Case No: C5/2007/1556

Neutral Citation Number: [2008] EWCA Civ 112
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No. AA/047779/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 14th January 2008

Before:

LORD JUSTICE MAURICE KAY,
LORD JUSTICE LAWRENCE COLLINS
and
SIR PAUL KENNEDY

- -

Between:

GN (IRAN) — **Appellant**

- and -

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

- -

(DAR Transcript 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)

- -

Miss J Fisher (instructed by Mitre House Chambers) appeared on behalf of the **Appellant**.

Mr A Henshaw (instructed by Brick Court Chambers) appeared on behalf of the **Respondent**.

- -

Judgment

Lord Justice Maurice Kay:

1. The appellant is a citizen of Iran. He arrived in this country on 25 April 2005 and claimed asylum. His application was refused by the Secretary of State. He appealed to an immigration judge who dismissed his appeal on 3 August 2005. There was then an application for reconsideration, which resulted finally in a second stage reconsideration determination, promulgated on 27 April 2007. Again, the appellant was unsuccessful.

2. The factual background can be summarised as follows: the appellant and his parents and sisters lived in Tehran. Indeed, the other members of the family still live there. He did Iranian military service. In due course he operated a gym which became a very successful business with some five hundred members, about a hundred of whom were women. The appellant has never been supportive of the regime in Iran, but nor has he involved himself in any political activities. Whilst running the gym he formed relationships with female members who, on his evidence, were always widows. From time to time he would give advice to female members about diet and exercise routines. He denies that he ever became involved with any married women, despite the fact that some had made advances towards him. His problems began in the summer of 2001 when the religious (as opposed to the civilian) police came to the gym. The appellant was handcuffed, blindfolded and taken to a detention centre. He was interrogated and accused of having had an affair with a married woman: a member of the gym. He was severely beaten, kicked, punched and slapped. He was hit on the head with a rifle butt. However, he maintained his denial of the alleged relationship.

3. That detention lasted some two weeks, in the course of which he was tortured on five occasions. At the end of that detention he was transferred to a prison in Tehran where he was put in solitary confinement for a week. He was accused falsely of being involved with the Mujahadeen. He was then detained for a further four months without charge, but his release was eventually procured when his father paid a bribe and handed over the deeds to the family home. The appellant signed an undertaking, promising not to become involved in politics, and was required to report to the local police station on a monthly basis for six months. He duly did so without incident. At the end of the six months the house deeds were returned, and he resumed running the gym which, in the meantime, had been looked after by his father and a friend. Thereafter he was more circumspect and did not became involved with any female members.

4. He continued to receive regular visits from the religious police, who complained that the music played in the gym was insufficiently Islamic, and further complained about posters and photographs on the walls depicting scantily dressed persons engaged in exercise. The religious police also sought bribes but he refused to pay any. In April 2005, two officers from the religious police came again and accused him of having an affair with a married woman. There was an incident in the course of which the appellant lost his temper and shouted remarks derogatory of Islam. There was a fracas,

but the appellant was able to run away. He went to a friend's home. His own home was raided the following morning but nothing was found. It was those events which precipitated his departure from Iran and his journey via Turkey to the United Kingdom. Part of his case before the AIT was that he had become friendly with members of the Roman Catholic Church in this country and had become interested in the Christian religion. He maintained that he was considering conversion to Christianity but had not yet done so. His fundamental case was and is that, if returned to Iran, he would be mistreated to a level which would involve a breach at least of Article 3 of the European Convention of Human Rights and Fundamental Freedoms because of the false allegation that he had had an adulterous affair with a married woman, and also because of his interest in Christianity.

5. It is not necessary to say anymore about that latter aspect of the case because the AIT made findings which did not support the totality of his religious case and no appeal has been brought in relation to that aspect of the matter. The case before us is concerned entirely with Article 3 and what might happen to the appellant on a forced return to Iran. Although at this stage it is appropriate to set out the central findings of the AIT, it is pertinent that the Tribunal accepted the evidence of the appellant on all matters except the absolute genuineness of his current interest in Christianity. It certainly accepted his factual account of what had happened between 2001 and 2005 at the gym at the hands of the religious police and during the periods of detention to which I have referred. The conclusion of the tribunal is expressed first in this passage, at paragraph 49 of the determination:

> "We therefore find the Appellant was the owner of a gym in Tehran which had a large membership, one quarter of which was female. We find that he was arrested, detained and tortured in 2001 and released upon payment of a bribe and subject to conditions. We find that his continued operation of the gym attracted the interest of the religious authorities from his release until 2005. We find that he was again visited by the religious authorities in 2005 and once again accused of adultery which led him to flee."

6. The tribunal then identified the central issue as being the assessment of risk on return, which required consideration of the reason why the appellant had been targeted by the religious police in the first instance. The conclusion as to that was that the religious authorities were interested only in the closure of the gym and not in pursuing the appellant personally. It is appropriate to set out the detailed reasoning of the tribunal in that regard. It is to be found in paragraphs 51, 52 and 53 at page 54 of the bundle.

> "51. We find that the reason the Appellant was targeted was because he owned a gym which had a membership which included women and that such an organisation was disapproved of by the religious authorities. Their actions confirm this. He was

arrested and detained in 2001 on a false accusation of adultery. He was tortured but was never taken before the court. It was Miss Fisher's own submission that the accusation that he was a member of the Mujahadeen was simply made to frighten him and intimidate him. It seems to us that the accusations of adultery were made in the same vein. If there was a real complaint of adultery or any evidence of adultery then the authorities would have pursued it at the time. The Appellant himself relies upon the objective and country information and the expert's report as to the severity of the treatment meted out to adulterers. If the authorities were serious about wishing to pursue him on a charge of adultery, they would not have released him, on payment of a bribe or otherwise. The authorities continued to keep a check on the Appellant by requiring him to report. He did indeed report as required. If they had been serious about laying a charge of adultery against him they could have brought him before a court to face the punishment he now claims to fear but they chose not to do so. This leads us to conclude that the false adultery accusation was also a means of intimidating and harassing the Appellant into ceasing his activities at the gym. It is of note that all the Appellant's dealings with the religious authorities took place at the gym -- never at his home or elsewhere. This is reinforced by the fact that the authorities continued to come on a regular basis to the gym and make complaints about the running of the gym and to harass the Appellant after his release. We find that the final visit which led to him fleeing and the further accusation of adultery was a further example of this. His parents continue to live in Iran as do his sisters. They have no difficulties with the authorities and there had been no evidence of any court summons or warrants issued for the Appellant. This all leads us to the conclusion that the religious authorities were interested only in the closure of the gym and not in pursuing the Appellant personally.

52. If the Appellant were to return to Iran he would return to his parents who are wealthy. He does not have to own and run a gym. If he wished to pursue a career in the fitness field there is no reason why he could not do so without including women in the membership. There would be no reason for the religious police to have any interest in him

> whatsoever. We do not believe that on his return to Iran he would be of any interest to the authorities.
>
> 53. In reaching our conclusions we have had in mind the content of the expert's report. However, that is all on the basis that the Appellant would be at risk as an adulterer. We do not believe that to be the case. Accordingly we find that there is no real risk that the Appellant would suffer serious harm upon return. His claim for Humanitarian Protection must also fail."

7. Although Miss Fisher, on behalf of the appellant, originally formulated grounds of appeal under six headings, she accepts that, in reality, they focus on two issues. The first is whether the AIT was entitled to conclude that the religious authorities were interested only in the closure of the gym and not in pursuing the appellant personally for adultery or some other offence against the religious law. The second is whether the AIT erred by not considering the risk on return of mistreatment, as a result of having left Iran illegally in 2005 or of being a failed asylum seeker. As to the first issue, it was plainly permissible for the AIT to consider why the religious authorities treated the appellant as they did, and it was essential for it to assess the risk on return in the light of that historical explanation. Although Miss Fisher submits that the AIT did not properly consider past persecution or mistreatment as an indicator of risk on return, in my judgment that submission is unsustainable. The AIT accepted the appellant's evidence of what had happened to him at the hands of the religious authorities between 2001 and 2005. It undoubtedly treated that evidence as relevant to, but not necessarily determinative of, the assessment of future risk. That approach is entirely in accordance with legal principle: see Nenni v SSHD [2004] EWCA Civ 1077 at paragraph 21 per Keane LJ.

8. The real question in the present case is whether, in concluding that the religious authorities were interested only in the closure of the gym, which has now long since closed, the AIT made a finding that was not supported by the evidence or was otherwise perverse. I am unable to answer that question in favour of the appellant. Mr Henshaw has taken us to the material that was before the AIT. In his supplementary witness statement for the tribunal, the appellant described how, between 2001 and 2005, he was continuously harassed by officials who complained about numerous things, including the insufficiently Islamic nature of the music at the gym and the posters and photographs on the walls. They also sought bribes. In addition, they harassed the female members, complaining that their heads were not properly covered during exercise. In the record of the cross-examination of the appellant at the tribunal it is apparent that he was asked whether the visits by the authorities had caused him to lose members. His answer was, "No, not really. It was their intention. Mostly they wanted to drive the ladies away". He added that the visits had continued after his department from Iran until the gym had closed.

9. In my judgment the AIT was entitled -- on the basis of that and the rest of the evidence before it -- to draw the inference that, between 2001 and 2005, the religious authorities were interested only in bringing about the closure of the gym in the form in which the appellant was running it at the time, and not in pursuing the appellant personally for adultery. Paragraph 51 of the determination, which I have previously set out in full, is a clear explanation of why the AIT reached that conclusion. In my judgment it suffers from no defect or deficiency of reasoning. It is not vitiated by any error of law.

10. I turn to the second issue. It is noticeable that it is not the basis upon which permission to appeal was granted. In effect, Miss Fisher is trying to establish a material error of law in the form of a failure to consider, sufficiently or at all, the risk on arrival back in Tehran to a person who had been detained and badly mistreated in the past, had left Iran illegally and would be returning as a failed asylum seeker. The first difficulty here is that, as Miss Fisher accepts, the elements of illegal departure and asylum failure were not expressly referred to in her skeleton argument before the AIT. To the extent that they can be said to have been referred to in the grounds for reconsideration, the references were somewhat laconic, verging on the subliminal. However, there are two more substantial reasons why, in my judgment, this aspect of the present appeal must fail. The first is that for it to succeed there would have needed to have been, before the AIT, material which showed how the Iranian authorities at Tehran airport -- which I take to be civilian authorities -- act upon historical information emanating from the religious authorities and use it as a basis for subjecting returnees to treatment, which would amount to a breach of the Refugee Convention or the ECHR.

11. There is no such material in this case. Moreover, if there were any force in this point, it would be greatly reduced by the permissible finding that the religious authorities have achieved their goal, namely, the closure of the gym. The second reason why I find nothing in this aspect of the present appeal is that the objective material demonstrates that neither leaving Iran illegally nor returning as a failed asylum seeker, without more, gives rise to a risk of Article 3 ill-treatment. At most, illegal departure gives rise to a risk of prosecution with potential consequences which fall short of a breach of Article 3. For all these reasons, I consider that the appellant cannot point to any material error of law in the determination of the AIT. Indeed, in my view it is a carefully reasoned determination of high quality. Accordingly, I would dismiss the appeal.

Lord Justice Lawrence Collins:

12. I agree that the appeal should be dismissed.

Sir Paul Kennedy:

13. I also agree.

Order: Appeal dismissed