IN THE IMMIGRATION APPEAL TRIBUNAL

LW (Cancellation refugee status: UNHCR Note) Ethiopia [2005] UKIAT 00042

Heard: 11.01.2005
Signed: 11.01.2005
Sent out: 03.02.2005

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2002

Before:

John Freeman (a vice-president)
and
Richard McKee

Between:

appellant

and:

Secretary of State for the Home Department,
respondent

Miss N Braganza (counsel instructed by Douglas & Ptnrs, Bristol) for the appellant
Mr Quy for the respondent

DECISION ON APPEAL

This is an appeal from a decision of an adjudicator (Mr JG Peart), sitting at Taylor House on 8 July 2004, dismissing an asylum and human rights appeal by a citizen of Ethiopia. Permission was given on the basis of the attitude taken by the adjudicator to the claimant having been granted asylum in Uganda, as it is accepted she was in 1995.

2. The refusal letter unfortunately misunderstood the claimant's case on that point, which appeared, but with nothing to mark it out as of any importance, at § 11 of her SEF statement at B12 of the Home Office bundle: as Mr Quy himself pointed out, § 7 of the refusal letter suggested that the claimant had said she had been refused asylum in Uganda. The point was, to her credit, taken by Miss (not Mr, as the adjudicator calls her at that point, we think) Rehman at the start of the hearing before the adjudicator. The claimant's representative at that stage (Mr Nigar, not appearing as counsel, but as a barrister employed by her then solicitors) was clearly completely unprepared to deal with it, and it was Miss Rehman who mentioned that there was authority (though she could not cite it) on the point.

3. To his credit, the adjudicator took the trouble to get that authority through the Legal and Research Department of the IAA: it is **Babela [2002] UKIAT 06124**. **Babela** was a citizen of Congo (Brazzaville) who had been granted asylum in

South Africa. It seems the issue in his case (see § 32 of the Tribunal decision) was whether things had changed enough in the Congo since then for the cessation clause at article 1 C (5) of the Refugee Convention to apply. The main issue in the present case is whether the adjudicator was justified in taking the view that what he saw as the incredibility of the claimant's account meant that she should never have been given asylum by the Ugandan authorities in the first place. It follows that what the Tribunal said in **Babela** about the operation of the cessation clause is strictly *obiter*; but clearly there was a good deal in what they said intended to be of general application.

4. What the Tribunal said in **Babela**, so far as relevant, was this:

> 27. *The main question for us is what significance is to be given to the fact that the Appellant had refugee status recognised in South Africa at the time when he arrived. There is nothing in the 1951 Convention that requires a state to recognise grants of refugee status by another contracting state. We cannot be bound by the 1978 Executive Committee minute of UNHCR, despite its very positive recognition of the need for contracting states to recognise each other's grants of refugee status. It is not part of the 1951 Convention and, being a statutory Tribunal, we are therefore precluded from giving it effect. Similarly, the advice contained in the recent letter from the UNHCR, whilst persuasive, is not binding upon us.*
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> 28. *It seems to us that the appropriate starting point in looking at this Appellant's asylum application should have been the fact that he already had refugee status. It is clearly recognised by the UNHCR minute and the UNHCR letter that the grant of status is a very significant matter. It is a continuing status. If we were considering a grant of refugee status by the United Kingdom, that could only be ended if the Appellant falls to be considered under one of the cessation clauses in Article 1.C of the Convention. The question is, therefore, how much weight to put upon this previous grant. In our opinion, the answer is, a great deal. We adopt the UNHCR's views set out in their letter of 24 July, where they say:-*
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> *"Refugee status, once granted, should not be reviewed or annulled except on the most substantial and clear grounds."*
>
> *We also note the terms of the minute that refugee status determined in one contracting state should only be called into question by another contracting state in exceptional cases. The letter goes on to say that the well-foundedness of Mr Babela's fear of persecution in the Congo should not be open to question. It explains the rationale of all this by saying that if international protection is to have practical meaning, then refugee status should have some stability and certitude and refugees should be assured that their status will not be likely tampered with. We also note that the UNHCR were of the view that this Appellant's request for a transfer should have been considered in a humanitarian spirit. By no stretch of the imagination can the way this Appellant was treated at Heathrow and subsequently be considered to be humanitarian. He was treated disgracefully. That a state contracted to the 1951 Refugee Convention should behave in such a way to a person who has been granted such status by another contracting state is almost unbelievable.*

29. *The Appellant's previous refugee status should therefore not be questioned unless there is a very good reason for doing so. No such reason has been put forward here in our view and, therefore, prima facie he has made out his entitlement to refugee status in the United Kingdom. However, that is rebuttable and we consider that the correct approach is to say that the burden of proof in rebutting that is on the Respondent. We have considered the arguments concerning* ***Arif*** *and take the view that this appeal falls firmly within the principles enumerated in* ***Arif****. In some ways, it can be said to be a stronger argument than that in* ***Arif*** *itself.* ***Arif*** *was argued on the basis that if it was thought that Mr Arif's application for asylum would have been granted at the time that it was made, then the onus was on the Respondent to establish that there had been sufficient change in circumstances in his country of origin in the meantime, in order to defeat that application. Here, this Appellant was a refugee. There is no question of having to look back and assess his situation at an earlier date than when the decision was made.*

30. *To deal with the burden of proof in this way, in our view, satisfies the considerations under the Convention as to whether or not a cessation clause applies. It equally satisfies the guidance (which we find very persuasive) of the UNHCR in saying that the status should not be lightly tampered with; that the status should not be reviewed or annulled except on the most substantial and clear grounds. We recognise that in* ***Dyli*** *the Tribunal sought to distinguish the majority of cases from* ***Arif*** *but, as we have said, we think that this case falls firmly into the* ***Arif*** *principles*.

7. Miss Braganza relied on the last sentence of § 29 in **Babela**; but, we think rightly, she did not suggest that, even if taken as applying to this kind of case, it prevented either the Home Office or an adjudicator from considering whether asylum had been rightly granted in the first place. Instead she argued that this should not be done unless the Home Office had first shown, in the words of § 30, "*the most substantial and clear grounds*". She suggested that it was not open to them to persuade the adjudicator on the whole of the evidence before him, even bearing the burden of proof themselves, that there were such grounds. Instead they must do so on the material available at the outset of the hearing, rather than go on what she described as a "fishing expedition".

8. There is no doubt much to be said, as the UNHCR did in their comments recorded in **Babela**, on the importance of international comity in matters of status. There is also a good deal to be said on the other side about the difficulties likely to be caused by placing too much reliance on grants of status in countries outside the European Union (to which special arrangements apply), where procedures may be less than transparent and standards in public life lower than we should like to think they are here. As those familiar with the format of grants of asylum in this country will be aware, there is no transparency about them in the form of reasoning even here; and there may at times be a suspicion, justifiable or not, that they are sometimes given for reasons which do not go far beyond expediency.

9. Mr Quy did not argue, and we do not see any reason for not requiring "*the most substantial and clear grounds*" as a condition for interfering with a previous grant of asylum in another country on the basis that it had not been justified when made, just as it was held to be in **Babela** on the basis of changed circumstances in the

claimant's country of origin. Miss Braganza on the other hand referred us to no authority to support her argument that this condition had to be decided as a preliminary issue by adjudicators. The general line of Tribunal authority has been to discourage dealing with issues in that way, except where obviously necessary or required by legislation (as for example with questions of extensions of time). In our view decisions, at least at a first instance hearing, are best made on the basis of all the facts which have come out in the course of the hearing.

10. That is not to encourage what Miss Braganza called "fishing expeditions". Clearly in cases of this kind, adjudicators need to bear in mind from the start that it is the Home Office who have to show "*the most substantial and clear grounds*" for revisiting the previous grant of asylum; but they should decide whether or not that has been done on the whole of the facts before them. What happened in the present case may well have been the result of the most unfortunate mistake (see **2**) in § 7 of the refusal letter. The adjudicator certainly said this at § 23:

The refugee status accorded to the Appellant by the Ugandan authorities is significant, however I will address issues of credibility relating to the Appellant's account of events occurring in both Ethiopia and Uganda before considering the implications of ***Babela****.*

11. While we do not accept Miss Braganza's argument that the adjudicator should have given a preliminary ruling on the effect of **Babela** before going on to consider credibility in detail at all, we do agree that he needed, as a matter of law, to show that he had taken the previous grant of asylum, not just as significant, but as the starting-point for his consideration of the case. What this adjudicator did was in effect to consider (with great care and energy, at §§ 23-36, whether the detailed criticisms in the grounds of appeal are made out or not) the credibility of the claimant's account just as if it had been given on a claim for asylum made for the first time in this country; only then did he go on to say (at § 38) that his credibility findings rebutted the claimant's entitlement to refugee status.

12. It was the way the Home Office had dealt with the claimant's case (or failed to deal with it on this point) which had made it rather difficult for the adjudicator to deal with it on the correct basis, that she had been granted asylum in Uganda. In our view he would have been amply justified in adjourning the hearing before him until the Home Office had taken stock of and set out their attitude to this potentially crucial fact. As we put it to the parties without disagreement from them, what has happened is that the claimant's case has been dealt with, without either the adjudicator or the Home Office considering the facts on the proper basis.

13. The result of our allowing the claimant's appeal from his decision, without ourselves going into the merits of the case, as we do, is that the field remains open for the Home Office to consider whether there are "*the most substantial and clear grounds*" for revisiting the Ugandan grant, either on the basis that:

a) the claimant's account should never have been accepted by the authorities there; or
b) enough time has passed, and changes come about in Ethiopia for her no longer to be at risk there;
or else:

c) for them to consider whether they ought to give removal directions, if at all, for Uganda rather than Ethiopia.

14. We do take Mr Quy's point that, under the current Act, the decision under appeal is the decision to remove, and not the removal directions themselves; but we should like to re-emphasize that (except for example in cases involving a claimed country of origin which the Home Office dispute, without being in a position to remove to any other), both claimants and adjudicators are entitled to have the Home Office set out what they actually propose to do in appealable form, if not in the notice of removal directions themselves, then at least in some document (such as the refusal letter) which can be treated as forming part of the decision under appeal.

15. Since the hearing took place, our attention has been drawn (not by either of the parties) to the UNHCR 'Note on the Cancellation of Refugee Status', published 22 November 2004. The summary of their views reads (with our lettering for clarity

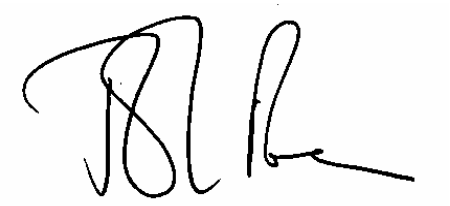
a) ...the invalidation of refugee status may be lawful only if there are grounds for cancellation, supported by adequate evidence;

b) *if the consequences of cancellation for the individual concerned are clearly not disproportionate and of a seriously prejudicial nature; and*

c) *if the decision to cancel is made in due observance of the guarantees and safeguards of procedural fairness.*

16. Needless to say, we have not heard argument on that Note, and it cannot form part of our reasoning. It will have to be considered another time whether it accurately represents international law on the point, and whether it ought to form the basis for the laws of these islands. No doubt consideration will be given on the same occasion to the correctness or otherwise of **Babela**. For the present, our decision stands: the Home Office should consider for themselves the effect of the Ugandan grant, and whether it ought to be subject to cancellation for the reasons given by the adjudicator, or because of any other relevant consideration. They should take their own view of the UNHCR Note, on which they will no doubt wish to take legal advice.

Appeal allowed



John Freeman

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