to engage with its content on the relevant point at all.

24. In the case of IA there is again, in my judgment, substance in both the main points made by Mr Stanage. The evidence put forward by Dr George, about the likelihood of IA being identified by the Syrian authorities as somebody hostile to the regime for his activities outside the Syrian Embassy, contained enough substance to require the tribunal to address it properly. It could not simply be dismissed as not amounting to evidence. Similarly, the letter from Amnesty International did apply to IA, and its cogency needed to be evaluated. It was not.

25. For those reasons, I would allow both appeals, and direct that they be remitted for reconsideration. I do so with some regret, because the process has already been protracted. I am conscious in the case of IA that this is the second occasion on which the case will have been sent back for further consideration. Nothing that I have said in this judgment should be taken to indicate any view on my part that the appeals are likely to be successful in the final analysis. I am far from saying that on the material before either tribunal the appeals ought necessarily to have been allowed, but I regret that there were, in my judgment, serious errors in the way in which the tribunals dealt with the issues, for the reasons that I have set out.

26. There is further material before this court to suggest that the position in Syria may have been changing. There is a report from the Foreign Office, which suggests that although the picture is not wholly good or wholly bad, in some material respects things have become worse since 2006. We are told that there is another country guidance case, supposedly due to be heard in the not-too-distant future. I am aware that tribunals are overburdened with cases, but it does seem to me highly desirable that there should be a fresh look at the position of the state of Syrian Kurds who apply unsuccessfully for asylum, as soon as possible. The issues which have been raised in the Amnesty International report need to be evaluated. The sooner they are fully evaluated the better.

Lord Justice Lawrence Collins:

27. I agree that both appeals should go ahead.

Lord Justice Ward:

28. I share my Lord's regrets, but agree for the reasons he gives that the appeals should be allowed and the matters remitted once again to the tribunal.

Order: Appeals allowed