

Neutral Citation Number: [2009] EWCA Civ 382
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No. AA/11316/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 10th February 2009

Before:

LORD JUSTICE LAWS
LORD JUSTICE WALL
and
LORD JUSTICE MAURICE-KAY

MM (Lebanon)

Appellant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

(DAR Transcript of
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Mr D Chirico (instructed by Messrs Knights) appeared on behalf of the **Appellant**.
Mr S Kovats (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

Judgment

Lord Justice Maurice Kay:

1. The appellant is a Lebanese national who came to the United Kingdom on 30 July 2006 and claimed asylum the following day. His application was refused by the Secretary of State. On 16 November 2006 an Immigration Judge dismissed his appeal. He then applied for a reconsideration; this was initially refused, but was ordered by Sullivan J on a statutory review. A first-stage reconsideration hearing took place and resulted in a determination dated 13 June 2008. The Senior Immigration Judge found no error of law on the part of the Immigration Judge who had originally dismissed the appeal. The appellant now appeals to this court.
2. The factual background can be summarised as follows. The appellant, who is now aged 26, was not politically active in Lebanon. In particular, he was not involved with Hezbollah. However, he lived in an area of Hezbollah influence and had friends who were involved with that group. From them he learned of Hezbollah activities. He had another friend called Ashraf, whom he believed to be working for the Lebanese Government. However, on 16 July 2006 the appellant and Ashraf were arrested by Hezbollah agents. The allegation against them was that the appellant had been passing secrets to Ashraf, who was alleged to be an Israeli spy. The two men were detained. All of this was taking place at the height of the conflict between Israel and Hezbollah in the summer of 2006.
3. Soon after the commencement of the detention the premises, which were controlled by Hezbollah, were struck by an Israeli rocket. The appellant escaped, and within a very short time thereafter made his way to this country. That was the appellant's account, which was accepted by the Immigration Judge, who also accepted that Hezbollah agents thereafter visited the appellant's mother's house on more than one occasion in an attempt to discover his whereabouts.
4. The Immigration Judge held that the appellant would be at risk of persecution if he were to be returned to an area of Hezbollah control. However, his ultimate conclusion was that the appellant could safely relocate to an area of Lebanon outside Hezbollah control and that it would be reasonable and not unduly harsh for him so to relocate. Among the findings of the Immigration Judge were the following:

“Hezbollah do operate only in some areas of Lebanon and by inference not in other areas. I find [...] they operate namely in southern suburbs of Beirut, the Beka'a Valley and southern Lebanon.”

“However since there are areas where they do not operate it is in my judgment a reasonable inference to draw that since they do not operate in these other areas they do not have any significant degree of control or direction in those areas beyond their own territories.”

“Hezbollah possess a reputation for ruthlessness and vindictiveness which persuades me that if they knew his whereabouts they would seek to find the appellant. However on the evidence of their control of limited territories I am not persuaded that they would be able to reach out to search for the appellant if he relocated outwith their areas of operation. At its highest I regard any power they do possess as not sufficient to amount to create a real risk for the appellant if he is now returned.”

5. The Senior Immigration Judge on reconsideration, after a much fuller survey of the objective material, found no legal error in the determination of the Immigration Judge. He said this at paragraph 25 of his determination:

“In my judgment, the background material [...] clearly demonstrates there are parts of Lebanon which are under the direct control of Hezbollah and to which the appellant cannot return. I do not regard the objective material as establishing that there is a keen line of demarcation between those parts under Hezbollah’s control and those parts which are not since it would appear no such distinctions are, in reality, likely to be achieved. The appellant has, however, failed to establish that there is no part of Lebanon to which he cannot safely be returned.”

6. The principal ground of appeal relied upon by Mr Chirico is that the Immigration Judge fell into legal error in his approach to the question whether there are areas of Lebanon to which the appellant could safely relocate. There is a second ground of appeal directed to the issue of whether it would be reasonable or unduly harsh to expect the appellant to relocate; but for reasons that will become apparent I do not intend to address that very secondary ground of appeal. As to the principal ground, Mr Chirico submits that the attempted division of Lebanon into Hezbollah and non-Hezbollah areas was an oversimplification on the part of the Immigration Judge and the Senior Immigration Judge. He relies in particular on the passage in the determination of the Senior Immigration Judge to which I have referred, in which he considered that the objective material does not establish:

“...a keen line of demarcation between those parts under Hezbollah’s control and those parts which are not”

7. It is common ground that that is a correct distillation of the objective material. On that basis it raises obvious questions, particularly in the context of a case in which the agents of persecution, whilst not State agents in the fullest sense of that expression, enjoy a degree of governmental indulgence or at least tolerance. That much was established by the objective evidence and is not disputed by Mr Kovats

on behalf of the Secretary of State. Moreover, Lebanon is a small country with a total area of just over 4,000 square miles, graphically referred to in the skeleton argument as being “two-thirds the size of Yorkshire.” The Senior Immigration Judge described the size of the country as “an important consideration.” But he seems to have attached no legal significance to the fact that the Immigration Judge had made no reference to it in his determination; nor did the Immigration Judge consider the extent to which Hezbollah members or activists enjoy freedom of movement outside the areas of direct and actual Hezbollah control. He simply inferred that the appellant would be out of reach beyond the Hezbollah-controlled areas, even though there was no objective evidence suggesting restriction on freedom of movement in a country every part of which is within a 30-minute drive of a Hezbollah stronghold.

8. These omissions -- together with the positive findings that, since the appellant left Lebanon, Hezbollah have on more than one occasion visited his mother’s house attempting to ascertain his whereabouts, and that, if they knew his whereabouts, they would seek to find the appellant -- lead me to the conclusion that the finding of potential safety in an unspecified non-Hezbollah area was not a finding which can be shown to have been based on all material considerations. To this extent at least it was, in my judgment, legally erroneous.
9. Having come to that conclusion in relation to the principal ground of appeal, it is not necessary to consider the second ground. It follows from what I have said that I would allow this appeal. Counsel are agreed as to the consequences of that: namely, that the case will have to be remitted to the Asylum and Immigration Tribunal for second-stage reconsideration, not least because the objective material was already somewhat dated at the time of the original hearing. At the second-stage reconsideration the appellant will have the benefit of his accepted evidence from the original hearing before the Immigration Judge, but he may need to supplement it in respect of subsequent events; and, as I have implied, the objective material will need to be updated.

Lord Justice Wall:

10. I agree. As a stranger to this jurisdiction I would normally be the first to accede to the powerful argument advanced by Mr Kovats in his skeleton argument, namely:

“Appellate courts should be slow to find that a specialist tribunal such as the AIT has misdirected itself on the law, and should not trespass on the area of factual assessment and judgment reserved for the Tribunal.”

However, in the instant case it seems to me, with all due respect, that neither the Immigration Judge nor the Senior Immigration Judge grappled with the central issue in the case, namely that the appellant could not safely relocate in Lebanon, due in part at least to the small size of the country and the likely determination of Hezbollah to track him down. To give one example, as Maurice Kay LJ has given, the appellant’s case, as I understood it, was that wherever he was in

Lebanon he would only be a short drive from an area controlled by Hezbollah. In my judgment the failure to address this critical issue is an error of law which entitles this court to intervene. I therefore agree that the appeal should be allowed with the consequences indicated by my Lord, Maurice Kay LJ.

Lord Justice Laws:

11. I agree with both judgments.

Order: Appeal allowed.