Case No: C5/2009/2183

Neutral Citation Number: [2010] EWCA Civ 371
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM ASYLUM AND IMMIGRATION TRIBUNAL
[AIT NO: AA/05321/2008; AA/05323/2008]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday 18th February 2010

Before:

LORD JUSTICE LAWS
LORD JUSTICE LLOYD
and
LORD JUSTICE SULLIVAN
- -

Between:

SM (IRAN)

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

- -

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Mr Tasaddat Hussain (instructed by Messrs Parker Rhodes) appeared on behalf of the **Appellant**.

Miss Carys Owen (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Laws:

1. This is an appeal with permission granted by Sir David Keene on 19 November 2009 against the determination of the Asylum and Immigration Tribunal notified on 16 July 2009 following a reconsideration hearing on 24 June 2009. By that decision the AIT dismissed the appeal of the appellant, who came to this country (as I shall explain in a moment) with her son who was effectively a co-appellant. Her appeal had been against the Secretary of State's refusal of her claim for asylum and protection against ill-treatment in violation of Article 3 of the European Convention on Human Rights.

2. The appellant is an Iranian national born on 4 February 1961. She arrived with her two sons illegally in the United Kingdom on 4 June 2008. She applied for asylum the next day for herself and her son, AR. The claim was refused on 2 July 2008. The other son also claimed asylum and on like grounds but his case was for some reason dealt with separately and was refused on 21 July 2008. His appeal was dismissed by the Immigration Judge on 13 August 2008. The appellant for her part appealed against the refusal of 2 July 2008. That appeal was dismissed on 26 August 2008. She sought a reconsideration. At the first stage Senior Immigration Judge Jordan on 1 December 2008 held that the Immigration Judge's determination of the appeal was flawed by an error of law consisting in an impermissible approach to issues of the appellant's credibility. So the matter came before the AIT for the second stage reconsideration on 24 June 2009.

3. The appellant's case on the merits is simply summarised by the AIT at paragraph 3:

> "The basis of the claim, as set out in the appellant's initial and supplementary statements, interview and oral evidence at the last hearing, is that she fears persecution from her husband, his family and tribe and from the Iranian authorities. She claims to have been subjected to some twenty years of ill treatment at the hands of her husband, who is of Arab ethnicity (as opposed to her Fars identity), and whom she married in 1988 at her father's insistence. At the time of her marriage she was working as a nurse and living on her own in Ahwaz. Her husband did not approve of her employment and so she eventually gave up work when her older son started school. Some ten years onto her marriage she joined a local art class. She disclosed her marital difficulties to her male teacher. In March or April 2008 her teacher gave her a lift home and she invited him in for a drink so he could see her paintings. Her sons were at friends' houses. Her husband then returned home and found the

> appellant with her teacher. He grew enraged and threatened to harm the appellant. Her teacher fled the house and the appellant's husband locked her in the house along with the children who had returned home. The appellant then called her family for help; her brother arrived in a taxi and took her and the children away. He then arranged for her and the children to travel to the UK. The appellant gave her gold to her brother and he sold it to cover the cost of the journey."

4. The appellant but not her son AR gave evidence. There were reports before the AIT from Dr Huws, a consultant psychiatrist, and Ms Martins, a psychotherapist. Those materials are of some importance in the case given the nature of the grounds of appeal. At paragraphs 86 to 97 of the determination the AIT set out in considerable detail a long series of inconsistencies and contradictions and improbabilities in the appellant's evidence which they came to regard (paragraph 98) as unsatisfactory and as calling into question the credibility of her entire account. There followed further paragraphs containing substantial reasoned points about the facts of the case. The AIT then conclude at paragraph 112 as follows:

> "We therefore conclude that for all the reasons given, we are unable to find that the appellant has told us the truth. We found her to be contradictory and evasive in giving oral evidence and in her written evidence. We find that there are instances where the background material and other documentary evidence does not accord with the appellant's account. We do not accept that the appellant has been the victim of any kind of abuse at the hands of her husband, nor do we accept that she abandoned him in the manner claimed or that she left Iran illegally without her husband's knowledge or consent. We do not therefore accept that she would be at risk of punishment for adultery on return, or of an honour killing or that she would be accused of abandoning him or of taking their sons from him without his consent."

5. The first ground of appeal is that the AIT failed to make any finding as to whether the appellant was suffering from post traumatic stress order (PTSD) and this was important because whether she was or was not so suffering would or might, it is said, have been material to her credibility. The AIT said this at paragraph 82:

> "We accept that the appellant is suffering from depression and migraine and we accept that she was on anti-depressants before she arrived in the UK and that she has continued to rely on them since her

> arrival here last summer. We note that she told her GP, Ms Martins and Dr Huws that she had problems with domestic violence and we accept that they took this at face value. We find that their diagnoses were largely based on the appellant's verbal description of her experiences and symptoms. We bear in mind, however, that the appellant's evidence has been given whilst she has been depressed."

6. Next I should set out paragraph 85:

> "We note that the diagnostic model used by Ms Martins to reach her findings (said to be the Penn Inventory) is missing from the report. Although this was pointed out to Mr Hussain at the start of the hearing and despite his attempts to obtain a copy for us, it remains missing. We are therefore unable to assess how Ms Martins reached her conclusion that the appellant was suffering from post traumatic stress disorder. Although Ms Martins refers to others in the practice having also formed this opinion (last paragraph on p.3), there is no indication to who these others are. We know from Dr Fisher's letter that she has no information about the appellant's claimed problems so she cannot be one of the individuals referred to. We also note that Dr Huws in reaching his 'opinion' (at p.12) does not indicate how he formed the view that the appellant suffered from a depressive illness of moderate severity and PTSD. We find that both reports rely heavily (indeed there is no indication that any other factors were relied on) on the appellant's description of her experiences and symptoms. Whilst we accept that the appellant may well be anxious and depressed, we find it necessary to assess her account before we are able to accept that her condition is caused for the reasons she has given. We are aware, of course, that the appellant's diagnosis is of some assistance in evaluating whether her account can be relied upon."

7. While I accept that the point is not expressly addressed by the AIT it would have been better if it had been. It seems to me from a fair reading of the terms of paragraph 85 that the AIT did in fact not accept the diagnosis of PTSD. It is only if that is the case that sense can really be made of the observations made by the AIT as to the absence of the various sources of the diagnosis in question. However, if that is a fair reading of paragraph 85 it is itself problematic, if only because Senior Immigration Judge Kekic, who was party to the determination, refused permission to appeal to this court in terms which suggest that the AIT did in fact accept the diagnosis. If the diagnosis was

accepted then it seems to me to be clear that the AIT decision by no means demonstrates what the AIT made of that diagnosis. If the diagnosis was rejected, as on an objective reading of the determination seems to me to be the case, then I do not consider with respect that the rejection was based on legally sufficient reasoning and is I think tainted with unfairness. The doctors were bound to place some reliance of what the appellant said. The AIT should have but did not ensure that they had the objective material before them if they were going to reject the diagnosis of both medical experts. To reject the PTSD diagnosis out of hand and for these shaky negative reasons fails in my judgment to accord the case anxious scrutiny which the case required.

8. Miss Owen for the Secretary of State in her very helpful submissions this morning argues that any such legal failure concerning the diagnosis of PTSD was not in the end a material legal mistake, because a diagnosis of PTSD could not have explained the whole range of inconsistencies and contradictions and difficulties in the appellant's evidence. Miss Owen has drawn up a schedule of defects in her evidence and she says the schedule -- certainly some of its items -- demonstrate that not all of the deficiencies in that evidence could have been explained away by a condition such as PTSD. The AIT for its part said this towards the end of paragraph 86:

> "We find that these matters represent serious contradictions in the appellant's evidence which go to the core of her claim and cannot be explained away by her medical problems. Whilst Dr Huws maintains that minor inconsistencies (as noted in the previous determination) are typical of PTSD, he does not suggest that major contradictions can be attributed to this condition."

9. That is not an entirely accurate reading of what is said in Section 4 of Dr Huws' report, where he gave no categoric opinion that major contradictions might not be generated by PTSD. In my judgment it may be a very tall order to postulate that all the unsatisfactory material in the appellant's evidence might be explained by a PTSD diagnosis, but the truth at the end of the argument is that we are in no position to know what might or might not have been the AIT's approach to the evidence if they accepted that the appellant was indeed suffering from PTSD.

10. Miss Owen showed us authority of their Lordships' House demonstrating that this court should be slow indeed to condemn the AIT for some want of reasoning based on the perception of an egregious error which it is unlikely they would have made; that is AH (Sudan) [2007] UKHL 49. Sedley LJ in Entry Clearance Officer, Mumbai v NH (India) [2007] EWCA Civ 1330, referring to AH (Sudan), indicated that this court ought to avoid what he described as "a microscopic search for error". We have not forgotten that guidance but it seems to us in the end that this is a classic reasons case, and the appellant, given the long standing requirement of anxious scrutiny in this context, was entitled to have a clear decision as to whether she was suffering from PTSD and, if so, what effects it had on her evidence.

11. The second ground of appeal advanced by Mr Hussain is, and I take it shortly, that the AIT had no business discounting the evidence of Dr Huws at paragraph 85. I quote the skeleton:

> "…based on the point that it is mere '*opinion*' and his report does not contain an explanation of how this professional opinion was reached."

However, the AIT did not discount Dr Huws' evidence because it was described as mere opinion. The term 'opinion' in paragraph 85 is really a quotation from the report itself. It is not, as I read the text, intended to be nor was it derogatory of the doctor's conclusions. In my judgment ground 2 adds nothing in effect to ground 1.

12. Lastly Mr Hussain has put in a lengthy further skeleton argument, much of which seems to be devoted to the task of persuading the court to treat this determination under appeal as if it were a country guidance case. That is nowhere within the four corners of this appeal properly constituted. Pressed about it, Mr Hussain took us this morning to paragraph 81 of the determination and indicated that he was anxious to preserve for any future hearing the finding in the first sentence of that paragraph:

> "We accept that women in Iran can form a particular social group."

He acknowledged that that looked like a departure from an earlier country guidance case. It seems to us that Mr Hussain is indeed seeking to persuade this court to treat the determination as a country guidance case. We are in no position to do any such thing and for my part I would base nothing in this judgment on anything said in the second skeleton argument.

13. However, I would allow this appeal on the first ground only for the reasons I have given. If my Lords agree it would no doubt be appropriate to direct that the matter be remitted for a further hearing of the second reconsideration stage.

Lord Justice Lloyd:

14. I agree

Lord Justice Sullivan:

15. I also agree

Order: Appeal allowed