

Neutral Citation Number: [2009] EWHC 303 (Admin)

CO/4606/2008

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

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 6 February 2009

B e f o r e:

NEIL GARNHAM QC
(Sitting as a Deputy High Court Judge)

Between:

THE QUEEN ON THE APPLICATION OF FOLASADE ESTHER ADENJI
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

The Claimant appeared in person with the aid of a translator (Mr Justin Nezianya)
Mr Sarabjit Singh (instructed by Treasury Solicitors) appeared on behalf of the **Defendant**

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

Crown copyright©

1. **THE DEPUTY JUDGE:** Can I begin by indicating that I am going to direct that a transcript of the judgment I am about to give is made available at public expense to Ms Adenji so that she has it and can get it translated at her leisure.
2. This is a renewed application for permission to apply for judicial review of three decisions: first, a decision of 7 March 2003 to refuse asylum and to certify the claim as clearly unfounded; second, a decision to detain between 11 May and 1 June 2008; third,

a decision of 30 April 2008 to remove the claimant to Nigeria on 15 May 2008. Permission has been refused on the papers by Lloyd Jones J.

3. This case has a somewhat unfortunate procedural history. The case was first heard on 28 November 2008 by HHJ Bidder, sitting as a Deputy High Court Judge. That case came on at about 11am, it being overlooked that the case had a "not before 2pm" marking. That marking had been given to accommodate the fact that the claimant had to travel from Halifax in west Yorkshire. In fact, she arrived before 2pm, but by then the case had been heard. Sullivan J set aside HHJ Bidder J's order and directed that the case be re-listed, again marked "not before 2pm". It came on before me this afternoon.
4. Ms Adenji has attended with her 18 month-old son. She is not represented by lawyers. Ms Adenji had been unable to make child care arrangements and so she came into court with her baby. The case had to be put back to 3pm because, despite a request by the claimant's lay advisers for an interpreter, none was initially available. Fortunately an interpreter did become available and assisted Ms Adenji throughout the hearing thereafter and I am very grateful to him for attending and assisting. Given the delays that had already occurred, I decided to allow Ms Adenji to keep her child with her in court. The only alternative would have been to adjourn, which seemed to me in the circumstances wholly unacceptable. I have to say Master Adenji has behaved remarkably well in the circumstances.
5. The basis of Ms Adenji's claim is her fear of the treatment she says she is likely to receive if she is returned to Nigeria. First, she said she feared being kidnapped in Nigeria or harmed by people who might want to retaliate against her because of her father's actions whilst he was in politics in Nigeria. He was apparently a member of a political party called The Alliance for Democracy. Her father had been arrested in September 2003. Thereafter, her family had received death threats and her sister had been kidnapped. That much is apparent from the papers she has lodged. But she went on to explain to me this afternoon that her sister had not only been kidnapped, she had also been raped, and in fact Ms Adenji has not seen her sister since. Ms Adenji went on to explain that not only her sister but that she too had been raped. She told me that she has not mentioned that previously because it is a series of events which causes her great shame. All of that, she told me, happened in 2003.
6. Her second ground for concern is that being a single mother, she said, she fears that she will be unable to survive with two young children. She said she fears the attention of rapists or occultists. A friend of hers who had returned to Nigeria had been the subject of attack from such people once returned. She told me that, in order to survive, a woman in her position would need a male friend, and in such circumstances, she feared that there was a high chance of her becoming infected with HIV/AIDS.
7. The third matter she relied on was the poor medical treatment that would be available to her and her two children in Nigeria. She said in her claim form that that might adversely affect her own mental health, but before me today she was more concerned about the potential effects of poor medical care on her sons. She explained that there is no state assistance for health care in Nigeria, and she is not a woman of great means.

8. Fourth, she explained that she has concerns about her family life. She says she would have nowhere to relocate to in Nigeria. She says that she has established a family and private life in the United Kingdom. She points out that her sons have been born and brought up here and have known nothing except England as a home land. She says that to remove her now to Nigeria would constitute a serious interference with her family and private life.
9. I should add that one particular feature of the case that concerned Ms Adenji was that she knew of a friend of her father's who had had to leave after the political controversies in the 1990s. He had fled from Nigeria but had returned ten years later, and despite the passage of those years, his political enemies had discovered him and killed him, and she said she was frightened by what had happened to that person and feared something similar would happen to her.
10. Mr Singh, for the Secretary of State, points out that the claimant's application for asylum was certified by the Secretary of State as clearly unfounded under section 94(2) of the Nationality, Immigration and Asylum Act 2002. The meaning of that expression, "clearly unfounded", has been considered by the Court of Appeal in two cases in particular, namely Bagdanavicius [2003] EWCA Civ 1605, and ZL and VL [2003] EWCA Civ 25. The Court of Appeal has held that the meaning of that expression was essentially the same as the meaning of the expression "manifestly unfounded" as considered by the House of Lords in Thangarasa [2002] UKHL 36, namely as so lacking in substance that the appeal would be bound to fail. Those submissions of Mr Singh on the law are, in my judgment, entirely correct, and I apply them as I consider this case.
11. Mr Singh then took me at a little length to the Secretary of State's decision letter of 7 March 2008, which sets out the Secretary of State's reasoning. He drew particular attention to paragraph 5(c), where the Secretary of State observed that the claimant had had no problems with the Nigerian authorities personally while she was there; to paragraph a paragraph 5(f) where it was observed that she had never been in trouble with the authorities; and to paragraph 14 where the Secretary of State pointed out that, in those circumstances and given that the claimant had not been involved in events in Nigeria since she left (and in particular was not involved in the events surrounding the 2007 elections), the Secretary of State had concluded-

"... that there would be no real risk to you if you were returned to Nigeria given that the event you claim led to your fleeing the country occurred some four years prior to these elections and you were not directly involved at that time either."
12. In respect of the allegations of criminal behaviour which the claimant says she feared, Mr Singh directed my attention to paragraph 23 of the decision letter, which describes the modest effectiveness of the Nigerian police force; to paragraph 1 where the Secretary of State concluded that there was a sufficiency of protection available in Nigeria; to paragraph 49 where the Secretary of State asserts that it would be possible for the claimant to relocate in a country with the size and population of Nigeria if she

was to experience a problem in the particular area to which she was returned; and to paragraph 57 where the Secretary of State's conclusion on Article 8 is set out.

13. This is simply an application for permission to apply for judicial review. I have to ask myself only whether there is an arguable case. Dealing with the different respects in which it is said the decision to refuse asylum is addressed by the claimant, my conclusions are as follows. Firstly, in my judgment it is unarguable but that the Secretary of State was entitled to certify the asylum claim as clearly unfounded. The claimant's concerns related to her father's conduct in 2003, and there is nothing in the papers I have seen or in the submissions I have heard to suggest that the claimant would be at risk as a result of those events were she to return now. Applying the Thangarasa test, it seems to me that the claim that she would be at risk of persecution is entirely lacking in substance.
14. The same analysis can properly be applied, in my judgment, to the argument based on Article 3. That too, in my view, is unarguable.
15. The case on Article 8 is even weaker. The claimant has indeed established a family life here with her two children, but she has no legal status in this country and has no right to remain. If she were removed to Nigeria, so would her children be, and she would be able to continue her family life there. Whilst removal would constitute some real interference with the private life she has established here, in my judgment it is unarguable but that that interference would be proportionate to the legitimate objectives the Secretary of State has in mind in enforcing immigration control.
16. In those circumstances, it seems to me that the challenge to the decision in respect of asylum and under Articles 2, 3 and 8 is unarguable. It follows that the complaint about the claimant's detention in May 2008 is difficult in the extreme. The claimant was detained at that time, her claim having failed, as an immediate precursor to her removal. I can see nothing arguably unlawful about that detention given the state of affairs as they were at that time. The challenge to the removal directions that were then set for 15 May clearly is no longer in issue since those removal directions were set aside consequent upon the commencement of these proceedings. In those circumstances, I can see no part of this case which can properly be said to be arguable.
17. Only one matter remains for me to address. During the course of her oral submissions today, Ms Adenji raised a number of matters to which I have already referred which do not appear in any of the papers lodged with the Secretary of State. I think, particularly, of her allegation that her sister has disappeared and that she was raped. It is, of course, open to Ms Adenji to make further submissions to the Secretary of State about those matters, and doubtless the Secretary of State will consider them and consider whether they would justify the exercise of any discretion on his part. I do not actively encourage the claimant to do so, however, because as Mr Singh has already observed, the answer to them is likely to be similar to the answers that the Secretary of State has already given to the other claims. However, that is not a matter for me; that is a matter, firstly, for Ms Adenji to decide whether she wants to make fresh submissions, and then for the Secretary of State to decide what she makes of them.

18. In those circumstances, I am afraid, Ms Adenji, your claim must fail.
19. MR SINGH: My Lord, no applications.
20. THE DEPUTY JUDGE: Thank you very much.