Case No: C5/2007/0404

Neutral Citation Number: [2008] EWCA Civ 590
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AS/09402/2004]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 13th May 2008

Before:

LORD JUSTICE PILL
and
LORD JUSTICE RICHARDS

- -

Between:

HF (ALGERIA) **Appellant**

- and -

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

- -

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THE APPELLANT APPEARED IN PERSON.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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Judgment

Lord Justice Richards:

1. The applicant came to this country from Algeria in February 2004 and claimed asylum. His case, in summary, was that since 2001 he had acted as a an informer for the police against the GIA, but this had led to him receiving threats from the GIA and to his family being attacked and his father killed; that he had moved twice to escape from the GIA but was afraid of being found by them; and that the police were unable or unwilling to protect him.

2. His claim was refused by the Secretary of State and an appeal was initially dismissed. In a fresh decision following a further appeal to the IAT, as it then was, Immigration Judge Kempton found in the applicant's favour. She regarded him as a credible witness and accepted his story and held that he would be at risk from the GIA if he were returned to Algeria. It emerged before her that documents on which he relied had been obtained irregularly by his friend, a police officer called Kamal, who was now in prison in Algeria because of his complicity in their theft. The applicant himself had been charged in respect of possession of those documents and had been found guilty in his absence. The Immigration Judge held that for that reason he could not expect state protection.

3. There was then, however, an application for reconsideration of Immigration Judge Kempton's decision on the ground that she failed to give adequate reasons to support the conclusion that he would not receive state protection and also because of a failure to deal with internal relocation. It was found at the first stage of reconsideration that she had made a material error of law in holding without adequate reasons that because he had committed a criminal offence he would not receive state protection. A full re-hearing was ordered, including a reassessment of the findings of fact made by Immigration Judge Kempton. That re-hearing took place before Immigration Judge Sacks, who did not find the applicant to be credible, and who found in any event that the GIA were no longer a significant threat. For those and other reasons he dismissed the appeal.

4. The next step in the proceedings was an appeal to this court, which found that the Tribunal had erred in law at the first stage of reconsideration in ordering a full-scale review of the evidence. On the principles laid down in DK (Serbia) v SSHD [2006] EWCA Civ 1747, the second stage of reconsideration should have taken place on the basis of Immigration Judge Kempton's favourable credibility findings. The Court of Appeal remitted the case for reconsideration on that basis. The matter was then duly reconsidered by a new panel presided over by Senior Immigration Judge Chalkley, which reached a decision issued on 5 November 2007 dismissing the appeal on asylum and human rights grounds.

5. That is the decision the applicant now seeks to challenge on the application before us. Permission to appeal to this court was refused by Senior Immigration Judge Chalkley himself and by Sir Henry Brooke on the papers. The applicant himself has presented the case to us today, as indeed he did in

writing, and has presented it, if I may say so, with very articulate and clear submissions.

6. In summary, the panel did not accept that the applicant would face any real risk of persecution or of ill-treatment at the hands of the GIA if he were returned to Algeria. Moving to the claim of fear of persecution from the authorities, the panel focused on the conviction for theft of the documents or for illegal possession of those documents and on the nature of the detention the applicant would face in consequence on return. It pointed to the fact that the conviction appeared to have been by an ordinary public court as opposed to a military tribunal. The statement of conviction appeared to be a copy of a public record. There was no reason why the authorities should think that the applicant had ever been involved with the GIA or any Islamic terrorist group. It was not accepted that he would be held in a prison for political detainees or a military prison or a high-security prison, in all of which there were reasons for concern about the treatment he might receive. Nor was there considered to be any reason to believe that he might be held in secret and unacknowledged detention, which again would give rise to concerns. The finding was that he would be held in ordinary civil and criminal detention, where conditions were unpleasant but did not amount to persecution or to inhumane or degrading treatment contrary to Article 3. Further, he would not be likely to be at risk of persecution or of treatment contrary to Article 3 by reason of his being a failed asylum seeker.

7. For those reasons, which are summarised in conclusions set out at paragraphs 65-67 of the decision, the panel found that the applicant would not be at risk from the state authorities.

8. In the final part of its decision it considered Article 8. It noted that the applicant was now married to an asylum seeker whose own appeal had been dismissed. They had met in July 2004 and although she was not living with him but with one of his friends who had refugee status and could support her, she saw him every day and stayed with him three days a week. They were expecting their first child in January 2008, a child who has now been born. The panel concluded that the applicant had established family life in this country and a private life, although one without any strong features since it was based simply on the fact that he had been living here for some three years. It accepted that Article 8(1) was engaged but, weighing all relevant factors, concluded that the applicant's removal would not prejudice his family or private life in a manner sufficiently serious to amount to a breach of Article 8.

9. The main grounds of challenge, as raised by the applicant in his written grounds and skeleton argument, relate to the panel's treatment of evidence concerning his friend Kamal, who had stolen the file relating to the applicant. The applicant himself had said in his witness statement that Kamal had been tortured during questioning and detention so as to extract the confession that led to his conviction. He had received a nine-year sentence (compared with a four-year sentence imposed on the applicant by the same court in his absence) and was detained in a high-security prison for a political offence. Immigration Judge Kempton had referred to him as languishing in prison on

account of a political offence. In remitting the case to the Tribunal, the Court of Appeal had said in effect that one could not assume that the applicant would be treated in the same way as Kamal, but that if there were found to be truth in the account relating to Kamal's treatment it might provide some evidence to support the applicant's case. I refer to paragraph 34 of the judgment, which it is unnecessary to read out.

10. The applicant complains that the panel on reconsideration did not consider the evidence relating to Kamal's treatment in detention in a high-security prison at all. This, it was said, was contrary to the Court of Appeal's intention in remitting the case. For this and other reasons the conclusions reached as to an absence of risk from the authorities are said to be flawed. It is said that the panel erred in failing to consider whether the applicant would meet the same fate as Kamal, being tortured so as to extract a confession from him and being held in a high-security prison where he would be at risk of further ill treatment.

11. In the course of his oral submissions this morning, the applicant has reinforced those points by taking us through passages of the panel's decision, stressing his submission that he would be liable to have other charges brought against him in respect of smuggling the file out of the country or other matters relating to the file; and that he would be liable to questioning in respect of all such matters and indeed as to what had happened to the file in this country. Such questioning, it is suggested, would be liable to include torture, directed at extracting a confession from him, as had happened to his friend Kamal. It is said further that this was, by its very nature, a security-related case (stealing a confidential file and smuggling it abroad) and that there are therefore good reasons to believe that he would receive the same kind of treatment that Kamal had received.

12. As Sir Henry Brooke said in refusing permission on the papers, it would have been preferable for the panel to state in terms why it considered that Kamal's treatment did not provide a reliable guide to the treatment that the applicant was likely to receive on return. It is clear, however, that the panel had in mind the position of Kamal, to which it referred earlier in its decision; and in agreement with Sir Henry, I take the view that the panel's reasoning, directed as it was to the particular circumstances of the applicant himself, was sufficient and sustainable. There was a very careful analysis of why, having regard to his particular circumstances, he would not be at risk in the way he claimed to fear; and the truth is that, whatever may have happened to Kamal, the applicant's situation is evidently not the same as Kamal's. It is true that the Court of Appeal in remitting the case contemplated that what happened to Kamal might provide some support for the applicant's case, but in the event there was no error of law in the way in which the matter was approached by the Panel. Nor am I persuaded that the further points drawn to our attention by the applicant this morning add enough to create an arguable case that the decision was an unreasonable or unlawful one.

13. A separate complaint is made about the panel's procedure and findings in respect of Article 8. It is said that the panel wrongly refused to hear submissions on the issue or to hear oral evidence from the applicant's wife

and that in consequence no attention was paid to the wife's own private and family life. It said further that his wife could not travel with him to Algeria and, more generally, the submission is made that the panel erred in concluding that his removal to Algeria would not be in breach of his Article 8 rights.

14. For my part however, I am satisfied that the panel's consideration of Article 8 was lawful and there is no proper ground of challenge to it. Indeed it seems to me that, on the facts of this case, no other conclusion could reasonably have been reached by the panel.

15. For those reasons an appeal, in my view, would have no real prospect of success and I would refuse permission.

Lord Justice Pill:

16. I agree and accordingly permission to appeal is refused.

Order: Application refused