

CO/5026/2007

Neutral Citation Number: [2008] EWHC 2545 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 25th July 2008

B e f o r e :

MR JUSTICE MITTING

Between:

THE QUEEN ON THE APPLICATION OF ALHASSI

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

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(Official Shorthand Writers to the Court)

Mr D Jones (instructed by Tyndallwoods Solicitors) appeared on behalf of the **Claimant**
Mr D Piersky (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved by the court)

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NB Transcribed without the aid of all the documents

1. MR JUSTICE MITTING: This is a renewed application for permission to apply for judicial review, permission having been refused on the papers by Lloyd Jones J on 28th December 2007.
2. The claimant is a citizen of Libya. He arrived in the United Kingdom on 27th June 2005 and claimed asylum on 25th August 2005. The basis of his claim was that he had fled Libya following an incident at his work which put him at risk of persecutory treatment by the Libyan state. He claimed that he worked as a police officer and guard at a prison in Benghazi at which political prisoners were held, and that in that capacity he had assisted a friend to escape. He gave a detailed account of the incident.
3. His claim for asylum was refused by the Secretary of State. He appealed against that refusal and his appeal was rejected in a determination promulgated on 9th November 2005 by an Immigration Judge. She considered his claim in great detail. She accepted on the basis of documentary evidence which he produced that he had graduated from police college in 1984 or 1985 and had worked as a guard at the prison in Benghazi, the Kuaffiya Prison, until 1995. She reached that conclusion on the basis of documents which he had produced about others there detained, which she concluded that he had stolen while so employed.
4. She considered the relationship claimed between the claimant and the friend, and concluded that he did not have a friend who was arrested as a political activist and had not assisted him to escape from the prison. She went a good deal further than that. She concluded that because he had entirely failed to produce any documentary evidence concerning his employment at the prison, other than the documents which he had stolen, that he was not employed as a police officer or guard at the prison in 2005 and indeed had not been since 1995. She considered the detail of the account of how the escape occurred and rejected it, too, as wholly incredible.
5. In a nutshell, she found that the whole of the claimant's account, apart from the proposition that he had graduated as a police officer in 1984/1985 and had worked at the prison until 1995, was a tall story fabricated for the purpose of permitting him to remain in the United Kingdom. She also concluded that if he were to be returned to Libya, he would not be at risk of persecutory treatment or ill-treatment infringing Article 3 of the ECHR.
6. She considered documents which were produced, which, in rather ambiguous terms, required him and another family member to attend at a stated address in Benghazi, but concluded that nothing could be inferred from them. Accordingly, she rejected his appeal.
7. He subsequently made further representations, not which sought to raise a new claim to asylum, but to bolster that which had been rejected by the Immigration Judge. First of all, he obtained from three witnesses witness statements which indirectly supported his up-to-now-rejected account. First of all from Dr Mohammed al-Megarief, a leading opponent of the Libyan regime who was last in Libya March 1980. As Dr al-Megarief makes clear, he does not know the claimant personally, but through his sources inside

Libya believes that he was indeed working at the prison at the time that he claimed. The Secretary of State rejected that evidence as adding nothing other than the most indirect of hearsay to the facts already considered by the Immigration Judge.

8. Two further statements were produced by from Jad El Maullah Al-Mgariaf and Meftah Alhafifi, which, although they were unable to confirm by any direct evidence the account given by the claimant of the alleged escape from prison, did, in ambiguous terms, support his claim to have worked at the prison more recently than 1995.
9. Mr Al-Mgariaf came to the United Kingdom in August 2000. He claims to know the claimant and to have done so as a neighbour in Benghazi. He says:

"I can confirm from my own knowledge of him that he was working as a police officer based in Al-Kuaffiya Prison in Benghazi."

(Quotation not checked).

But no time is put upon that knowledge. It is not, in terms, inconsistent with the Immigration Judge's finding that he had worked at the prison up to 1995, but not for any period thereafter. Given the obvious importance of dates to this claim, it is very surprising indeed that Mr al-Megarief was not asked to be precise about the time during which he knew that the claimant was working at the prison.

10. Mr Alhafifi came to the United Kingdom in October 2005 but had spent the previous 18 months in Egypt, having left Libya in April 2004. He states that he has known the claimant for 10 years through his brother-in-law, who was also a police officer. Without putting any dates upon it, he says that the claimant "was based at a prison in Benghazi". It is very surprising indeed, given the obvious importance of dates, that Mr Alhafifi's statement did not descend to them. There is nothing in the statement which is inconsistent with the Immigration Judge's finding, unless one reads into it something which is not there, namely that the witness was saying that the claimant had been employed as a guard at the prison up until the time that he left Libya.
11. The claimant also relies on a document which, in translation, is dated 3rd March 2006 and notifies the claimant's father that:

"In connection with our investigations about your son who is suspected mainly of smuggling the prisoner [whose name is then given] who is one of the opponents of the revolutionary ideology from his work place in Al Kofiyya Prison and then escaping abroad. Therefore, please report [to our Head Office] immediately to provide us with the needed information, and if you do not comply with this request we will take the necessary measures against you."

The document purported to bear the signature of a captain who is the head of the investigation unit.

12. As is notorious, these documents are easily forged and readily available to those making false claims for asylum. Consequently, ever since **Tanveer Ahmed v**

Secretary of State for the Home Department [2002] UKIAT 00439, appellate authorities have treated them with reserve and required them to be considered within the totality of the evidence available without requiring the Secretary of State to prove positively that they are forgeries. This document falls squarely within such a category. Against the Immigration Judge's robust findings that the claim to asylum was fabricated, that document by itself, or together with the other evidence to which I have referred, is simply not capable of giving rise to a realistic prospect that an appeal would succeed. I say that, notwithstanding the observation of Professor Joffé, a well-known expert in the affairs of the Maghreb, that the photocopied document which he examined has the appearance of being a genuine document. So would any skilled forgery.

13. The Secretary of State rejected these representations as giving rise to a fresh claim for the purposes of paragraph 353 of the Immigration Rules in two letters dated 19th June 2008 and 24th July 2008 respectively. Save in one minor respect, the decision letters are unimpeachable. The first of the two notes that the two witness statements to which I have referred "are also based on what they claim to have been told by others". That is true as regards the claimed escape, which is the foundation of the asylum claim. It is not true as regards the claim that the claimant worked at the prison to their personal knowledge but, for the reasons which I have already given, that first-hand evidence does not go nearly far enough to give rise to a realistic prospect of success in a renewed claim.
14. Accordingly, notwithstanding that the **WM** threshold is a low one and that the first decision letter contains the minor error to which I have referred, I am satisfied that the two decision letters were not irrational, nor did they take into account material which should not have been taken into account, nor did they fail to take into account material which should have been. Applying **Wednesbury** principles, as I am required to do, to the decision letters, against the low threshold test, I am satisfied that the Secretary of State was entitled to conclude that the new material did not give rise to a realistic prospect of success on the renewed appeal before an Immigration Judge. For those reasons, I reject this renewed application for judicial review.
15. MR PIERSKY: My Lord, I am grateful. There is a costs application restricted to the costs of the acknowledgment of service. That has been made at page 131 and I make that application.
16. MR JUSTICE MITTING: The usual £480?
17. MR PIERSKY: It is indeed the usual £480.
18. MR JUSTICE MITTING: Mr Jones, can you resist that?
19. MR JONES: It is very short and it seems to repeat the refusal letter. I am not sure it merits 3 hours' work, but I do not resist it. I would ask that the order not be enforced. We have the benefit of a Legal Services Commission certificate, so without further order from the court.
20. MR JUSTICE MITTING: What precisely is the order that is now made?

21. MR JONES: I think it is that the order not be enforced without further leave of the court.
22. MR JUSTICE MITTING: So it has gone back to the position as it was 15 years ago?
23. MR JONES: I will take your Lordship's guidance on that one, but I think that is probably right.
24. MR JUSTICE MITTING: Mr Piersky?
25. MR PIERSKY: I do not know, I am afraid. My learned friend asks for limitation. I cannot resist.
26. MR JUSTICE MITTING: I am going to order the claimant to pay the defendant's costs, which are assessed in the sum of £480. I make, as regards the claimant's costs, an order for public funding assessment of the his costs, and I make, in terms which I hope you will be able to translate into an order, the usual order in relation to the order that I made in favour of the defendant.