



Case No: C4/2008/1029

Neutral Citation Number: [2008] EWCA Civ 1277  
IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM THE QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT  
(MR JUSTICE CRANSTON)

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Tuesday, 28<sup>th</sup> October 2008

**Before:**

**LORD JUSTICE STANLEY BURNTON**

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**Between:**

**THE QUEEN ON THE APPLICATION OF HA (LIBYA)      Appellant**

**- and -**

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

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(DAR Transcript of  
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**Mr C Jacobs** (instructed by Messrs TRP) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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**Judgment**

**(As Approved)**

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**Lord Justice Stanley Burnton:**

1. This is a renewed application for permission to appeal in a fresh claim case. Cranston J at first instance in the Administrative Court refused permission to apply for judicial review, permission having been refused initially on the papers. Cranston J refused permission; on the application for permission to appeal, Longmore LJ refused permission on the papers; hence the renewed application before me.
2. The applicant is a citizen of Libya who claimed asylum in this country. His claim, having been refused by the Home Secretary, came before an adjudicator as long ago as December 2003; and the adjudicator's decision was promulgated on 7 January 2004. The appeal to the tribunal was dismissed. The basis of the appeal was that the appellant was associated with the Muslim Brotherhood and would by reason of that association be subject to arrest and torture if he were returned to Libya. The adjudicator rejected his claim on the basis of credibility or, rather, the incredibility of the applicant's account. At paragraph 17 of the adjudication he referred to differences between supporting statements, not only in form but insofar as content is concerned, in paragraph 18 remarked on the absence of the supporting witness for the claim for asylum, and in paragraphs 20 and elsewhere, namely paragraphs 39 to 41, referred to inconsistencies in the appellant's own account of having been tortured. At paragraph 44 the adjudicator said:

“It is extraordinary that the torture of the Appellant, the behaviour of the Home Office interviewer and the competence of the interpreter should be raised

for the first time in a hand written statement produced by counsel on the day of the hearing.”

3. The adjudicator concluded that the claim for asylum was simply false and he gave substantial reasons for that. The result of that was that the adjudicator found that the appellant’s claim that he had been arrested in 1994 was a fabrication. The adjudicator also took into account that on his own story the applicant had left Libya openly using his own passport. The fresh claim is based on a document which purports to be a letter to the applicant from the communication office of the Al-Mansoura branch of the Revolutionary Committees. If it is genuine it would give rise to a fear of mistreatment on return. What is said on behalf of the applicant is that that document has been authenticated by a foremost expert on Libya, namely Dr Alan George, who has confirmed that its contents and form are consistent with a document of that kind. Of course Dr George has not said that the Al-Mansoura branch of the Revolutionary Committees has confirmed that it issued that document, but he deals with the form of the document. The judge rejected the claim on the basis that the document, together with the findings of the immigration judge to which I have referred, to which the Home Secretary was entitled to have regard, meant that the Home Secretary was entitled to reject the new claim.
  
4. The alleged fresh claim, which results from the document to which I have referred which was actually dated 2005 and therefore post-dates the arrival of the applicant in this country, nothing, I think, turns on that, since his original case was that his association with the Muslim brotherhood was not appreciated by the authorities in Libya when he left the country. Be that as it may, what is

said about the judge is that he placed a hurdle on the applicant too high in requiring there should be an expert document examiner in relation to the document rather than the evidence of Dr Alan George, which was sufficient. Reliance is placed on the decision of Collins J in the case of R ex parte Rahimi v SSHD [2005] EWHC 2838. (Admin).

5. In my judgment, in a case such as this, a fresh document of the kind now relied on is capable in certain circumstances of justifying the conclusion that there is a fresh claim. However, the court is only too well aware of the bringing into existence of documents supporting asylum claims after an asylum claim has already been rejected as incredible, as being a pattern which is seen generally and is certainly seen more often now than it was when Collins J made his decision. That in a sense is irrelevant. What in my judgment must be examined is the document, whether it is obviously genuine or not genuine, or not on its face, together with the account given by the applicant when he sought asylum and the findings made by the adjudicator. As the judge rightly said, the adjudicator had been devastating in his findings as to the credibility or lack of credibility of the applicant, and it seems to me that this document really cannot be rendered consistent with those findings; in particular the finding that, for example, the allegation of torture was made at such a late stage.
6. When there is such a powerful finding of incredibility based on the account given by the applicant, it seems to me that the Home Secretary cannot be criticised as being irrational when she treats a document such as this as not

justifying a fresh claim. The incredibility of the original account is such that an adjudicator or immigration judge, hearing the matter again even with this document, would be bound to conclude that the asylum claim was unfounded.

7. In those circumstances, despite all that Mr Jacobs has cogently said, in my judgment this is not a case for permission to appeal.

**Order:** Application refused