

Neutral Citation Number: [2009] EWHC 1190 (Admin)

Case No. CO/6528/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Thursday, 14 May 2009

B e f o r e:

MR KENNETH PARKER QC
(Sitting as a Deputy High Court Judge)

Between:

THE QUEEN ON THE APPLICATION OF MOHAMMED MOBIN SAMANDARI
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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(Official Shorthand Writers to the Court)

Miss S Khan (instructed by Parker Rhodes) appeared on behalf of the **Claimant**
Mr P Greateorex (instructed by Treasury Solicitors) appeared on behalf of the **Defendant**

J U D G M E N T

1. THE DEPUTY JUDGE: This is a claim for judicial review brought by Mohammed Mobin Samadari against the decision of the Secretary of State contained in two letters dated 12 July 2007 and 4 February 2009 rejecting a fresh claim to asylum made on 1 June 2006.
2. I shall first summarise the immigration history of the claimant. The claimant is a national of Afghanistan, who arrived in the United Kingdom in June 2003 and claimed asylum, which was refused later that month. The appeal was dismissed in October 2003 and again, following reconsideration, in January 2005, and then again, following further reconsideration, in September 2005. This last decision was not appealed and appeal rights were exhausted on 20 October 2005.
3. Further representations were made on 1 June 2006 based upon the claimant's alleged conversion to Christianity. These were not responded to until July 2007 when the claimant was discovered working illegally and detained. They were rejected by letter dated 12 July 2007, and on 21 July 2007 removal directions were set for 31 July 2007. Further representations were made on 26 July 2007, which in turn were rejected on 27 July 2007. The claimant was removed on 31 July 2007 in accordance with the removal directions.
4. Permission to apply for judicial review was refused on the papers by Silber J on 15 January 2008, but granted by Davis J following an oral hearing on 9 May. In granting permission, Davis J made certain observations. In view of those observations, the defendant reconsidered the further representations, and on 4 February 2009 issued a further decision letter.

The legal framework

5. Paragraph 353 of the Immigration Rules provide:

"When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection."

6. WM (DRC) (No 2) and AR (Afghanistan) [2006] EWCA Civ 1495 gives definitive guidance on the correct interpretation and application of paragraph 353. It is common ground in this case that, following WM, I must ask first whether the Secretary of State applied the correct criteria, and secondly whether the Secretary of State could rationally

conclude that the fresh matters raised by the claimant would not have a realistic prospect of success in an application before an asylum adjudicator.

7. Miss Khan, in her crisp and lucid submissions, accepts that the Secretary of State did apply the correct criteria in the second decision letter of 4 February 2009, and therefore the issue is simply whether the Secretary of State could rationally conclude that the fresh matters stood no realistic prospect of success before an asylum adjudicator. I remind myself that, on the authorities, this is a relatively low hurdle.
8. In a nutshell, Miss Khan submits that in this case there is independent evidence corroborating the claimant's contention that he has genuinely converted to practising Christianity, and that, having regard to other decisions to which I was referred, it could not rationally be concluded that an asylum adjudicator would reject a fresh claim based on such conversion.
9. In looking at this issue it is necessary to examine with particularity and precision the relevant events leading up to the claimant's alleged conversion and the evidence bearing on its credibility. The starting point is the earlier immigration appeals to which I have referred.
10. In the decision of Mr Cruthers dated 14 January 2005, he was prepared to accept much of the claimant's account that related to a land dispute and its alleged consequences (see in particular paragraph 39 of that decision). However, certain elements of the claimant's account were rejected (see paragraphs 53 and 56), and at paragraph 55 there is a specific finding that the claimant lied about a particular matter at the hearing. However, in my view, the final adjudication on 7 September 2005 provides a much more powerful insight into the claimant's credibility and propensity to make false and opportunistic asylum claims. At that appeal a central issue was the veracity of the claimant's contentions that he had sufficient association with the Communist Party that he would be exposed to treatment contrary to the ECHR if he was returned to Afghanistan.
11. The claimant told the adjudicator:

"My life in danger. I am a communist. I do have problems due to land. I also have political problems. I have documents from the BBC about the constitution. It has been arranged that all members of the Communist Party should be arrested and prosecuted according to law. I'm sure there would be no life for me in Afghanistan ... Got to wash my hands of Afghanistan as no chance to live there. I do not want to die. My mother has only got me and that's it. I want the United Kingdom and you to pity me. I will be arrested by government and news that people arrested in my country. Government broadcasts that they have created security in Kabul but the fact is that people are being killed on a daily basis. The government is formed of Mujahideen members and the only people who can live there are people related to commanders. I am known and labelled as a communist, anyone who finds out my history will kill me. Hundreds arrested and killed. No one knows where they have died or

how they died. They've disappeared. Government will arrest me as orders were issued to arrest members of the new party. I found out the new party from the news in Rotherham Library Internet."

12. At paragraphs 31 to 40 the adjudicator carefully evaluated the claimant's contentions and wholly rejected them as false, finding in particular at paragraphs 36 to 37 that the claimant had after interview relied upon a matter that he would have mentioned in interview if it had been true. Of considerable significance also is the fact that the claimant made no mention whatsoever of his alleged conversion to Christianity at the asylum hearing appeal on 1 September 2005.
13. On 1 June 2006, as mentioned, the claimant made his fresh claim. In the letter of 1 June 2006, written on his behalf, it is said:

"We believe that our client is entitled to a fresh application for asylum because his circumstances have materially changed, and there are new grounds to fear persecution in Afghanistan. This is based on his conversion to Christianity, his fear of persecution, harassment and a real risk of harm due to his religious beliefs, and that he could be subjected to inhuman and degrading treatment should he be forced to return to his country of origin."
14. It is notable that the letter does not include any statement from the claimant explaining, first, how he came allegedly to convert to Christianity; secondly, precisely when the alleged conversion took place; thirdly, the extent of his alleged commitment to the Christian faith and the extent to which he engaged in Christian services and activities generally; fourthly, the extent to which he would openly and riskily involve himself with the Christian movement in Afghanistan; fifthly, and most importantly, why he had failed utterly to mention the alleged conversion to Christianity at the appeal hearing in September 2005 when he had ample opportunity to do so.
15. This was a person whose claim to asylum based upon a wholly different ground had relatively recently been dismissed by a judge, after hearing the claimant extensively and skillfully cross-examined, as wholly fictitious and opportunistic. In the absence of a credible statement from the claimant dealing with the matters to which I have referred, including the fifth matter, in my judgment the claimant's bare assertion, standing alone, could only be rejected as incredible.
16. Of course, the assertion did not stand alone because the letter of 1 June enclosed several letters from clergymen in support of the claimant's contentions. It is necessary to examine these letters critically, especially the letter of 15 March 2006 from the Reverend John Hartley, and the letter of 26 July 2007 from the Reverend Colin Reasbeck. Nothing I say is intended to cast doubt on the good faith or honesty of these clergymen. However, my first observation is that these clergymen do not appear to have had the benefit of an appreciation of the claimant's immigration history, in particular an appreciation that in September 2005 an immigration judge had rejected an earlier asylum claim based on a different ground as false. Neither clergymen had any reason, therefore, to question critically and sceptically the claimant's alleged conversion

to Christianity, as would a putative future adjudicator, in particular to probe the five significant matters that I have already adumbrated.

17. Bearing that observation in mind, I note that the letter of 15 March 2006 from the Reverend Hartley gives relatively little objective information about the alleged conversion. The Reverend Hartley first came into contact with the claimant in June 2005 when he was brought to the church by some Afghan friends. He was baptised in November 2005. The letter continues:

"Mobin (as we know him) is in my opinion a genuine Christian, who comes to Hexthorpe Methodist church as often as he can, obviously because of his status he is sometimes unable to journey to Doncaster because of the expense, however he is with us as often as he can be. He still has a great deal to learn about the Christian faith and despite the teaching that he has had, I know from speaking to him that there are large gaps in his knowledge of the faith, being a Christian though is not a matter of head knowledge but is all about a change in the heart. Being able to convince others and being able to speak about your faith is also not an academic exercise, some of the best evangelists are those with a very simple message. Mobin has discovered in Christianity the simple truth that God loves him, has forgiven him by sending Christ Jesus to die on a cross for him and he now knows peace, this is the message that he will take and pass onto others."

18. The material part of the letter from Reverend Reasbeck reads as follows:

"6. He attended a baptismal class that I led in the autumn of 2005 and was baptised along with two other Afghan men on 20 November of that year.

7. Subsequently he has maintained links with our church though for extended periods he has lived outside Doncaster and therefore attendance has not been as regular as the others. However, he participated in the public open-air production of the Easter Drama by the Farsi-language congregation and whenever he has been in Doncaster he has attended church meetings."

19. The objective picture, in short, is a person who became baptised as a Christian very shortly after his asylum appeal had been wholly rejected, and whose later attendance at services had been somewhat sporadic and less regular than other members of the congregation.
20. In my judgment, any putative future asylum adjudicator would have to consider the evidence as a whole. The starting point would be the rejection of the claimant's asylum claim in September 2005, the claimant's false evidence and his complete failure to mention any conversion to Christianity at that time. The second material element would be the claimant's failure to deal specifically and with particularity with any of the five matters that I have mentioned earlier.

21. Against that background the adjudicator would need very critically to consider the weight of the letters from the clergymen in this case. In my view, for the reason that I have given, these letters could carry very little intrinsic weight in this case, and the objective material that can be gleaned from them has very limited probative value.
22. There was a further letter dated 10 February 2009 from the Reverend Reasbeck, which was referred to in the supplementary skeleton argument of Miss Khan but was not referred to in any detail at the hearing. But in any event, in my view, having read it, that letter does not take the matters that I have referred to further.
23. Set against the relevant background, these letters and the information that they contain could not begin to create a realistic prospect that an adjudicator would believe that this claimant had genuinely converted to Christianity and genuinely intended to conduct himself as a Christian in Afghanistan in a manner that would expose him to treatment contrary to the ECHR.
24. In my judgment, therefore, the Secretary of State took a rational decision in this case to reject the further representations as standing no reasonable prospect of success on a future putative appeal. Indeed, I would go further and say that, on the material seen as a whole, for the reasons that I have given, that was the only reasonable conclusion open to the Secretary of State in this case. For those reasons, I dismiss this claim for judicial review.
25. MR GREATOREX: My Lord, I am grateful. I would just make an application for costs -- the ordinary order -- it will have to be assessed if not agreed. I know we ought to have provided a schedule, my Lord, but in the circumstances, particularly as we do not know whether anything is going to come of it, I hope that is acceptable.
26. THE DEPUTY JUDGE: Yes.
27. MISS KHAN: My Lord, we would resist the application for costs. I do realise that the judgment is against us, but I would refer my Lord's attention to the earlier decision letters. They did not address the host of evidence and the Reverends' evidence, and that is why the letters had to be supplemented with another letter of 4 February of this year. So it would be my submission, my Lord, that the application was properly made.
28. THE DEPUTY JUDGE: In my judgment, you have failed, and all that has happened in this case is that a particular aspect had not been dealt with by the earlier decision letter that was then adequately dealt with by the subsequent decision letter. Notwithstanding that subsequent letter you continued this claim. It has failed and the normal order follows.
29. MISS KHAN: My Lord, I am sorry, there is a slight correction, if I could make that.
30. THE DEPUTY JUDGE: Yes.
31. MISS KHAN: The letter of 10 February 2009 was from Reverend Reasbeck; it was not from Reverend Hartley.

32. THE DEPUTY JUDGE: Yes.
33. MISS KHAN: Could I ask for the usual order for public assessment of the appellant's costs?
34. THE DEPUTY JUDGE: Yes.