CO/10792/2007

Neutral Citation Number: [2008] EWHC 2834 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 3rd July 2008

B e f o r e:

MR JUSTICE MITTING

Between:
ORINGA

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
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190 Fleet Street London EC4A 2AG
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(Official Shorthand Writers to the Court)

Mr A Jafar (instructed by Gracelands) appeared on behalf of the **Claimant**
Mr S Singh (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

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

1. MR JUSTICE MITTING: This is a renewed application for permission to apply for judicial review following refusal on the papers by McCombe J. The principal argument advanced is not one that was before McCombe J. In the context of immigration asylum claims it is unusual. It is certainly the first time that I have encountered it. It was, however, considered and rejected by the Secretary of State in a reasoned letter of 16th May 2008.

2. To explain precisely what the ground is it is necessary to set out a little of the history. The claimant was born in Uganda on 22nd September 1985. He is therefore now 22. His father was, it is claimed, politically active in Uganda and himself at risk of persecution. He arrived in the United Kingdom on 19th September 1989. The claimant arrived with his stepmother and brothers and sisters in the following year on 30th July 1990. There appear to have been grave family difficulties which resulted in 1996 in the claimant, then aged 10 or 11, being taken into the care of the London Borough of Greenwich. On 23rd January 1997 a court order was made placing the claimant in the care of that authority.

3. By a letter dated 6th February 1998, the local authority wrote to the Home Office suggesting that it would be in the interests of the claimant if his legal status in this country could be separated from that of his father. The local authority suggested that indefinite leave to remain should be granted. It was, on 20th October 1998. The Joint Council for the Welfare of Immigrants advised the London Borough of Greenwich on 4th November 1998 that it would be possible for the claimant to apply as an adult for naturalisation, and as a minor for the acquisition of British nationality by registration. Naturalisation is only available to adults (see section 6 of the British Nationality Act) but registration, at the discretion of the Secretary of State, is available to minors (see section 3(1)). There were telephone messages from the Joint Council to the London Borough in November and December 1998 with apparently no response. On 5th March 1999 the Joint Council wrote to the London Borough informing them that they had not received a response to their last three communications and so would be closing the file. No application for registration or naturalisation was made.

4. By a date unknown to me in 1998 the claimant's troubles extended beyond his family and resulted in the commission of criminal offences by him. In a decision of an AIT Panel dated 29th August 2006 (paragraph 24), the Panel noted that the claimant had an extremely serious criminal record, starting in 1998 and culminating in an offence of robbery for which he was sentenced on 7th October 2004. The convictions included, they noted, offences of dishonesty and of violence.

5. On 27th July 2004 the claimant was convicted of the offence of robbery and was sentenced, either on that date or on 7th October 2004 (it is difficult to determine which), to 30 months' detention in a young offender institution. The judge is recorded as having noted an escalating record of violent offending and, by implication, a long time spent in custody for a young man.

6. It is said that the claimant is now well on the way to mending his ways, has shown remorse and is, if given the chance, capable of becoming a useful adult citizen able to

conduct himself lawfully. Be that as it may, on 23rd May 2006 the Secretary of State made a decision to deport. The claimant exercised his right of appeal against that decision. His appeal was dismissed by the Panel on 29th August 2006. Except for the fact that the Panel applied the then Article 8 test of exceptionality laid down by the Court of Appeal in **Huang**, there is nothing in the reasoning of the Panel to indicate that it made any error of approach or conclusion in its determination. Its conclusion was, in short, that the criminal convictions outweighed the claims to family and personal life in the United Kingdom and any other ground that might be advanced for allowing the appeal.

7. On 19th January 2007 the claimant made a claim for asylum. On 24th May 2007 a Panel of the AIT dismissed that appeal and also dismissed an appeal which was either implicitly or expressly made against a decision by the defendant to refuse to revoke the deportation order, which I assume by then had been made. All grounds of appeal were rejected. Again, it is not suggested that the reasoning of the Panel was obviously flawed. There was an application for reconsideration. No order was made by a Senior Immigration Judge and it does not appear to have been pursued to the High Court. There matters rested until this judicial review application.

8. I can deal rapidly with two of the grounds: that the Asylum and Immigration Tribunal did not adequately engage with Articles 3 and 8. If those grounds are viable, which in my view they are not, then the correct method of challenging the AIT's decision was an application for reconsideration and not a subsequent presentation of the claim on essentially the same facts to the Secretary of State, followed by judicial review of the inevitable refusal to treat the same claim as a fresh claim under paragraph 353 of the Immigration Rules.

9. The single and unusual ground on which it is asserted that this claim should be given permission can be stated as follows. Section 17 of the Children Act imposed on the London Borough of Greenwich a statutory duty to safeguard and promote the welfare of children within their area, including this claimant. They did so by asking the Secretary of State to consider granting indefinite leave to remain, successfully, in 1998. Mr Jafar, who appears for the claimant, submits that it is at least arguable that they should have gone further, at least when prompted by the Joint Council, and applied for registration for the claimant under section 3(1) of the British Nationality Act 1981.

10. Thus far, it is difficult to see how the failure of the local authority could possibly engage any obligation on the part of the Secretary of State to reconsider the decision to deport, let alone to grant naturalisation under section 6. However, it is argued that section 84 of the Children Act gave to the Secretary of State for Housing and Local Government a power which he should have exercised to declare that the London Borough of Greenwich were in default. Section 84 provides:

> "(1) If the Secretary of State is satisfied that any local authority has failed without reasonable excuse to comply with any of the duties imposed on them by or under this Act, he may make an order declaring that authority to be in default with respect of that duty . . .

> (3) Any order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with within such period as may be specified in the order as appears to the Secretary of State to be necessary.
>
> (4) Any such directions shall, on the application of the Secretary of State, be enforceable by mandamus."

11. Mr Jafar submits that it is at least arguable that the London Borough failed in its duty under section 17. Accordingly, it is at least arguable that the Secretary of State for Housing and Local Government should have exercised his power to declare the authority to be in default and to issue directions, presumably requiring the local authority to apply to the Secretary of State for the Home Department for the registration of the claimant as a British citizen under section 3 of the British Nationality Act 1981. The argument is ingenious, but hopeless. The Secretary of State's power under section 84 clearly exists for the purpose of giving strategic directions to local authorities who are failing wholesale in their duties towards children in their area. It cannot be sensibly contended that it should have been used in an individual case to cause the local authority to make an application to another Central Government Minister, the Home Secretary, for him to exercise a discretion which he had under section 3 of the British Nationality Act 1981.

12. Further, and even if that is a misreading of the purpose of section 84, on the facts of this case as found by the Panel of the AIT, the claimant was already committing criminal offences of some seriousness at a time when it is suggested that that application should have been made. The Secretary of State for the Home Department would have been, in accordance with well-known policy, perfectly free to refuse the application, an application which could only have succeeded if the Secretary of State had exercised a discretion in favour of the claimant. It seems to me to be the remotest of long shots against the background of persistent criminality, that the Secretary of State could have been persuaded by the most diligent of local authorities to grant registration.

13. If there had been anything in the point, the claimant could himself have applied when he became an adult for naturalisation under section 6 of the 1981 Act. By then he would have faced very serious difficulties, because by then he had committed, or was about to commit, the serious offence of robbery for which he was sentenced in 2004. The way in which the Secretary of State dealt with these representations when made, in her letter of 16th May 2008, was to state that:

> "It is not considered to be a matter which requires your client to be present in the United Kingdom. Furthermore, the outcome of these enquiries are very unlikely to make a difference to his status here as his criminal convictions now render him unsuitable to be granted British citizenship."

Those comments could equally have been made at any time since the claimant became an adult in 2003.

14. Mr Jafar disclaims any claim on the part of the claimant to naturalisation. He submits simply that the facts which I have recited arguably give rise to an obligation on the part of the Secretary of State to revoke the decision to deport and to, as Mr Jafar puts it, give the claimant another and final chance to mend his ways. The Secretary of State is not arguably under any such obligation. The decision to deport, upheld on appeal, was lawful. The refusal to revoke the decision and to refuse asylum was likewise lawful. The decision, upheld on appeal, that the claimant's rights under Articles 3 and 8 would not be infringed if he were to be removed to Uganda are likewise lawful. There is nothing in this ingenious challenge which would justify the grant of permission to apply for judicial review. Accordingly, I reject the renewed application.

15. MR SINGH: My Lord, when the matter came before Wyn Williams J on 20th May, he adjourned the hearing so that this one particular issue could be dealt with today. He reserved the costs of the hearing of 20th May, my Lord. I do not ask exceptionally for the costs of today, but I would ask for the costs of that hearing on 20th May 2008. I would just ask for counsel's fee of £350.

16. MR JUSTICE MITTING: Forgive me, why? The respondent does not normally get costs on the renewed application.

17. MR SINGH: No, my Lord, but in this case the Secretary of State has been put to the expense of two hearings precisely because the claimant wanted to persist in what you described as an "ingenious but hopeless" argument. I do not ask for the costs of today and I do not ask for the costs of the acknowledgment of service, I simply ask for the costs of that wasted hearing on 20th May.

18. MR JUSTICE MITTING: Why was this argument not dealt with on 20th May?

19. MR SINGH: There was not enough time, my Lord. This had a time estimate of 1 hour today, my Lord.

20. MR JUSTICE MITTING: Was that because of congestion in the list or is this a case which could have been dealt with in half an hour?

21. MR SINGH: No, my Lord. Wyn Williams J took the view that two of the grounds were not arguable, in any event, but he thought at least an hour needed to be set aside to deal with this particular argument.

22. MR JUSTICE MITTING: As indeed it did. My question is whether there was such congestion in his list that it would not have been possible to have dealt with it then.

23. MR SINGH: I do not know, I was not there, my Lord.

24. MR JAFAR: My Lord, I was there, I can assist you. I was given the acknowledgment of service on the day, as well as the refusal of 16th May. I had not had an opportunity to read those documents. I applied for the adjournment on that basis. It was an important matter that I needed more fleshing out, I submit. I think the court was in a better position with authorities to come to this conclusion. So no, my Lord, it is not the case that this matter was adjourned at the last hearing due to congestion. It was

adjourned because there had been a late service by the defendant, so I submit the contrary: it should be the claimant who was disadvantaged by the late service by the Secretary of State.

25. MR JUSTICE MITTING: There will be no order for costs of the renewed application on either date. Thank you.