Case No: C5/2007/1760

Neutral Citation Number: [2008] EWCA Civ 1064
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No. AA/07227/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 17th June 2008

Before:

LORD JUSTICE PILL,
LORD JUSTICE HOOPER
and
LORD JUSTICE MOSES

- -

Between:

AM (PAKISTAN) **Appellant**

- and -

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

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Mr P Nathan (instructed by Messrs Sutovic Hartigan) appeared on behalf of the **Appellant**.

Miss P Whipple (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Moses:

1. This is an appeal against a decision of Senior Immigration Judge Jordan who, on 22 February 2007, reconsidered the appeal of AM for refugee status on both asylum and human rights grounds. The appellant is a citizen of Pakistan, as was accepted. He is both a Christian and a human rights activist. There is no dispute but that, since 1994, he has feared that fundamentalist Islamists in Pakistan have targeted him by reason of those activities which follow from his position as a Christian human rights activist. He has demonstrated his concern and pursuit of those activities through the offices -- which it is accepted he held in Pakistan -- firstly as executive secretary of the Justice and Peace Commission, and secondly as director of the Minority Rights Commission.

2. He claimed as a result of those activities he had been targeted ever since 1994. The method by which he says he had been pursued by such extremists was mainly by stopping him and causing him to have accidents on roads in areas of the Punjab where he lived. Firstly in 1994, and more recently in 2003 and 2005. Particularly serious was an incident back in 1994 when, he says, his children were targeted, forcing him to send them away to college in Lahore, where he was separated from them during their education over a space, it appears, of some ten years.

3. He arrived in the United Kingdom in July 2005 and sought the protection of this country. The Secretary of State rejected his claim in August 2005 and he appealed before Dr Ransley. She dismissed his claim in a determination of 23September 2005. The terms in which she did so are important because they are the source of the subsequent criticism that she erred in law and therefore justified a reconsideration of the claim. It was Senior Immigration Judge Jordan's failure to recognise the errors in Dr Ransley's original determination that provide the basis of the appeal to this court. It is therefore necessary to examine what Dr Ransley said as long ago as September 2005.

4. She recited the claim based upon not only religious activities as a Christian but, with greater emphasis, as she found at paragraph 29, on his human rights activism. She examined the report of the incident in 2004 in relation to the accident on the road and recorded the complaint that police had not investigated it properly. She dealt with the targeting of the children, but she rejected the force of those complaints because she said that "the credibility of the claim", as she put it, was undermined because the appellant was unable to name the militant organisations which, he said, had targeted him. As Senior Immigration Judge Jordan was subsequently to point out, the inability of the appellant to identify those who he alleged were targeting him was no rational basis for undermining credibility. She went on to deal with incidents in what she said were June 2004 and July 2005 when, first, he was driving along a road and motorbikes attempted to stop his vehicle, causing him to hit a central reservation and be injured, and the second when he was chased by another vehicle, followed immediately the same light by threatening calls

relating to an alleged association with a church minister in Paschawar, Pastor Barboor, who had been murdered.

5. She found that there was no basis for saying that this was because he was being targeted. However, it is apparent from her recital of the evidence in paragraphs 17 and her conclusion at paragraph 52, that those incidents in 2005, 4 and 5, as she put it, might have been more sinister because, in fact, they did both take place in 2005, and thus lent greater force to the suggestion that they were the result of his being targeted. But the nub of the conclusion -- that he was not entitled to protection -- stemmed from the way that Dr Ransley dealt first of all with the evidence of a witness called on his behalf, the Reverend Windsor, and from her views as to protection elsewhere within Pakistan. Firstly, the witness was a Reverend Windsor who was an important figure in the employer, the Justice and Peace Commission's partner, CSW in Pakistan. As the Reverend Windsor was later to say, the credibility of his organisation and its importance would be undermined were he not to be careful in the supporting evidence he gave to someone in the position such as this appellant.

6. She considered Reverend Windsor's evidence of an association in the minds of Islamist extremists of the appellant with Pastor Barboor, as demonstrated by the name of this appellant's appearance on a computer list. But she found that it was speculation to suggest that in fact the appellant's name was on the list of contacts. She then considered, whatever the truth as to the threats whilst he was in the Punjab, whether it would be safe for the appellant to return elsewhere to Pakistan, and she concluded, giving her reasons, that it would be. She pointed out the size of Pakistan; that the appellant is well known as a published author and freelance journalist and concluded that, notwithstanding that profile of the appellant, he would be safe, resting upon objective evidence as to the position of Christians within the legislatures within Pakistan, and having regard also to the country guidance case of AH (Sufficiency Protection -- Sunni Extremists) Pakistan CG [2002] UKAIT 05862 and AJ (Risk -- Christian Convert) Pakistan CG [2003] UKIAT 00040. She concluded that he could relocate elsewhere in Pakistan and there was an inadequate link with Pastor Barboor. In those circumstances she rejected his claim.

7. This rejection excited a complaint on the part of the advocate who had been present at that hearing that the judge was not prepared to listen to the full account of the Reverend Windsor's evidence, particularly in relation to safety on relocation. According to that person, an immigration counsellor, the judge had constantly interrupted and would not allow lengthy submissions and, more importantly, would not allow the full evidence of the Reverend Windsor to be given orally, but rather to be dismissed only by reference to the witness statement; but it should be noted that apparently that statement from the Reverend Windsor did not confine itself merely to that which had been found or not found on the list of names on the computer but also as to relocation, since that immigration counsellor also refereed to what was said to be a large tract of evidence which had been misunderstood, relating to the Reverend Windsor's fears as to those who would be without sufficiency of

protection and would be exposed to persecution by reason of their pursuit of human right causes.

8. This account, by someone who was present, led to grounds of appeal drafted on 4 October 2005 by counsel, Mr Mukherjee, which particularly attacked the findings in relation to the road incidents and the conclusions as to the objective evidence as to safety on return. The grounds referred to sources, which tended to suggest that armed militants would target Christians; those sources were the Human Rights Commission report, 8 July 2005, the Human Rights Watch report 2005 and also an Amnesty International report. They contended that there was evidence of over two hundred thousand armed militants in Pakistan who perpetrated assassination of Christians.

9. In relation to the inadequacies of the procedure at the hearing, they contended that, whilst no allegation has been made that those inadequacies in the procedure affected the core findings of the judge, they left disquiet in the mind of the applicant. Those grounds were considered by Senior Immigration Judge Walmsley on 17 October 2005 who found that there was no error of law, and particularly rejected the accusations in relation to procedure on the basis of the way those grounds had been drafted, since it was not alleged that any inadequacies in the hearing affected core findings.

10. There was then a claim made by way of an in-house application for reconsideration to the High Court. The basis upon which that was advanced appears now to have been not those grounds drafted by Mr Mukherjee in October 2005, but rather the grounds drafted by another counsel, Mr Diamond, on 27 October and dated 27 October 2005. These alleged in ground A an appearance of bias in failing properly to consider the Reverend Windsor's evidence and not permitting it to be developed by way of oral evidence, and further contended that there was what was described as "substantive evidential errors" in relation to the views given by Reverend Windsor, both as to the name appearing on the list, which would have associated the appellant with Barboor, and in relation to risks from Islamic militants, and finally contended that the reasoning of the immigration judge was unsustainable in accordance with well-known Wednesbury principles referring again to the Reverend Windsor.

11. These second grounds are the subject of attack by counsel on behalf of the Secretary of State, who, in my judgment, correctly points out that there is nothing in the rules which permits different grounds to be advanced before the High Court Judge from those which were advanced originally to the Senior Immigration Judge. That submission, in my view, is correct. Having regard to the rules which govern the filter provisions and the provisions for consideration by the High Court, CPR 54 31 2A(d), which provides that the application for reconsideration under section 103(a) of the 2002 Act should be filed "as submitted to the tribunal referred to in Rule 54 29(1)(a)". That, to my mind, establishes that there was no basis for those second grounds to be drafted by different counsel; the grounds which should have been submitted were the grounds advanced by original counsel.

12. Nonetheless, Lloyd Jones J did have those second grounds alleging bias, to which he made no reference, but he ordered a reconsideration on these grounds: "It is arguable that the Immigration Judge misunderstood and thereby failed to have due regard to the evidence of the Rev Windsor." In other words he did not say that there had been any refusal to consider that which fell from the Reverend Windsor, but rather that what he had said in his statement had been misunderstood and had not been given sufficient weight. Thus the matter came before Senior Immigration Judge Jordan.

13. It is important to consider, in my view, the nature of the reconsideration carried out by Senior Immigration Judge Jordan on 19 February 2007. It would be otiose to deal in any detail with that which has been so clearly identified in the decision of this court in DK (Serbia) and others v SSHD [2006] EWCA Civ 1747, but the upshot (for reasons to which I shall shortly come) is that there was no jurisdictional reason which limited the Senior Immigration Judge's reconsideration to the precise grounds which had been before either Senior Immigration Judge Waumsley or Lloyd Jones J. The source for that proposition starts, as one would expect, with the AIT (Procedure) Rules 2005. Paragraph 31(4) provides:

> "In carrying out the reconsideration, the Tribunal --
>
> (a) may limit submissions or evidence to one or more specified issues; and
>
> (b) must have regard to any directions given by the immigration judge or court which ordered the reconsideration."

14. I should observe that those rules have been amended by Rule 31(c) of the AIT Procedure Amendment Rules 2008 1088 at Rule 6, but the alteration at Rule 31(4)(c) does not seem to me to be material to any consideration this court has to pay in relation to Senior Immigration Judge Jordan's decision.

15. The important principle identified by this court in DK (Serbia) is to be found at paragraph 21, which makes it clear that, whilst the immigration judge should primarily focus upon the direction and terms on which an order for reconsideration is expressed, the reconsidering tribunal is not bound by or confined to those orders or directions and, certainly as an exception, it is entitled to have regard to any other error of law which may be identified by way of submission before him or on reconsideration.

16. The hearing before Senior Immigration Judge Jordan on 19 February was conducted by yet another counsel, Miss Rutherford, by whom we have been assisted in a written account of what happened. The hearing was conducted through the means of a video-link, the judge being in Field House in London and counsel and the presenting officer being in Birmingham. What appears to have happened is that Senior Immigration Judge Jordan had only the first grounds before him -- those drafted by Mr Mukherjee -- and not the second

grounds advanced by Mr Diamond. Thus, it is said that he was unaware of the attack on Dr Ransley in her failure properly to consider the bias (as it was said to be) she exhibited in the conduct of the hearing by refusing to allow the Reverend Windsor to develop what he wanted to say about safety on return and internal relocation.

17. To my mind, the hearing by way of video-link has nothing to do with the fact that the judge did not have the grounds drafted by Mr Diamond on 27 October 2006. Whether the judge had been in front of counsel sitting at the same level or not, unless someone pointed out and went through those grounds by way of submission, the judge was not to know. But the important feature of the hearing is that counsel was not inhibited by any rule of law, still less of practice, from advancing anything she wished to on behalf of her client in relation to safety on return. Senior Immigration Judge Jordan considered, as he was bound to do, whether the evidence, as to the source of attacks from 1994 to 2005, demonstrated evidence that he was being targeted by Islamic extremists in such a way as to create a risk should he return. The judge did not identify any error of law. He was entitled to reach that conclusion, to my mind. He considered the evidence of the Reverend Windsor in full and set out the evidence of Reverend Windsor as to the source of those attacks. He made an error because he had picked up that which had been drafted by Dr Ransley in relation to the date of the two incidents and thought that the first had been in June 2004. That was, to my mind, of some significance for this reason: that both Dr Ransley and Senior Immigration Judge Jordan had pointed out that, in 2004, the appellant had returned voluntarily to Pakistan after he had been working as a student in the United Kingdom for a period of two months and apparently had exhibited no fear of persecution or ill treatment in Pakistan. That was of some significance, but of much less significance, if, as appears to have been the case, the two incidents on which the appellant particularly relied had taken place in 2005.

18. The real question, as always in these cases, was, notwithstanding that which had happened (and the source of those attacks would always remain in doubt), whether it be safe for this appellant to return. Senior Immigration Judge Jordan took the view, at paragraph 18, that Dr Ransley, the original immigration judge, was entitled to reach the conclusion that she did; that there would be no indifference on the part of the police, still less unwillingness to take action. The Senior Immigration Judge put it in quotations:

> "There is no suggestion that the judicial system would have failed to protect the appellant had there been a sufficiency of evidence on which to base a prosecution. The criminal system operates to protect the individual from physical and criminal attacks."

19. It is that conclusion that is attacked by Mr Nathan, either the fifth or the sixth counsel now appearing on behalf of this appellant. He says that, had the second edition of the grounds been before Senior Immigration Judge Jordan,

he would have appreciated that the Reverend Windsor had a great deal more to say about attacks on Christian human rights activists throughout Pakistan, and therefore Dr Ransley's conclusion would not have been sustainable.

20. The difficulty with that submission, in my view, is twofold. Firstly, it was open to counsel before Senior Immigration Judge Jordan to argue to that effect, having regard to the Procedural Rules which I have already identified, and, so far as I can see, she did not do so. It is therefore quite impossible to criticise Senior Immigration Judge Jordan, let alone identify an error of law in his conclusion, in his failure to adopt some argument that was never before him. If, as appears to have been the case, the wrong grounds of reconsideration were before him, that was the responsibility of the party who wished to rely upon those grounds. True it is that solicitors at the time assert that they had sent those second grounds to the judge, but, whether they had done or not, it was up to counsel to argue those grounds which she thought would best advance her case and she apparently did not do so.

21. Quite apart from the fact that there was no procedural error leading to an error of law by Senior Immigration Judge Jordan, he, in my view, was perfectly entitled to endorse, as disclosing no error of law, the original findings of Dr Ransley. There was ample evidence on which it could be concluded that it would be safe for the appellant to relocate within Pakistan, based on the objective material to which the original immigration judge, Dr Ransley, referred. True it is that she does not set out the countervailing evidence of the Reverend Windsor, or any other evidence before her, to suggest to the contrary; but it is vital to appreciate that the fact-finding tribunal is not obliged to set out all the evidence one way or the other and then reach a conclusion. Her obligation was to set out her propositions of fact as to safety of return and the evidential basis upon which she reached those conclusions. She did so. In those circumstances, in my view, Senior Immigration Judge Jordan was entitled to find that Dr Ransley was not guilty of any error of law. Once I have reached that conclusion in relation to safety on return, the difficulties or doubts there may be in relation to the attacks upon this appellant back in 2005 lack any impact in relation to his claim to refugee status, either on asylum or humanitarian grounds, the essential question being whether he would be at real risk in the future. In those circumstances I would dismiss this appeal.

Lord Justice Pill:

22. I agree.

Lord Justice Hooper.

23. I also agree.

Order: Appeal dismissed