

CO/4591/2006

Neutral Citation Number: [2008] EWHC 2355 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 2nd April 2007

B e f o r e:

MR JUSTICE WILKIE

Between:

THE QUEEN ON THE APPLICATION OF AHMAD

Claimant

V

SECERTARY OF STATE FOR HOME DEPARTMENT

Defendant

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(Official Shorthand Writers to the Court)

MR T Cooray (instructed by Thompson & Co Solicitors) 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
(Approved by the Court)

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1. MR JUSTICE WILKIE: On 5th June 2006 the claimant commenced judicial review proceedings of a decision of the Secretary of State for the Home Department refusing his fresh application for asylum, dated 9th March 2006. Underhill J on the papers refused permission, and this is the renewed application for permission. The chronology of relevant events is set out in the Secretary of State's acknowledgment of service, dated 17th July 2006.
2. The claimant was born in Pakistan in September 1982 and, on 12th April 2002, arrived in the United Kingdom claiming asylum at the airport. On 30th May of that year his asylum application was refused and on 10th June of that year he submitted additional grounds. There was a supplementary refusal letter based on those additional grounds served on 3rd February 2003.
3. On 1st July 2003 an appeal to the Asylum and Immigration Tribunal was dismissed. On 28th July 2003 leave to appeal to the AIT was granted but on 16th February 2004 that body dismissed the claimant's appeal. He applied for leave to appeal to the Court of Appeal. That was refused on 22nd June 2004. On 19th July 2004 further representations were submitted, seeking that they be treated as a fresh claim. On 9th March 2006 the Secretary of State issued a decision letter refusing to treat his further representations as a fresh claim.
4. Further representations were submitted, which included as enclosures a number of documents. One was an affidavit from a claimant's brother alleging that he was attacked by some Mullahs who were looking for the claimant on or about 20th June 2004. There was a medical certificate issued on the following day describing the claimant's brother's injuries as having resulted from a quarrel. There was also an affidavit from the claimant's aunt giving details of the attack on the claimant's brother. In addition to those documents, and relevant particularly for the purpose of today's hearing, were two letters from the Ahmadi Muslim Association of the United Kingdom. They were dated 10th April 2004 and 12th July 2004. There had previously been, on 18th August 2002, a letter from that association which had confirmed that the claimant was a bona fide member of the Ahmadiyya Muslim Association. These other letters were follow-up letters which it was said confirmed enquiries which had been made in Pakistan of the extent of his activities and the nature of them as an Ahmadi.
5. The letter of 10th April indicated that, according to a report dated 23rd May 2002 received from their headquarters in Pakistan, the claimant's conduct and contact with the Ahmadiyya Association were good. He used to take part in its activities. He was an active member and served voluntarily as a financial secretary and block leader of one of the blocks of Rabwah town. It also contained evidence of his involvement within the United Kingdom as an office-holder at the Mitchum Surrey branch.
6. The letter of 12th July 2004 was further to the earlier letter and reads:

"We confirm that in respect of the person whose details are set out below according to a further report received from our headquarters in Pakistan issued at this person's request, headquarters have confirmed that he also

served as the organiser of physical health, and at his local in Rabwah Pakistan participated in preaching activities as a result of which he was also concerned and anxious, and that he used to set up medical camps."

This last letter is at the heart of Mr Cooray's submissions this morning, because, he says, as indeed is the case, there is a significant distinction for asylum purposes between a member of the Ahmadi faith who has no record of active preaching and has no particular profile and has not come to the attention of the authorities in Pakistan relating to his Ahmadi faith, and somebody who does have such a record of preaching and as a result has come to the attention of the authorities. If someone falls within the latter group, then there have to be serious questions whether they are entitled to claim asylum on the grounds of a well-founded fear of persecution on the grounds of their preaching and proselytising the Ahmadi religion.

7. That distinction was at the forefront of the Immigration Appeal Tribunal decision UKIAT 00033 of KK - unexceptional Ahmadi risk on return to Pakistan. It was also at the forefront of the decision in this case made on 1st July 2003 by the adjudicator, because at paragraph 16 of his decision the adjudicator accepted that the claimant is an Ahmadi and that he had given a lucid account of the differences between different sects of the Ahmadi faith. However, at paragraph 23 he also made a finding that he did not accept that the appellant was anything other than an ordinary follower of the Ahmadi faith. He did not accept that he had proselytised as he alleged or at all.
8. Furthermore, on 16th February 2004, in the course of the determination by the Immigration Appeal Tribunal hearing at the further appeal of the claimant, at paragraph 13 the tribunal said:

"It is material that at no stage has the appellant said that he intends to preach or proselytise if he has to return to Pakistan."

Mr Mahmood, who had represented the claimant, had accepted that there was nothing in his evidence to that effect.

9. Shortly after that decision came the first of the two letters from the Ahmadi Association, and this was part of the documentation which the Secretary of State had to consider as part of the representation said to give rise to a fresh claim. On 9th March 2006 the Secretary of State wrote as follows:

"Your client states that he has actively pursued his Ahmadi faith in the United Kingdom. He submitted two letters dated 10th April 2004 and 12th July 2004 from the Ahmadiyya Moslem Association to verify this and at your client's one-stop appeal hearing the adjudicator was aware that your client was a member of the Ahmadi or Moslem Association UK."

There was then a citation from the decision at paragraph 14:

"The appellant said that he preached in the United Kingdom. I was shown a copy of a certificate from the Ahmadiyya Moslem Association UK, dated 18th August 2002, indicating that the appellant was a member of that organisation. His name was shown on a list of members. He was acting as a secretary for the group."

The Secretary of State then went on to say:

"Despite knowledge of your client's membership, the adjudicator proceeded to dismiss his appeal on 1st July 2003, and the two letters which you have submitted do not challenge the adjudicator's findings."

10. In refusing permission, Underhill J indicated that he did not accept the contention that the Secretary of State's decision not to treat the subsequent representations as raising a fresh claim was even arguably irrational. He refers to the new material comprising the statements from relatives and the medical evidence in one category, and the certificates from the Ahmadi and Moslem Association UK in the second category.

As to the former, he said this:

"The evidence was supplied in July 2004 within three weeks of the failure of the claimant's application for permission to appeal to the Court of Appeal against the decision to refuse him asylum. The Secretary of State was entitled to take the view that the coincidence that the alleged incident should occur at that point when the claimant had already been absent from Pakistan for two years made the evidence incredible, at least in the absence of independent corroboration. He was plainly entitled to take the view that affidavits from family members did not constitute such corroboration. As to (b), there is nothing irrational in the Secretary of State taking the view that a general statement also produced only in July 2004 that the claimant participated in preaching activities as a result of which he was concerned and anxious is not sufficient potentially to undermine the adjudicator's view."

11. There is nothing new in the renewed application for permission which goes to the heart of this case. Mr Cooray has helpfully gone to the heart of the case which is, as he has indicated, the impact of the letters of 10th April and 12th July 2004 upon this application. In my judgment, notwithstanding his efforts, this is not a case which is arguable. This is a case which went through the adjudication process. In particular, I regard as highly significant the statement at the end of the appeal hearing before the IAT in February 2004 that there had been no contention and nothing in the evidence to support the contention that he intended to preach or proselytise if he were returned to Pakistan.

12. In those circumstances the Secretary of State, confronted as he was a matter of a few weeks later with a document from the United Kingdom association recording that which had not been recorded a couple of months earlier that in fact it was now being said from Pakistan that he did participate in preaching activities, was entitled to conclude that that was insufficient when viewed in the round with all the other evidence to raise a realistic prospect that an adjudicator reconsidering the matter would or may consider that an asylum claim should succeed.
13. In those circumstances, in my judgment the Secretary of State's refusal to treat the fresh representations as a fresh asylum claim cannot arguably be said to be irrational and accordingly I refuse permission.
14. MR GREATOREX: I am grateful. I have an application for costs in two parts. The acknowledgment of service, which as your Lordship knows we are entitled to, and I see no reason why we should not in this case -- £350 consist of this hearing, which normally I would not be entitled to, but I say we should be awarded £350. My Lord, briefly the reasons are that ---
15. MR JUSTICE WILKIE: Sorry, is there an application for costs in the acknowledgment of service? Is there an indication?
16. MR GREATOREX: No, I do not think there was any indication.
17. MR JUSTICE WILKIE: Is it not normal for such an indication to be made if such an application is to be made?
18. MR GREATOREX: It is certainly good practice, my Lord, yes. I think perhaps at that stage it was not necessarily envisaged quite how far matters would go. My Lord, that is a point that may go to some parts of your Lordship's discretion. But looking at this in the round, quite apart from the merits of this case, the judicial review was lodged just inside the three-month time limit and the actual renewal of applications of Underhill J's decision was renewed (inaudible) out of time and the manner and form of these proceedings indicates it really has been simply an attempt to prolong matters, rather than to engage properly in the legal merits of the decision, which is why I say the normal rule should not apply and we should get the costs of this hearing as well as the acknowledgment of service.
19. MR JUSTICE WILKIE: How much is the acknowledgment of service?
20. MR GREATOREX: It is £350 and the same sum, my Lord, for today.
21. MR COORAY: My Lord, I cannot resist my learned friend's application for costs, except to say I think the gloss my learned friend put is wrong, because this is a claimant who has no legal ---
22. MR JUSTICE WILKIE: Normally the costs are limited to the costs of the acknowledgment of service, not the cost of the oral hearing.

23. MR COORAY: The claimant is not legally-aided. The reason for delay was because he had to find the money. He is not somebody who is able to work because he is not allowed to work, so he had to get money from different people. That is the reason for the delay.
24. MR JUSTICE WILKIE: Thank you. I will award the costs of the Secretary of State's preparation of the acknowledgment of service for £350.