IMMIGRATION APPEAL TRIBUNAL

Appeal No: [2002]UKIAT07008
HX12799-02

Date heard: 07/01/2003
Date notified: 04/03/2003

Before:
DR H H STOREY (CHAIRMAN)
MR C A N EDINBORO

MR SAI KYAW WIN
Appellant

The Secretary of State for the Home Department
Respondents

Determination and Reasons

1.The appellant, a national of Myanmar, has appealed with leave of the Tribunal against a determination of Adjudicator, Mr D A Radcliffe, dismissing the appeal against the decision of the Secretary of State refusing asylum albeit granting limited leave to remain. This is a s. 69(3) appeal. Mr D O`Callaghan of Counsel instructed by Raja & Co Solicitors appeared for the appellant. Mr P Deller appeared for the respondent.

2. The Tribunal has decided to allow this appeal.

3. The basis of the appellant`s claim was that he had been imprisoned for two years in 1996 for demonstrating against the military regime. He left Myanmar in June 2001. In the UK he had taken part in meetings and demonstrations protesting against the military regime. He had become involved with the BDMA (Burmese Democratic Movement Association) since November 2001. In December 2001 he had taken part in a hunger strike outside the Myanmar Embassy. He had become a BDMA member in February 2002. In August 2002 he had attended another demonstration in front of the Myanmar Embassy.

4. Whilst accepting that he was “possibly truthful” in his claim to have spent 2 years in prison in 1996 for anti-government protest, the adjudicator did not accept the appellant had continued to be of adverse interest to the regime after his release. He did not believe the appellant had been involved in the December 2001 hunger strike in the UK and he considered the appellant had no genuine interest in the BDMA and had only taken part in demonstration and meetings against the regime in order to bolster his asylum appeal.

5. The grounds which were written by the appellant contended that he had participated in anti-government activities in the UK because of his political beliefs, not to prevent his

removal from the UK. He believed that the regime would know about his activities here.

6. In granting leave Acting Vice President Mr D Parkes considered it was arguable the adjudicator had overlooked the Danian point, namely necessity when assessing sur place activities to consider not just the motives of the appellant but also the effect of those activities as perceived by the Myanmar authorities.

7. In amplifying the grounds Mr O`Callaghan argued that the adjudicator failed to consider that upon return the appellant would be known to the authorities twice over. They would have a record of him as an anti-government person on account of his detention for 2 years in 1996. Via the Myanmar Embassy in the UK, they would also know that he continued to be active abroad in his opposition to the current regime. That the Embassy would know of him could be inferred from the photos showing staff inside the Embassy. Mr O`Callagahan asked us to attach particular weight to the evidence that the Myanmar authorities operated a sophisticated and pervasive system of control of political dissidents. Mr Deller for the respondent, although accepting the adjudicator had "skated over" the Danian point, considered that the adjudicator had been right to dismiss the appeal. Allowing the appeal required acceptance of a complex chain of events. Viewed overall there was too much speculation involved in making the necessary causal connections between: this appellant whose UK involvement in anti-government activities was low-level and only fairly recent being photographed; being identified; being viewed adversely; adverse information about him being relayed back to Myanmar; and the regime there then acting upon it, notwithstanding that their domestic records would show the appellant had ceased to be of adverse interest to them previously.

8. We would agree with Mr O`Callaghan that the adjudicator failed to take cognisance of the Danian point: Danian [1999] INLR 533. He appeared to reason that establishing the appellant's motives in demonstrating in the UK as self-serving sufficed to defeat his claim. He failed to address the additional essential question of whether, irrespective of the appellant`s motives, the authorities in Myanmar would view his UK activities adversely. However, we do not think this error on its own was enough to fatally flaw his determination. And had we considered, reviewing the evidence for ourselves, that his main conclusions were nevertheless correct, we would have gone on to dismiss the appeal. However, in the event we have decided, considering the evidence for ourselves in the light of the Danian point that it points to a different conclusion to that reached by the adjudicator.

9. Before proceeding further, it is important to clarify what the adjudicator did and did not accept regarding the photographs produced. The appellant had produced one photograph showing him outside the Myanmar Embassy in March 2001. Another showed Myanmar embassy staff apparently taking a video film from inside the Embassy. The adjudicator did not make any specific finding on whether he accepted that these photos, when considered alongside other evidence, established that the appellant had in fact attended when these photographs were taken. However, despite his disbelief regarding other matters, his analysis implies acceptance that the appellant was at least present on this occasion. We see no reason to interfere with that acceptance.

10. Two points concerning the sur place claim also need clarification at the outset.

11. Firstly, we entirely accept that the Myanmar authorities in London would have a detailed knowledge of those of its nationals who involve themselves in anti-government activities in the UK. For one thing the current regime is a highly repressive. Torture of political opponents is a widely used tool for the purposes of extracting information, punishing, humiliating and controlling the population. The number of political prisoners is believed to be about 1,700. For another this regime is bound to be aware that opposition groups have had and still have strong connections with London. Aung San Suu Kyi spent many years in London and her family remain here. The regime is plainly very sensitive about the role of political émigrés in bringing the regime's excesses to the attention of the international community. All this points to the regime keeping an especially close watch on the activities of its nationals overseas.

12. Secondly, we would also accept there was sufficient evidence to establish that the appellant had been involved in activities conducted by groups in the UK opposed to the Myanmar military regime. It is true this evidence was not enough to establish that he played a genuine part or one that was prominent. In this regard it was relevant thata the appellant made no mention of his political interest in the SEF statement, SEF interview or Witness Statement. Even accepting the evidence of the photographs there was no evidence he had undertaken such activities until February 2002, some 8 months after his arrival. Given the lack of consistency in his accounts of his involvement in the hunger strike in December 2001, we consider the adjudicator was fully justified in concluding that he did not in fact go on hunger strike. However, irrespective of his motives, it remains that, even on the adjudicator's own findings, the appellant had eventually become involved with the BDMA and had attended some of their demonstrations.

13. We next need to consider the evidence concerning the appellant`s past experiences in Myanmar. Although the adjudicator's finding on the appellant`s past detention was cast in extremely tentative language (he said it was "possibly truthful"), he plainly treated it as a principal finding. Once again, we see no reason to interfere in that finding and so we are prepared to accept that he was entitled to conclude that the appellant had been detained for his part in an anti-government demonstration for 2 years in 1996. By the same token, however, we think he was perfectly entitled to reason that, by the time the appellant left Myanmar in June 2001, the authorities no longer considered him of adverse interest. There was no satisfactory evidence that he had difficulties with the authorities subsequent to his release. Given the appellant`s failure to give a consistent account of why his claimed reporting conditions had suddenly stopped after 7 months, the adjudicator cannot be criticised for concluding that there were in fact no difficulties. In addition the evidence was that the appellant had been able to leave the country on his own passport. Mr O`Callaghan disputed that the adjudicator was right to place the reliance he did on the appellant`s possession of a passport. However, given the very tight controls operated by this regime against political opponents, we do not consider the appellant would have been able to leave on his passport if the authorities had maintained an adverse interest in him. It may be that, in respect of prominent political opponents,

they can sometimes encourage rather than inhibit departure, but there was no evidence, even on the appellant`s own account, that he fell into that category.

14. However it remains in our view to ascertain, in the light of the appellant`s past history in Myanmar and the nature of his UK activities, what attitude the Myanmar authorities would adopt towards him upon his return.

15. Given our earlier observations on the nature of this regime, we consider it would be naïve to assume that, even if the authorities had ceased to view him adversely in June 2001, they would not still retain a record on him detailing the 1996 incident and the reasons why he had been seen fit to detain for 2 years. Equally it would be naïve to assume that the current regime in Myanmar would not have learnt that he had become involved in anti-government activities in the UK.

16. The question thus becomes whether the authorities would take a different view of the appellant now they were aware of his UK activities.

17. Plainly if the Mynamar authorities, acting in consultation with their UK Embassy staff, took the view that anyone involved in anti-government activities was of adverse interest, that would suffice to make out the appellant`s case.

18. And if the Myanmar regime was one that operated a relatively unsophisticated, rough and ready system of control of political opponents, there might be sufficient reason to conclude that it would adopt such a blanket view. However, all the available evidence indicates that this regime is one which does its homework on all those involved in anti-government activities in the UK. The evidence points to it having a relatively clear idea of who are the prominent activists as opposed to the low-level supporters. It is also reasonably likely, in our view, that this regime is aware that some participants have self-interested reasons for feigning political dissent in order to help them stay in the UK. The very high number of asylum-seekers who gain entry into the UK and then seek to stay despite being refused is a fact which would be well-known to the staff of any embassy or consulate based in this country. That of Myanmar would be no exception.

19. Were therefore the appellant’s anti-government activities in the UK the only evidence the Myanmar authorities had, we do not consider the appellant could demonstrate he would be at risk upon return. Although we do not think the evidence goes so far as showing that this regime is one which would be able to accurately distinguish between the genuine political opponent and someone merely feigning political dissent for asylum purposes, we think it is reasonably likely that they view some participants in anti-government activities more anxiously than others.

20. However, in the case of this appellant, the uncertain extent and quality of his UK activities would not be the only evidence the Myanmar authorities would have. On the adjudicator’s findings they would also have the information that they had seen fit to imprison this man for 2 years for political dissent. It is true that, at the point when the appellant left Myanmar in June 2001, they would have considered he was no longer of

adverse interest. In our view the adjudicator was quite correct to consider that the lack of any interest in the appellant on the part of the authorities for some two and half years following his release was strong evidence to this effect. But if now, in early 2003, the appellant were returned we consider that things would be different.

21. Coupling as they would the fact of his previous history of detention in Myanmar for dissent with information that he was involved afresh in dissent against the Myanmar regime whilst in the UK, we are satisfied they would view his UK activities as an indication that he might well recommence at home the type of anti-government activities that led to his imprisonment in 1996. We agree with Mr O`Callaghan that in this regard some weight must be attached to the fact that the regime had previously seen him as a sufficiently serious threat to them to impose a sentence of 2 years imprisonment. He would be in a very different position from a returnee who had no political record and had never been seen as enough of a threat to imprison. Given the regime's continuing record of heavy repression of dissent, we consider it is more than reasonably likely, therefore, that they would apprehend and ill treat him in much the same way as they have ill treated many other dissidents.

22. For the above reasons the appeal is allowed.

DR H H STOREY
VICE-PRESIDENT