Case No.: CO/3829/2001

Neutral Citation Number: [2002] EWHC 1469 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Monday, 17th June 2002

B e f o r e:

MR JUSTICE FORBES

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VIRJON B

(claimant)

-v-

SPECIAL ADJUDICATOR

(defendant)

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Computer-Aided Transcript of the stenograph notes of
Smith Bernal Reporting Limited,
190 Fleet Street, London EC4A 2AG
Telephone No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

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Miss R Chapman appeared on behalf of the Claimant
Mr S Wilken appeared on behalf of the Defendant

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J U D G M E N T

Monday, 17th June 2002

1. MR JUSTICE FORBES: This is an application for judicial review of the decision of an Adjudicator dated 11th July 2001, whereby the claimant's appeal against the refusal by the Secretary of State to grant him refugee status was dismissed and the Secretary of State's certificate under paragraph 5(4)(b) of Schedule 2 to the Asylum and Immigration Appeals Act 1993 (as amended) was upheld.

2. The claimant is a citizen of Albania, whose date of birth is given as 22nd March 1965. He arrived in the United Kingdom on 16th September 1998 and claimed asylum on arrival at port. He was accompanied by his wife and child, who had been born on 6th October 1996. Accordingly, his wife and child are his dependents.

3. The basis of the claimant's claim for asylum was that he had been a member of the Democratic Party, which was the governing party in Albania until 1996. According to the claimant, a breakdown in law and order occurred in Albania following the elections in May and June 1996, as a result of which the Socialist Party took over the government of the country. Thereafter, according to the claimant, he was persecuted by members of the Socialist Party because of his political affiliations to the Democratic Party.

4. However, that generalised claim apparently depends heavily upon two particular incidents. The first is said to have occurred in September 1997, when police officers, said to have been acting on behalf of the Socialist Party, came to the claimant's home looking for him and his brother. According to the claimant, the police fired shots into the house and the claimant's sister in law was injured as a result. More importantly for the purposes of this judgment, there is said to have been a second incident which, according to the claimant, was the immediate cause of his decision to leave Albania with his family and seek refuge in the United Kingdom. That incident is said to have occurred on 8th or 9th September 1998. According to the claimant, the police came to the house where he was staying with his wife and seriously ill treated them. In particular, it is alleged that the claimant's wife was raped by police officers in his presence. According to the claimant, they reported the rape to the authorities and also sought appropriate medical examination and treatment. However, the relevant authorities and the medical examiner refused or failed to deal with the matter properly because, having ascertained that the rape had been carried out by police officers acting on behalf of the Socialist Party, each was too fearful to deal with the matter properly.

5. So it was that the claimant, his wife and child left Albania and sought political asylum in this country. However, by his letter of 4th February 1999, the Secretary of State rejected the claimant's claim for asylum. The Secretary of State expressed misgivings as to the credibility of the claimant and issued the appropriate certificate under Schedule 2 of the 1993 Act, to the effect that the claimant's fear of persecution was manifestly unfounded and that there was no credible evidence relating to torture.

6. On behalf of the claimant, Miss Chapman raised three particular grounds of challenge. The first was a challenge relating to the certificate under paragraph 5 of Schedule 2 to the Act; the second was a natural justice challenge; and the third can be described as the merits

challenge. The third ground of challenge can itself be subdivided into the following two criticisms of the way in which the Adjudicator approached the matter: (i) it is said that she erred in her approach to the medical evidence when deciding the critical issue of credibility; and (ii) it is suggested that she was wrong in her approach to and consideration of the objective evidence.

7. Having heard submissions from Miss Chapman and also from Mr Wilken on behalf of the defendant, it appeared to me that this was an application which must succeed on the first aspect of the merits challenge, having regard to the way in which the Adjudicator dealt with the medical evidence. I will come to that in just a moment. However, it seemed to me that the other matters raised by Miss Chapman by way of challenge to the Adjudicator's decision were very unlikely to succeed. I therefore indicated to Miss Chapman that I proposed to allow the application on the basis of the first aspect of the merits challenge (i.e. with regard to the medical evidence) and asked whether she wished to address further argument to me on the other matters. She indicated that she did not. In those circumstances, it is not appropriate or necessary to consider the other grounds of challenge. I merely indicate that, in relation to those other matters, I was not persuaded that there was any real substance in those grounds of challenge. However, that was a provisional view and I emphasise that I did not hear final argument from Miss Chapman with regard to those other matters.

8. I therefore turn to what seems to me to be the central issue in this case, namely the criticism leveled against the Adjudicator with regard to her treatment of the medical evidence. I should say at the outset that Mr Wilken very properly conceded that if I was persuaded by Miss Chapman's argument with regard to this aspect of the matter, then the application must succeed.

9. Critical to the Adjudicator's dismissal of the appeal, and indeed to her conclusion that she should uphold the Secretary of State's certificate, were her adverse conclusions with regard to the credibility of both the claimant and his wife, both of whom had given evidence. The evidence given by the claimant and his wife was consistent with the claims that had been made in support of the application for asylum. In particular, the claimant and his wife both gave evidence as to the wife's rape by the police officers, who were believed to have been acting on behalf of the Socialist Party. The Adjudicator came to the conclusion that she was not persuaded as to the truth of either the claimant's account or that of his wife.

10. Miss Chapman criticised the way in which the Adjudicator approached the question of credibility, having regard to the available medical evidence, which came from no fewer than four sources. The first was a medical report from a Dr Mema, dated 11th September 1998. This gave an account of Dr Mema's examination of the claimant's wife shortly after the alleged incident of rape. It appears that Dr Mema carries on medical practice in Albania. It is not entirely clear in which medical discipline Dr Mema is a specialist. Suffice it to say that his only recorded findings were of facial bruising. Notably, his report does not contain any statement to the effect that any of the injuries was consistent with the allegation of rape, although bruising to the face can, of course, be the result of a violent rape. However, there is no suggestion anywhere in the report of the medical findings being consistent with there having been a rape. Dr Mema merely observed that the injuries to the

face were consistent with a beating.

11. The next was a report by a Dr Rich, dated 2nd August 1999. That report gave an account of Dr Rich's psychiatric assessment of the claimants. It is brief and expressed in terms which do not suggest that Dr Rich did any more than accept at face value what he was told by the claimant and his wife and then used those assertions for the purposes of the psychological assessment which he made of the claimant and his wife.

12. It is important to note that Miss Chapman very properly accepted that neither of the reports from Dr Rich or Dr Mema could be said to provide strong or significant corroboration of the truth of the claims made by the claimant and his wife with regard to the rape. However, there were also before the Adjudicator the reports of two other doctors; one was from Dr George, dated 21st December 2000, who carried out a psychiatric and psychological examination of the claimant; the other was from Dr Rose Varley, dated January 2001, who carried out a similar examination of the claimant's wife.

13. It is clear from the reports of both Dr George and Dr Varley that each is highly qualified in the field of psychiatric medicine. It is also clear that each is very experienced in examinations of the type that they carried out. Both the claimant and his wife were required to undergo searching examinations, during which their account of what had happened was assessed by experienced clinicians against objective psychometric tests used for the purposes of such examinations. Necessarily, the medical assessment of the claimant and his wife was dependant to a significant extent upon the truth of the account each gave as to what had happened. Having said that, it goes without saying that clinicians of the experience of Dr George and Dr Varley must be taken to be well used to assessing the truth or otherwise of assertions made by patients, particularly when assisted by appropriate objective forms of questionnaire and tests used for those purposes. In this case, the doctors came to the conclusion that the claimant and his wife each exhibited general symptoms of mental illness that were consistent with the trauma allegedly suffered by the claimant's wife and, in particular, the trauma of a violent rape.

14. In my view, the reports of Dr George and Dr Varley constitute a significant body of medical evidence which provides strong corroboration of the truth of the claims made by the claimant and his wife as to what had happened to them. The question is, how did the Adjudicator approach that evidence?

15. It goes without saying that the Adjudicator was not bound to accept the medical evidence without question. However, if the medical evidence was to be rejected by her, it had to be rejected on a reasoned and proper basis. Moreover, in my view, it is clear from the authorities that the evidence in question should have formed part of the overall material to be taken into account by the Adjudicator when considering the credibility of the claimant and his wife, before any final conclusion was reached by the Adjudicator as to the truth of their claims.

16. Those propositions seem to be self-evident, but if it is necessary to rely upon authority, then it is to be found in such cases as ex parte Ahmed, a decision of David Pannick QC (sitting as a Deputy High Court judge on 9th June 1999); Ademaj, which is a decision of

the Immigration Appeal Tribunal, dated 4th April 2002; and, perhaps most conveniently, in the case of Ibrahim v Secretary of State for the Home Department (1998) INLR 511, a decision of the Immigration Appeal Tribunal which contains a convenient and helpful statement as to the appropriate principles to be applied when dealing with medical and psychiatric reports in the context of findings relating to credibility. At numbered paragraph 2 in the headnote, what is said is this:

> "Any medical or psychiatric report deserves careful and specific consideration, bearing in mind, particularly, that there may be psychological consequences from ill-treatment which may affect the evidence which is given by an applicant. In the Tribunal's view, it is incumbent upon the Adjudicator to indicate in the determination that careful attention had been given to each and every aspect of medical reports, particularly that they are matters of expert evidence which cannot be dismissed out of hand".

17. At page 514, His Honour Judge Pearl, who was then the President of the Immigration Appeal Tribunal, in giving the judgment of the Tribunal said this:

> "Turning to the case before us, we look at these findings in turn. Mr Jorro submitted that the Adjudicator, when making an adverse finding because of the elapse of time between being granted a visa and actually leaving for the UK, had totally ignored the detailed medical evidence about this appellant. This evidence suggests that he has a trauma to his head which has resulted in weakness of his left side (both arm and leg) as well as slight mental function weakness (letter from a consultant pediatrician). He told the psychiatrist, Dr M Michail, who examined him on 13th December 1997 that, since the age of 17, he started to have strange experiences of having aliens talking to him, and believing that God was talking to him and telling him what to do. Dr Michail's opinion is that 'he has had a miserable childhood starting with his severe head injury with its subsequent organic impairments in the form of mental retardation and undeveloped left side of his body.'
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> "Mr Jorro submitted that the Adjudicator had totally failed to take account of any of this evidence, and had ignored the important paragraphs 206ff of the UNHCR Handbook which set out appropriate guidelines for cases of this type. He also referred us to the Tribunal decision of Mohammed (12412) with Professor Jackson as Chairman, and the two members of this Tribunal sitting in that case also as members. The Tribunal said in that case:
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> "'Any medical report or psychiatric report deserves careful and specific consideration, bearing in mind, particularly, that there may be psychological consequences from ill-treatment which may affect the evidence which is given by the applicant. In the Tribunal's view, it is incumbent upon the Adjudicator to indicate in the determination that careful attention has been given to each and every aspect of medical reports,

> particularly that these are matters of expert evidence which cannot be dismissed out of hand'".

18. In the present case, the Tribunal came to the conclusion that the Adjudicator's peremptory dismissal of the psychiatric report from Dr Michail was an unsatisfactory way to approach the evidence in that case, and accordingly the appeal was allowed for that reason, amongst others.

19. In this particular case, the Adjudicator dealt with the linked questions of credibility and the medical evidence as follows (I quote from paragraph 24 of the written determination):

> "I find that there is little corroborating evidence from Albania about the appellant's wife's rape. The evidence of both the appellant and his wife was that they went to see the public investigator who was afraid to help them because she feared for her job and for her life and therefore referred them to a gynaecologist. Even if the gynaecologist was not willing to write a report stating that the appellant's wife had been raped they could surely have gone to another doctor and told him that she had been raped without mentioning that the attackers were police officers. I find the appellant and his wife both knew about the importance of medical evidence in this regard. The report produced by the appellant's wife and the gynaecologist only refers to facial injuries. I find that these could have been caused by any incident or even an accident. The medical reports of Dr Rich, Dr George and Dr Varley refer to the clinical depression and post traumatic stress disorder of both applicants resulting from the rape incident. However, these reports were based upon the evidence which the appellant and his wife gave the doctors. I therefore attach little weight to the reports bearing in mind that I have found both the appellant and his wife to be without credibility".

20. Miss Chapman submitted that it was clear from that paragraph that the Adjudicator had fallen into error in two main respects. First, the Adjudicator had dealt with credibility in advance of a consideration of the medical evidence of Dr George and Dr Varley and had then used the adverse credibility findings in order to reject that medical evidence, that being an incorrect approach to the issue of credibility: see ex parte Ahmed and Ademaj. Second, if the medical evidence of Dr George and Dr Varley was to be dismissed, it should not have been dismissed as it was, namely on a peremptory and unreasoned basis. In order to reject that evidence, the Adjudicator had to give sensible and comprehensible reasons for doing so.

21. I think both submissions are well founded. It is clear to me that the Adjudicator used her adverse findings of credibility with regard to the claimant and his wife as the means whereby to reject the important and significant evidence of Dr George and Dr Varley. That was putting the cart before the horse. The evidence of Dr George and Dr Varley was strongly corroborative of the truth of the account given by the claimant and his wife about the serious rape that was suffered by the wife. It was therefore necessary for the Adjudicator to take that evidence into account as part of her consideration of all the evidence, before coming to any conclusion as to the credibility of the claimant and his wife.

22. In my judgment, the Adjudicator thereby fell into error in her approach to the evidence when considering the credibility of the claimant and his wife. Furthermore, the Adjudicator also fell into error in failing to give adequate reasons for rejecting the evidence of Dr George and Dr Varley. The only reason given was the adverse finding as to the credibility of the claimant and his wife but, as I have already said, that finding was itself flawed because it had been reached by the Adjudicator as a result of her error in her approach to the evidence. It would have been open to the Adjudicator to reject this important medical evidence, but only on a properly reasoned basis and no such reasoned basis was put forward. To the extent that any reason was given, the reason was itself the result of an error in the approach adopted by the Adjudicator to the evidence, the error being that which I have already explained.

23. Accordingly, I have come to the conclusion that the Adjudicator's adverse findings as to the credibility of the claimant and his wife cannot stand. The Adjudicator failed to evaluate the evidence properly and approached it in the wrong way. She also rejected an important body of medical evidence which corroborated the truth of the claimant's assertions, without giving any proper reasons for doing so. Accordingly, and for those reasons, the application succeeds. I should add that, although I have indicated doubt as to the substance of the other grounds raised by Miss Chapman, for the reasons already given, I do not consider that it would be appropriate to express any concluded view as to the criticisms made of the Adjudicator's approach to those matters.

MR WILKEN: My Lord, as far as my learned friend's application for costs, I cannot resist an order for the defendant to pay the claimant's costs. I assume she is legally aided.

MR JUSTICE FORBES: The application succeeded. The defendant is to pay the claimant's costs and I grant the appropriate certificate as to the appropriate assessment.

MISS CHAPMAN: I am grateful, my Lord. Might I raise one matter briefly, and that is the issue of the certificate?

MR JUSTICE FORBES: I think you have to go back and argue the whole lot again.

MISS CHAPMAN: There are authorities. A recent one says once the certificate is quashed, it is quashed rather than having to reargue the certificate again. Of course all certificates will be abolished when the new Act comes into force, but it depends at what stage that happens.

MR JUSTICE FORBES: I have quashed the decision whereby the appeal was dismissed and that is the appeal on the merits. The consequence of that is that the matter should be remitted to be reheard before a fresh Adjudicator.

So far as the claimant has an appeal against the Secretary of State's certificate, that will be open to the claimant to reargue, because having quashed the whole decision, in effect I have quashed the decision with regard to the certificate as well, but I have not specifically quashed the Secretary of State's certificate. So it is up to you to appeal it again. That is my understanding.

MR WILKEN: I agree, my Lord.

MISS CHAPMAN: I can make submissions later on if necessary, lower down. I am grateful.