Case No: C5/2006/2221

Neutral Citation Number: [2007] EWCA Civ 306
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL
[AIT No: AA/00247/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 15 March 2007

Before:

LORD JUSTICE PILL
LORD JUSTICE KEENE
and
LORD JUSTICE MOORE-BICK

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Between:

HH (Ethiopia)	**Claimant/ Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant/ Respondent**

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MR D BAZINI (instructed by Messrs HCL Hanne & Co) appeared on behalf of the Appellant.

MR C BOURNE (instructed by Treasury Solicitors) appeared on behalf of the Respondent.

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Judgment

Lord Justice Keene:

1. The appellant, a female citizen of Ethiopia, now aged 22, appeals from a decision of the Asylum and Immigration Tribunal ("AIT") dated 23 November 2005. That decision was made as the result of an order for reconsideration under section 103A of the Nationality, Immigration and Asylum Act 2002 of an Immigration Judge's decision to dismiss both her asylum appeal and her appeal under Article 3 of the European Convention on Human Rights.

2. A few, but only a few, of the facts of the case are not in dispute. The appellant, who was born in Addis Ababa in February 1985, is a single woman found by the Immigration Judge to be an Oromo. She arrived in this country in March 2005 and claimed asylum. Her claim was based on an alleged fear of persecution in Ethiopia because she was related to two family members -- her father and an uncle -- who had been, she said, arrested and imprisoned for political activities there on behalf of the Oromo Liberation Front ("the OLF").

3. At the heart of the case in fact was her credibility. The Immigration Judge did not accept that her father and uncle had been imprisoned for political activities and he rejected her account of having been detained and beaten by the authorities in Ethiopia. He found that the Ethiopian authorities had no adverse interest in her and his decision to dismiss her appeals was ultimately upheld by the AIT.

4. It is necessary to set out her account of events in a little more detail. She said that she had originally lived with her father in a small town about 45 kilometres from Addis Ababa, but from the age of 10 had been sent to live with her uncle in that city to obtain a better education. Both her father and uncle belonged to the OLF and contributed money to it. She said that they held weekly OLF meetings at her uncle's house, but she did not herself attend them; she only carried in drinks. Her evidence was that her father was first arrested in December 2004 and then released. Then in January 2005 both he and her uncle were arrested; her father first and then some time later her uncle.

5. According to her evidence, on 20 February 2005 she herself was arrested while out shopping. She was taken to a detention centre where she was held for some five days. During this time she was interrogated about the activities of her father and uncle and she was kicked and beaten on her back and legs. Eventually she was released on condition that she sign a piece of paper saying that she would go back and give more detailed information about the activities of her father and uncle. Upon her release, she said, she did not go home but went to stay with a friend of her uncle in Addis Ababa for two weeks before leaving for this country on 15 March 2005.

6. Apart from her own evidence the Immigration Judge had before him background evidence about conditions in Ethiopia, including a CIPU assessment of April 2004 and a medical report from Dr Anna Hiley, who works as a general practitioner in a specialist practice for asylum seekers and who saw and examined the appellant on 20 June 2005. The background evidence indicated and the Immigration Judge noted that the Ethiopian government did arbitrarily detain thousands of people suspected of being members of or sympathisers with the OLF. Security forces detained family members of those sought for questioning.

7. Much of the argument in this case turns on the medical report and it is therefore helpful to summarise Dr Hiley's evidence at this stage. Her report set out the account which she was given by the appellant, including the latter's descriptions of herself as depressed and suffering from insomnia, poor appetite and weight loss. The account included also the description of being beaten and kicked while in detention. The report by Dr Hiley then deals with what was found on examination:

> "16. The types of injuries described by Miss H do not typically leave permanent scarring. She did not describe any injuries which bled but only deep bruising. It is therefore unlikely that significant diagnostic scars would be seen. However on examination I have identified the following scars:
>
> "17. On the inside of the right thigh there is a small circular irregular and pale scar of unknown origin. On the back there are two patterns of scarring, firstly on the left upper spine over the shoulder blade there is a circular pattern of well healed scars which could be consistent with being beaten across this bony prominence. Below this to the right side of the spine there is a pattern of four smaller circular but irregular scars, it is possible that these patterns of scarring were caused by being beaten."

8. In her conclusions Dr Hiley said that it was her opinion that the appellant was the victim of imprisonment and beatings in the way that she had described. The doctor went on to say this about the scarring:

> "There is little physical evidence which can absolutely confirm this lady's history; however the types of injury described would not be expected to leave diagnostic scars. I would therefore not recommend any conclusion is drawn for any lack of scarring."

In those conclusions the doctor expressed two further opinions: one, that she, the doctor, believed that the appellant was suffering from some elements of post-traumatic stress; and two, that:

> "Whilst the history given today was consistently delivered it is not unusual for patients who have experienced trauma to become confused or to remember details inaccurately when they are later asked about them."

9. The Immigration Judge in his consideration of the appellant's credibility was clearly concerned about her lack of knowledge of the OLF. In interview she had been unable to say what OLF stood for, who the leader was or what its aims or objectives were. He acknowledged that she was not personally involved with it or its meetings, but he said at paragraph 22 of his determination:

> "I find it very difficult to reconcile the appellant's account that her closest relatives were involved with OLF and hosted regular meetings with her almost total lack of knowledge about the movement. It is hard to imagine how an Oromo living with OLF

> activists over a period of years in early adulthood could fail to pick up the basics about the organisation."

10. The Immigration Judge then dealt with a number of alleged discrepancies in her account of events, which the Home Office presenting officer had relied on. For some of those the judge attached no weight, for reasons which he gave. However, he did attach some weight to others. Thus he noted that the appellant had given inconsistent accounts of where her father and uncle had been at the time of their arrests in January 2005, and she had not mentioned in interview signing a paper before release. He found her oral evidence about the contents of the paper to be vague and he described her as having become very evasive on the issue of her addresses in Ethiopia.

11. The Immigration Judge then went on to deal with the medical report. He said that he disregarded Dr Hiley's view that the appellant had been imprisoned and beaten as described because that was something he had to decide on all the evidence. He then went on at paragraph 28 to deal with the rest of the report, saying:

> "She refers to the appellant suffering from some elements of PTSD and symptoms of depression. She says [that] there is little physical evidence which can absolutely confirm the history. However, she notes that the types of injury described would not be expected to leave diagnostic scars. She does not recommend that any conclusion be drawn from a lack of scarring. That said, on examination, she did record two patterns of scarring on the appellant's back consistent with being beaten on bony prominences. With all due respect to Dr Hiley, I am not able to place much weight on her conclusions in this particular case. There is a tension between her statements that the appellant has consistent scarring and that there is little physical evidence to confirm the appellant's claim. Dr Hiley is a GP with a special interest in asylum seekers and with basic training from the Medical Foundation. I would place less weight on her opinions than those of more qualified specialists. The appellant therefore derives little corroboration from the diagnosis of elements of PTSD and depression. Dr Hiley does not seem to have considered that these could have other causes, such as the anxiety and loneliness felt by all asylum seekers, particularly those who have already been refused by the Home Office."

Finally, the judge said at paragraph 29:

> "Drawing these points together, I conclude [that] the appellant has not told the truth with regard to her claim and that there is no reason for her to fear the Ethiopian authorities on account of an imputed political opinion. I find her claim that her father and uncle were imprisoned due to political activities to be untrue. It follows I find [that] she was never detained or assaulted and that there is no adverse interest in her on the part of the authorities. She has not discharged the burden of proof with regard to either the asylum or article 3 grounds of appeal."

That is the last substantive paragraph in his determination.

12. The AIT had to deal with a number of challenges to that decision, many of which do not now feature in the appellant's case, which on this appeal is based upon the approach taken to the medical evidence. On the scarring the AIT noted that the evidence of scarring, such as it was, did not advance the appellant's case to any significant extent. The tribunal also held that the Immigration Judge had been entitled to limit the weight placed upon Dr Hiley's views about post-traumatic stress, since she was not a psychiatrist or possessed of specialist psychiatric training.

13. Finally, the AIT dealt with an argument based upon the decision in Mibanga [2005] EWCA Civ 367; it was contended the judge had failed to treat the medical report as part of the overall evidence to be considered "in the round" before coming to any conclusion on the appellant's credibility. It rejected that contention on the basis that the judge had twice stated that he was considering the evidence in the round in the light of all the circumstances. It rejected the appeal.

14. The appellant now challenges that decision. At one time there was a suggestion that the Mibanga argument, if I may so describe it, was going to form one of the grounds of this appeal, namely that the Immigration Judge and the AIT erred in law and in effect that, as in Mibanga, the judge had reached his adverse conclusion on credibility before dealing with the medical evidence.

15. Mr Bazini this morning, appearing on behalf of the appellant, does not now rely on that contention and, in my judgment, rightly. What this court criticised in Mibanga was a decision maker who had conclusively rejected the central features of the appellant's account of events before considering highly relevant medical evidence. The defects in that case, as Buxton LJ emphasised, were the artificial separation of the medical evidence from the rest of the evidence and the reaching of a conclusion on credibility before dealing with the medical evidence; what his Lordship there called "a structural failing". As Mr Bazini in effect acknowledges, that structural failing is not present in this appeal. As I have already indicated the judge in the present case went through the alleged discrepancies and then the medical evidence before arriving at this eventual conclusion on credibility in paragraph 29. He did not artificially separate the medical evidence from credibility. This case is far closer to the situation in the case of S v SSHD [2006] EWCA CIV 1153, drawn to our attention in the argument on behalf of the Secretary of State, where it should be noted this court described the Mibanga case as an exceptional one because of the powerful and extraordinary medical evidence.

16. In S this court also approved the passage which appears in the AIT's decision in the present case at paragraph 21. That reads as follows:

> "The Tribunal considers that there is a danger of Mibanga being misunderstood. The judgments in that case are not intended to place judicial fact-finders in a form of forensic straightjacket. In particular, the Court of Appeal is not to be regarded as laying down any rule of law as to the order in which judicial fact-finders are to approach the evidential materials before them. To take Wilson J's

> 'cake' analogy, all its ingredients cannot be thrown together into the bowl simultaneously. One has to start somewhere. There was nothing illogical about the process by which the Immigration Judge in the present case chose to approach his analytical task."

Like this court in the case of S, I respectfully agree with that passage.

17. The first ground which is pursued orally this morning is that the Immigration Judge was wrong to disregard, as he said he did, the doctor's view that the appellant had been the victim of imprisonment and beatings. Mr Bazini, in response however to questions from this court, accepted that it was not for the doctor to reach an overall conclusion on the credibility or otherwise of the victim's account. The most that any doctor could say was the physical and psychological condition of an appellant was consistent with her story. Mr Bazini says that was all the doctor was doing in her report in this case.

18. I entirely agree that that is all that a medical report should do, but in fact the doctor in this case at paragraph 19 did purport to go further than that and did purport to pronounce on the credibility of the person's account which had been given to her. In my judgment she should not have done so. That is not the function of a medical expert. It is the task of the Immigration Judge to look at all the evidence, including the medical report, and to arrive at a conclusion on credibility.

19. The next ground of appeal, elaborated on in the written argument on behalf of the appellant and not given a great deal of emphasis orally this morning, is of a more conventional variety. It is contended that the Immigration Judge failed to take into account that part of Dr Hiley's report where she referred to it not being unusual for those who have experienced trauma to become confused or to remember details inaccurately when they are later asked about them. Mr Bazini submits that this could have explained some of the discrepancies in the appellant's evidence and that the Immigration Judge did not consider whether they might have arisen in such a way.

20. As I have indicated, he does not put this at the forefront of his submissions and in my judgment he is correct to take that approach. I am not persuaded by the line of argument in question. First of all, it is clear that the Immigration Judge here did take into account the medical report. He does not expressly cite the one sentence from it which is now relied upon by the appellant, but that is not surprising because the submissions made to him did not single out this point for mention. Secondly, it is a point which, given Dr Hiley's lack of psychiatric qualification, could only have had limited weight in any event. Thirdly, at the forefront of the judge's reasoning on credibility was the appellant's ignorance of the OLF and its features. That was not a matter of confusion or of remembering details of traumatic events inaccurately, which is the possibility referred in Dr Hiley's report. The alleged weekly meetings in her uncle's home had, according to the appellant's answers in interview, been going on over a very long time and yet she knew very little indeed about that body. In contrast she was actually able to give quite detailed evidence about the alleged traumatic events of her own arrest, detention and beatings, except in respect of the paper which she had signed. I see nothing in this argument.

21. The third ground of appeal concerns what is said to be an unreasonable interpretation by the Immigration Judge of the medical evidence. There are a number of specific points taken under this head. First, the appellant criticises the judge's statement that:

> "There is a tension between her [Dr Hiley's] statements that the appellant has consistent scarring and that there is little physical evidence to confirm the appellant's claim."

Mr Bazini argues that there is no tension between these statements because scarring consistent with the appellant's account does not mean that the doctor was saying that was how the scars were caused. There were no diagnostic scars. That may be what the doctor meant by the passages in her report which I have set out earlier but I am bound to say that the doctor's report, to my mind, is unclear in the passages which are referred to. It is far from easy to see what the doctor meant, but I can certainly understand why the Immigration Judge used the word "tension". On the face of it there was some degree of inconsistency between saying on the one hand that she had scars consistent with her account and on the other saying that the injuries which she had described would not normally give rise to any scarring.

22. In any event, whether the Immigration Judge's comments were justified or not, the medical report in relation to scarring simply does not help the appellant. Dr Hiley's evidence about scarring gave no real support to the appellant's case. As I have set out earlier, the medical report says in terms that the type of injuries described by the appellant do not typically leave permanent scarring. She had not described any injuries which bled. Therefore, unlike some cases which one sees, the scarring which was found in this case did not add anything of any real significance to the appellant's case. That was the point which was being made by the AIT in its decision and in my judgment it was right to do so. Certainly I can find no error of law in this respect on the part of the Immigration Judge.

23. Next the appellant criticises the AIT for saying that Dr Hiley was not a psychiatrist or someone with other specialist psychiatric training and yet not mentioning that, according to her curriculum vitae, her experience included psychiatry. However, all that the AIT was doing was upholding the Immigration Judge's entitlement to attach little weight to Dr Hiley's diagnosis of PTSD because of her lack of a specialist psychiatric qualification. Mr Bazini says that the judge was wrong to attach little weight to that diagnosis of PTSD and wrong to say that the doctor should have considered other possible causes of the appellant's depression. I disagree. He was entitled to comment as he did, especially since the diagnosis was very largely dependent on assuming that the account given by the appellant was to be believed. I could see no error of law here.

24. Standing back and looking at the medical evidence in this case in the round, it seems to me that the Immigration Judge and the AIT were fully entitled to regard it as being of little real significance when it came to deciding whether or not the appellant's story was true. Physical scarring, according to Dr Hiley, was not something which one would expect from the injuries described. As for the appellant's mental state, there was no specialist evidence from a qualified

psychiatrist. The report simply provides no basis for finding any legal error in the decision on credibility arrived at by the Immigration Judge or in the decision of the AIT.

25. For my part I would dismiss this appeal.

Lord Justice Pill:

26. I agree that this appeal should be dismissed for the reasons given by my Lord, Lord Justice Keene. There is nothing that I wish to add.

Lord Justice Moore-Bick:

27. I also agree.

Order: Appeal dismissed, there be a detailed assessment of the Appellant's publicly funded costs.