Case No: C5/2007/1803

Neutral Citation Number: [2008] EWCA Civ 125
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AA/11921/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 6th February 2008

Before:

LORD JUSTICE PILL
LORD JUSTICE SEDLEY
and
LORD JUSTICE LONGMORE

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Between:

CM (CAMEROON)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Ms K Cronin (instructed by Messrs Tyndallwoods) appeared on behalf of the **Appellant**.

Mr S Kovats (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Sedley:

1. The appellant, represented before us today by Kathryn Cronin, arrived around the middle of 2004 in this country. She was by then extremely ill and was admitted almost immediately to hospital suffering from tuberculosis, toxoplasmosis, HIV/Aids and respiratory failure. Through a representative she eventually applied in February 2005 for asylum. This the home secretary refused, but her appeal to the AIT was allowed by Immigration Judge Phull on both refugee and human rights grounds. In essence Immigration Judge Phull found that the appellant was at risk from her violent husband who was a gendarme in Cameroon and that relocation would not afford her sufficient protection, especially because she would have to be close to an Aids treatment centre, of which there are 11 in Cameroon, and because women such as the appellant formed a particular social group who were persecuted because they had no legal or other protection.

2. The reason for the appellant's vulnerability was in essence that her husband was a violent man who would not only beat her up but bring other women to the house, and from whom she had finally stolen some money he had saved for a new car in order to make her escape. It was upon the basis of these findings that the immigration judge allowed the appeal under both the refugee and the human rights convention.

3. This determination, while humane and visibly concerned, certainly displays at first reading a number of weaknesses in its approach and structure. In paragraph 28, only the refugee question is posed by way of introduction to the conclusions. It might be thought that the particular social group ultimately identified by the immigration judge at paragraph 34, namely women subjected to domestic violence to whom no protection is available, is a self-defining group. Articles 3 and Article 8 are spoken of in a single breath and treated as if they raised the same issues, issues which the immigration judge allocates almost entirely to the medical aspects of the case; and the final substantive paragraph is expressed in terms only of asylum rights, albeit the decision is to allow the appeal both on asylum and on human rights grounds.

4. The Home Office's grounds, on the basis of which reconsideration was in due course ordered by Senior Immigration Judge Perkins, were in essence that there was perversity in the finding that the Cameroonian state provides no effective protection for women at risk of domestic violence; that there had been a failure to apply the well-known decision of N v SSHD [2005] UKHL 31 [2005] 2 AC 296 to the human rights case on medical needs; that there had been no explanation of why the appellant's husband was likely to find her; and that there was no Article 8 finding at all.

5. On reconsideration, Senior Immigration Judge Jordan at a single hearing not only overset the immigration judge but substituted his own decision, dismissing both claims. It is an unhappy fact, accepted before us by Mr Steven Kovats for the home secretary today, that this second determination is also shot through with error. Mr Kovats accepts this specifically in relation

to the senior immigration judge's finding, diametrically contrary to the immigration judge's, that it was "simply fanciful" to suppose that the husband would be able to find the appellant if she were returned. Mr Kovats accepts that it was an erroneous finding because it was not one of the grounds of appeal and so not open to the senior immigration judge. But what seems to me just as strong a reason is that the senior immigration judge's reason for taking this view, spelt out in paragraphs 11 and 12 of his determination, is (with respect) a classic example of ethnocentric reasoning, dismissing the immigration judge's view that word-of-mouth information would sooner or later reveal the appellant's whereabouts to her husband on the ground that this would make such information:

> "capable of doing what the most sophisticated information gathering in the United Kingdom is incapable of doing" -

a view supported by the senior immigration judge by reference to passenger lists and hospital records.

6. The senior immigration judge goes on, remarkably to my mind, to treat his disagreement with the immigration judge's appraisal of how the husband was likely to behave if he found the appellant as proof of perversity on the part of the immigration judge. There is more, to which I will not devote more time, because Mr Kovats accepts that the senior immigration judge's reconsideration decision cannot stand. But because he says that the first immigration judge's determination was nevertheless flawed the appeal should be allowed on terms that the case is remitted for a *de novo* hearing, a hearing which he accepts might be limited to a determination of what was to follow from the basic facts found by the first immigration judge.

7. Although Mr Kovats stands by the particular social group point, he very properly now accepts that in the light of the House of Lords decision in K v SSHD [2006] UKHL 46 [2007] 1 AC 412 it would be open to a properly instructed tribunal to find women in Cameroon to be a "particular social group" within the meaning of the 1951 convention. His problem, however, remains that the grounds of reconsideration included no challenge to the immigration judge's approach to the particular social group issue. They were limited to an allegation of failing to resolve conflicts of fact about it.

8. Miss Cronin is not content to accept remission. She contends that the Home Office's concession that the senior immigration judge had no sufficient basis for oversetting the immigration judge's view that the appellant faced a real risk of being traced and violently treated by her husband without any real chance of state protection means that on any view her claim succeeds.

9. Her principal reliance is on the unappealed finding that the appellant was at risk of persecution as a member of a particular social group with no possibility of safe relocation; but she also contends that the Home Office's grounds leave unchallenged the finding that the appellant was unprotected by the state, and that therefore the human rights finding also stands up, at least under Article 3.

There is a problem with the Article 3 issue in that it was never explicitly determined by the immigration judge. As I have said, she spoke of Article 3 and Article 8 in the same breath but at no point directly related either of them to her fact findings.

10. For my part I find it impossible to discern any intelligible Article 8 finding in the immigration judge's determination which is capable of being recognised or therefore upheld by any court. But the refugee convention finding is intelligible and complete, and, however open to challenge, was not in terms or in substance challenged before the AIT on reconsideration. I would not want it to be thought that this court necessarily endorses the immigration judge's reasoning about membership of a particular social group, but that is a long way from permitting us now for the first time to consider interfering with it, given the concession that in the light of recent authority such a finding would be open on the facts found by the immigration judge.

11. Beyond this, however, as Mr Kovats accepts, there are fact findings about the risk of renewed personal violence on the husband's part which, had they been expressly followed by a finding that Article 3 would be violated by returning the appellant, could not have been appealed. It is regrettable to my mind that this was not done in terms and in a systematic fashion by the immigration judge, as it should have been; but it was certainly a tenable conclusion on her findings and one which it seems to me followed inexorably from them.

12. Accordingly I do not think that the Home Office is entitled to a re-run of the appeal at first instance. The uncontested findings in the immigration judge's original determination were and remain sufficient to sustain her decision that the appeal on both human rights and refugee convention grounds succeeded. It is accepted that the senior immigration judge's reasons for oversetting her do not pass muster. Accordingly I for my part would allow this appeal and would restore the immigration judge's decision without further recourse. That means that the Article 8 finding falls by the wayside, for reasons I have given. It also means that insofar as Mr Kovats' respondent's notice contains a cross-appeal, the cross-appeal fails.

Lord Justice Pill:

13. I agree

Lord Justice Longmore:

14. I also agree

Order: Appeal allowed