



Case No: C5/2008/1104

Neutral Citation Number: [2008] EWCA Civ 1390
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No AA/13421/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 25th November 2008

Before:

LORD JUSTICE TUCKEY
LORD JUSTICE JACOB
and
SIR WILLIAM ALDOUS

Between:

FG (TURKEY)

Appellant

- and -

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

(DAR Transcript of
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Ms K Degirmenci (instructed by Messrs Sheikh & Co) appeared on behalf of the **Appellant**.

Mr P Greatorex (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

Judgment

(As Approved by the Court)

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Lord Justice Tuckey:

1. This is an appeal by FG from a decision of the AIT which, on a reconsideration, dismissed her appeal from the Secretary of State's refusal of her claim for asylum.
2. The AIT granted permission to appeal on one ground on 6 July 2007 but the notice of appeal was not filed until 9 May 2008, so it was about eight months out of time. The application to extend time is supported by a statement from the appellant's solicitors which explains that their case worker dealing with this case mistakenly believed that a date for the appeal would be provided by the tribunal and no notice of appeal to this court was required. This is an entirely inadequate reason for the delay which has been caused or for the granting of an extension of time and says little for the way in which the appellant's solicitors (who do a lot of work in this field) manage their caseload. But we have heard the appeal on its merits on the basis that we would extend time if we concluded that it should be allowed, because the appellant was in no way to blame for the delay.
3. The appellant is a 42 year old Turkish Kurd who arrived in the United Kingdom with her husband in May 2005. He claimed asylum and she remained here as his dependant. When his claim was finally dismissed in September 2005 she claimed asylum in her own right on much the same ground as her husband. The basis for her claim is that she feared the Turkish authorities if she were made to return there, because of her and her family's association with the PKK. Her brother had been killed fighting the PKK in 1992 and she had assisted the PKK by providing them with food. She claimed that she had been detained four times between 1992 and 2005, when she had been beaten and sexually abused.
4. The Secretary of State decided that her claim was not genuine, as did the immigration judge who first heard her appeal from that decision. Full reconsideration of the immigration judge's decision was ordered and this resulted in the decision by two immigration judges which is the subject of this appeal.
5. In their full and well reasoned determination, the tribunal rehearsed the appellant's account and gave a number of reasons why it concluded that this account was not credible and why she was not a credible witness, relying to some extent on the evidence which she had given under cross-examination by counsel for the Secretary of State appearing before the tribunal, Ms Herbert. These reasons were the subject of the application for permission to appeal, but no permission has been granted to advance them in this court.
6. The only ground upon which permission was granted focuses on the way in which the tribunal dealt with a report from Dr Garwood upon which the appellant had relied in support of her claim. Dr Garwood specialises in the effects of trauma of the kind claimed by the appellant. He had seen her in

January 2006 and concluded that she suffered from post-traumatic stress disorder and other symptoms, which led him to state:

“Examination elicited evidence to support to the strongest degree the claim to have been detained, ill-treated, sexually violated and severely psychologically traumatised in the manner described.”

7. The tribunal dealt with this evidence directly at paragraph 27 of its reasons where they said:

“We have considered Dr Garwood’s conclusions in the context of our assessment of the appellant’s claim to have been a credible witness. However, it was not for Dr Garwood to pronounce upon the credibility of the appellant and, of course, Dr Garwood did not witness the appellant under Miss Herbert’s cross-examination. Dr Garwood’s conclusion was predicated upon his understanding that the appellant had given a credible account of events in those sources of evidence to which he referred. We, however, have not accepted the appellant’s account of the events or of her experiences before leaving Turkey.”

8. The first point which Ms Degirmenci makes on behalf of the appellant is that the tribunal simply dismissed Dr Garwood’s findings because it had already made an adverse credibility finding against the appellant and in so doing it courted the peril against which this court warned in Mibanga [2005] EWCA Civ 367 where, at paragraph 24, Wilson J (giving the judgment of this court with which the other two members agreed) said of an expert, who had made a report of this kind, that what such experts:

“...can offer is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him, and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant’s evidence, and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.”

9. But this criticism of the tribunal is not, I think, justified. In paragraph 27 which I have quoted it says that Dr Garwood’s report had been considered “in the context of” the tribunal’s credibility assessment. The tribunal had made the same point in paragraph 18 where, immediately before it stated its conclusions on credibility, it said:

“We should also mention that we have considered with care Dr Garwood’s report and we have borne in mind the contents of that report in the context of the appellant’s claim for being a credible witness.”

10. The other criticism which Ms Degirmenci makes is that the tribunal failed properly to evaluate Dr Garwood’s evidence, given in particular his statement that, in a significant percentage of his cases, he had not accepted the account of his patient. In developing this submission before us this morning, it seemed to me that what she was really saying was that there was no sign from the tribunal’s reasoning that it had done what it said it had done, namely taken the report into account in making their overall assessment of credibility. Ms Degirmenci says that the tribunal have not engaged with Dr Garwood’s reasoning. Had it done so, she says, it could have affected the credibility findings which she characterised as “borderline”.
11. I do not accept these submissions. It is obvious that the tribunal did take account of what Dr Garwood said. It said so twice. As she accepts Ms Degirmenci put this report at the very forefront of her submissions about the appellant’s credibility. But the report did not compel the tribunal to accept the appellant’s evidence. It had to assess the credibility of her entire account in the light of the objective evidence about country conditions in Turkey upon which the tribunal relied and, more importantly, how that account had withstood the challenge made to it by cross-examination. Dr Garwood’s assessment had necessarily to be made on much more limited material. It had, of course, to be taken into account, not least because of his experience, but it could not usurp the tribunal’s fact-finding task and it is obvious that the tribunal’s conclusion was open to it on the evidence which it heard. It does not seem to me that in reaching the conclusion it did, and dealing specifically with Dr Garwood’s report, that the tribunal made any error of law, let alone an error of law which was material to the final decision which it reached.
12. For these reasons I do not think that there is any merit in this appeal and, as I said at the beginning of this judgment, I think that we should simply say that the application to extend time should be refused for that reason.

Lord Justice Jacob:

13. I agree.

Sir William Aldous:

14. I also agree.

Order: Application refused