Case No: C5/2008/0165

Neutral Citation Number: [2008] EWCA Civ 1299
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No AA/02545/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 7th November 2008

Before:

LORD JUSTICE RIX
LADY JUSTICE SMITH
and
LORD JUSTICE TOULSON

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Between:

OD (IVORY COAST)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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Ms C Kilroy (instructed by Refugee Legal Centre) appeared on behalf of the **Appellant**.

Mr J Hyam (instructed by The Treasury Solicitor) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Toulson:

1. OD appeals against the dismissal of his asylum and human rights claims. The appellant is a citizen of the Ivory Coast. He was born in Ferkessedougou, in the north of the country, on 19 February 1978. He is Muslim and of Dioula-Malinke ethnicity.

2. He travelled to the United Kingdom from the Ivory Coast via Togo and France, arriving on 31 December 2006, and claimed asylum two days later. His application was refused by the Secretary of State. His appeal was heard by Immigration Judge Rose, who dismissed it for reasons set out in a determination dated 20 April 2007. Reconsideration was ordered on limited grounds. It was agreed between the parties at first stage reconsideration that the immigration judge's determination was deficient in two respects: first, he had not found whether the appellant, on being returned to the Ivory Coast, would continue with his previous political activities; secondly, in assessing the question of risk to him on return at the airport, the immigration judge had not made it clear that he had considered whether the appellant's ethnic and geographical origin, his religion and his activities in the United Kingdom would increase his risk on return, although he had referred to those matters in the course of his determination. Whether the AIT would have ordered reconsideration if they had then had the benefit of the observations of Baroness Hale in A (Sudan) & Ors v SSHD [2008] 1 AC 678, [2007] UKHL 49, to which I will refer later, is possibly moot but that is past history.

3. It was agreed that second stage reconsideration should be by the same immigration judge who had heard the original appeal. In his second determination, dated 7 November 2007, Immigration Judge Rose again dismissed the appeal.

4. The essence of this appeal is that the immigration judge misdirected himself as to the effect of the guidance provided by the AIT in GG (Political Oppositionists) Ivory Coast CG [2007] UKAIT 00086, or misapplied it.

5. In his first determination the immigration judge accepted the appellant's account of his activities in the Ivory Coast and how he came to leave that country. The appellant described himself as having been an activist in the opposition party Rassemblement des Républicains ("RDR") from 1996. He became a registered member in 1999 at the branch in the area where he was then living at Banco, Abobo, Abidjan. Banco is a suburb of Abidjan in the very south of the country, his birthplace being at the northern end of the country.

6. The appellant became one of twelve key members in his local branch of the RDR. When there were national RDR demonstrations or rallies he would arrange venues for local meetings and would produce banners and posters. He attended RDR demonstrations in Abobo in 2000 and monitored a polling station in Banco during local elections in 2001. In February 2004 he married -- he and his wife lived in Banco. Soon after his marriage he was assaulted by the police at a demonstration and his right arm was broken. He and others

were detained for two days but released after pressure from human rights organizations and others. In July 2005 the police searched his area for those suspected of attacks on gendarmeries. He went into hiding for a month. While he was away his house was searched, although the immigration judge found that the police were not particularly searching for the appellant.

7. The episode which caused him to leave the Ivory Coast occurred in December 2006. An RDR activist called Yao Bakary was killed by police at a demonstration in Koumassi, Abidjan. He was given a martyr's funeral, which the appellant attended. On the return journey the vehicle in which the appellant was travelling was stopped by gendarme commanders at Plateau, Abidjan. He and others in the vehicle were wearing RDR T-shirts. The police demanded to see their documents; his included an RDR membership card. He and three others carrying RDR membership cards were then taken to Kamassi Commando Camp. There they were beaten with belts and kicked. On the next day they were forced to crawl on their knees and elbows in the sun and received more beatings. Later he passed out in his cell. He woke to find that his guards had poured water over him to revive him. They gave him back his clothes and personal belongings, including a small amount of money, and took him to a civilian hospital. There he was seen by a doctor who said that he needed to be admitted and put on a drip. The doctor told the appellant's escorts to leave the room and the appellant was left on his own while the doctor went for medication. The appellant took this opportunity to escape. He went by taxi to a friend's place; there he called his wife and told her to leave home. She went back to her parents some hundreds of kilometres to the north. The appellant's friend made arrangements for him to leave the country. He was met in London by an RDR official and subsequently became involved in RDR activities in London. The immigration judge described the appellant as a mid-level RDR activist.

8. Between the dates of the first and second appeals heard by the immigration judge the AIT delivered its judgment in GG. On the second appeal both parties' representatives made submissions about the effect of GG. The immigration judge referred to their submissions in his determination. He said that he would deal separately in his determination with the two subjects on which reconsideration had been ordered, but that in his assessment of risk he would consider the evidence in the round. He then addressed the specific points on which reconsideration had been ordered. As to the appellant's birthplace, religion and ethnicity he accepted that these were factors which had to be taken into account, along with his political profile, in reaching an overall determination about the risk of persecution or serious ill-treatment on the appellant's return. He did not accept that the appellant's activities in the UK had materially increased any risk to him on return. After considering the evidence he concluded that the appellant's name was not likely to be on a wanted list at the airport on his return. As to the appellant's future intentions, the immigration judge accepted that he intended to remain politically active on his return.

9. He then turned to his general conclusions on the evidence and material before him. He set them out as follows.

"64. In the context of risk generally, I bear in mind guidance given by the AIT in GG, which also deals with the observations of the UNHCR position of October 2006, which advised against returns until such time as the security and human rights position had improved sufficiently to justify resuming returned failed asylum seekers. In that context, I note the Appellant's evidence (WS 32) that 'the peace movement is moving forward, I'm not saying it isn't' and that, for the present at any rate, there are cautious grounds for optimism, noting that some six months have passed since I last reviewed the situation. The UNHCR paper (AB 'A' at 33) states that 'following the signing of the Ouagadoudou Agreement, there is no longer a situation of generalised violence in Cote d'Ivoire…security concerns today lie primarily with the militias and other armed individuals acting independently of the militia and *Forces Nouvelles*.'

65. The Appellant, as I accept, intends to carry on his party activity in Abidjan. There is no foundation for supposing that he is a high-ranking RDR member and Ms Caucci accepts that he operated at a medium-level. Although each case must depend on its own facts, I note that the AIT in GG ascribed a risk profile to mean 'something more than being someone with an official position in a local branch of a party' (at 84). In that context, I note that the Appellant has described himself as a delegate for the Abobo Banco branch of the party in Abidjan, a position which would appear to be similar to that described in GG.

66. Without straying too far into the ground already covered in my earlier determination, I bear in mind the Appellant's evidence of two detentions, one in March 2004, the other in December 2006, accompanied by some ill-treatment, each the consequence of participation in a demonstration when he was arrested with other RDR members. Although his home may have been raided in July 2005, on his own account he had no problems with the authorities for nearly a year and a half while living in Abidjan. I do not accept that such evidence establishes a consistent pattern of violence or adverse interest such as to warrant the grant of international protection.

67. Although the Appellant claims that he would be arrested immediately on arrival, detained, tortured and possibly killed, I find that, even as a Muslim northerner and mid-ranking RDR activist, he has not shown that such ill-treatment is reasonably likely to occur on return as a failed asylum seeker. For reasons already stated, I find that he has not established that his name is on a wanted list at the airport.

68. As to the second ground of reconsideration, I have accepted that he intends to remain politically active in Abidjan (indeed that was the tenor of my earlier determination). On his own account (WS supra paragraph 28), the Appellant states that 'most of the RDR leaders live in Abidjan', a factor of some significance in relation to the assessment of risk on return in Abidjan at the present time. Indeed, in oral evidence, dealing with return to the north, he stated that he could not access protection from the RDR in the north because the party leaders lived in Abidjan. He has not established that he would be at risk of persecution there, for reasons already stated. In that context, I also bear in [m]ind that six government portfolios are now held by RDR ministers.

69. Even if had established a persecutory risk to Abidjan, I adopt the findings set out in my determination with regard to the practicability of getting to the north, a journey that may be difficult, even dangerous, but which, for the reasons given, does not present insuperable difficulties, although there is clearly a risk of violence, extortion and robbery to the populace at large. There is no new evidence which suggests that the situation for travellers has changed significantly since April 2007.

70. Similar problems also beset the generality of the population in the north. The Appellant's parents and two brothers live in Ferkessedougou, supported by earnings of other siblings in Abidjan. I bear in mind that they are said to be RDR supporters, rather than activists, but note that they appear to not to be suffering particular difficulties arising from their political affiliation.

> 71. The Appellant plainly has close family members in the north and although he left Ferkessedougou in 1997, at the age of 19, the roots of his ethnic and religious identity are there. I accept that conditions for him on return would be unpleasant, even harsh, but note the widespread support for the RDR among his ethnic and religious community there. Furthermore, the Appellant is a young, fit male, now aged 29.
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> 72. For these reasons, I maintain my assessment of risk on return. The Appellant has not shown that he would not be safe, within international norms of protection, on return or while living in Abidjan, allowing for his level of political involvement in IC and in the UK. He has not established a real need for international protection to the requisite standard of proof. Internal location is a viable option and would not be unduly harsh."

It is said by Ms Kilroy on the appellant's behalf that the immigration judge misapplied the GG guidance. His reference in paragraph 65 to a risk profile as meaning "something more than being someone with an official position in a local branch of a party" (from para 84 in GG) was a misleading abbreviation. It is submitted that he missed the main point of the judgment in GG. It was argued that in GG the AIT had found that there was a clear risk to activists on return. The immigration judge had found that the appellant was an activist. Accordingly, he ought to have found that there was a real risk of persecution or human rights violation on return. The immigration judge was wrong to downgrade his assessment of risk by calling the appellant a "mid-ranking activist". This was to introduce a distinction not found in GG. Furthermore, the immigration judge failed to weigh adequately the additional risk factors of birthplace, religion and ethnicity. Moreover, he dealt inadequately with the risk arising from the appellant's activities in the United Kingdom. If the immigration judge understood GG, then for those reasons he misapplied it.

10. Ms Kilroy took us to the judgment in GG. She relied particularly on the following passages:

> "84. We consider that taken as a whole the background evidence does not bear out that the political oppositionists in the Ivory Coast in general face a real risk of persecution or serious harm or ill-treatment on return. However, where a person is able to establish a political profile as an activist political oppositionist (whether as a member from a southern political party (e.g. the RDR) or as a member from the northern-based FN), the position may well be different, at least so far as risk in that person's home area is concerned. For the sake of

clarity we emphasise here that by activist or militant we mean something more than being someone with an official position in a local branch of the party. Likewise, a person who is not a member but merely a supporter of the RDR or the FN (or other oppositionist party or organisation) may, depending on the circumstances, be able to show a real risk if he or she is also an activist. Once again, however, that leaves the issue of whether he or she would have a viable option of internal relocation.

85. In reaching the above conclusions we acknowledge that there were more incidents of threats and violence directed against certain political opposition parties (including the RDR) in 2006 than in 2005. However, as before, it was primarily directed to oppositionist (especially RDR) leaders and activists and those closely involved with them. While the background evidence (including Mr Reeve's report) does bear out a continuing real risk of persecution or ill-treatment to high-level opposition party members or to activists, it does not demonstrate that low-level or medium-level members or supporters are at risk: the principle thrust in his report is that there is a serious risk on return to active members or supporters, not to low-level or medium-low-level oppositionists.

88. In the context of deciding cases involving persons claiming to be at risk because of their actual or perceived membership of, or support for, political opposition parties or groups, we consider that the existence of certain other factors may raise the level of risk, although whether they raise it enough to cross the threshold of persecution or serious harm or ill-treatment will depend on the particular facts of the case. The factors we have in mind are: being of a particular ethnic or ethnographic background, being a northerner, being a Muslim and being a perceived (West African) immigrant. However, it seems to us that the background evidence (including Mr Reeve's expert report) reflects the fact that none of these is sufficient in itself to give [rise to] a real risk. Even in combination with a low or medium-level political profile as an oppositionist, we do not think that such factors will normally give [rise] to a real risk; but we do not rule out that they may sometimes operate as additional risk factors of some significance."

11. Decisions in country guidance cases are authoritative, but the language used by the AIT in GG is not to be construed as if it were a statute. In any organisation activists may operate at different levels. The AIT has indicated that a member of an oppositionist party would not ordinarily face a real risk of persecution or serious ill-treatment on return to the Ivory Coast. The position may well be different if a person is an activist, but that is not the same thing as saying that it will necessarily be different. Whether such a person is at real risk of persecution or serious ill-treatment is a matter for the immigration judge to assess on the evidence, which would include taking into account the extent of his activism, ie what he did for the organisation. To label a person an activist is not the end of the inquiry. The task of the immigration judge is not a simple tick box exercise. It should involve making an assessment of risk on the full evidence before the tribunal; that is why we have experienced immigration judges. The weight to be attached to any particular factor is again a matter of judgment. Accordingly, this case did not fall to be decided simply by pinning on the appellant the label of "mid-level activist"; and the same applies with the addition of his personal factors relating to birth and the like. As I listened to the development of Ms Kilroy's submissions, I found my mind going back to the guidance given by Baroness Hale in AH v SSHD. Although well familiar to all who deal in this area of the law, it nevertheless merits repetition. She said at paragraph 30:

> "This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see Cooke v Secretary of State for Social Security [2001] EWCA Civ 734, [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

12. I am unpersuaded that the immigration judge misunderstood the impact of GG: that would be most improbable. Nor am I persuaded that he misapplied it, ie reached conclusions which no immigration judge properly considering the guidance in GG could have reached. He reviewed the evidence and the materials before him. Another tribunal might have made different findings or expressed itself differently, but the appellant falls far short of showing that the

immigration judge reached a decision that was not properly open to him. However tempting it may be for an advocate who has obtained leave to appeal on behalf of his client to reargue the case as though it were before the immigration judge, that is to misunderstand the role of this court.

13. Ms Kilroy relied, as already mentioned, on matters relating to the appellant's ethnicity, birthplace and religion and also on his political activities in London as part of her main attack on the immigration judge's determination, but she also advanced them as separate grounds of appeal; she had been given leave to do so, although leave was granted on the basis that these issues were closely related to the main ground. They are indeed closely related to the main ground. As to the significance of the appellant's political activities in the United Kingdom, the immigration judge arrived at findings of fact which appear to me to be unimpeachable. As to the other factors of birthplace, ethnicity and religion, he made clear that he did consider them. It was argued that he did not go into them in sufficient detail in his determination. Conciseness in a judgment is not in itself a fault, indeed it is often a merit.

14. An immigration judge's determination should cover four elements, but the length to which the judge needs to go is variable. As with any judgment, it should be as long as it needs to be but no longer. The four elements which should be covered are these: the judge should direct himself as to the relevant law; he should identify the important facts or factual issues and, where these are disputed, should state his findings; he should state the overall conclusion which he draws from his factual findings and from the material before him as to whether the appellant has a valid asylum or human rights claim; and he should explain his reasons for arriving at those conclusions sufficiently that the parties can see that he has considered the relevant matters and can understand why he has decided the case as he has.

15. In reviewing the adequacy of an immigration judge's determination, an appellate court must follow the guidance of Baroness Hale to which I have referred. In this case the determination covered all that it needed to cover. It was well reasoned and the conclusions were open to the immigration judge. There is one final matter to which I must refer. The appellant was also given leave to appeal against the immigration judge's findings in relation to internal relocation. The case advanced in relation to that was that the alleged errors which affected the immigration judge's approach to the primary question also affected his approach to the question of internal relocation, but that issue does not arise for consideration by us if the appellant fails on his main ground of attack. It is therefore unnecessary to say more about it.

16. In conclusion, in my judgment this was a clear and well-reasoned judgment by the immigration judge against which no proper ground of criticism has been made out or could be made out. I would therefore dismiss the appeal.

Lady Justice Smith:

17. I agree.

Lord Justice Rix:

18. I also agree.

Order: Appeal dismissed