IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)

Neutral Citation No.: [2004]EWCACiv552
Case Number: C1/2002/2032

Date: 26/04/2004

Before:
LORD JUSTICE KEENE
MR JUSTICE BENNETT

THE QUEEN ON THE APPLICATION OF AHMED
Appellant

The Secretary of State for the Home Department and IMMIGRATION APPEAL TRIBUNAL
Respondents

JUDGEMENT

Representation:

MR T U COORAY (instructed by Thompson & Co Solicitors, London SW17 0RG) appeared on behalf of the Claimant

MISS KATE GRANGE (instructed by Treasury Solicitor, London SW1H 9JS) appeared on behalf of the Defendant

1. LORD JUSTICE KEENE: This matter comes before the court today initially as an application for permission to appeal against a decision by Jackson J dated 23 February 2002, whereby the judge refused permission to seek judicial review of a decision of the Immigration Appeal Tribunal ("the IAT"). The IAT had refused leave to appeal to it from a decision of an adjudicator, Mr Grant D Birt, who had rejected the applicant's asylum appeal. We indicated during the course of argument that we were prepared to grant permission to appeal to this court and we have treated this, therefore, as being the hearing of the substantive appeal.

2. The appellant is a citizen of Pakistan who came to the United Kingdom on 22 March 2000. He is a member of the Ahmadi faith and he claimed asylum on grounds that he had a well-founded fear of persecution in Pakistan by reason of his religious belief. As Jackson J rightly said, the crucial paragraph in the adjudicator's decision is paragraph 12, which is the sole paragraph setting out, in effect, the reasoning of the adjudicator. He said this:

> "Whilst it is accepted that in Pakistan the Mullahs and the police do in fact persecute the Ahmadi this is mainly those who are leaders and activists in the faith rather than the ordinary persons who practise it. I regard the Appellant as having low credibility to the extent that I do not believe him when he says he preached the faith to various people both in Pakistan and those who would listen to him in this country. Further I do not believe his account of flying to the Cameroon islands and then coming to London, leaving London and going to Antigua. If he felt he was in need of international protection he would have applied for it as soon as he arrived in London on the first occasion."

Consequently the adjudicator concluded that the appellant (as he now is) would not be persecuted for a Convention reason if returned to Pakistan and the appeal was dismissed.
3. The appellant sought leave to challenge that decision in the IAT principally on the ground that the adjudicator had given inadequate reasons for concluding that the appellant lacked credibility. In its brief decision on leave the IAT by one of its vice-presidents refused leave, saying that the credibility findings were at least partly based on the appellant's account of how he got to this country. Part of the short statement of the IAT's decision reads thus:

> "This included a flight from Karachi to the 'Cameroon islands', a place which does not exist. Even a direct flight from Pakistan to the Cameroons, on the mainland of West Africa, is so wildly improbable a circumstance that the adjudicator was well justified in disbelieving the appellant."

The vice-president went on to say this:

> "No details are given of the 'objective' evidence said to show that all Ahmadis (and not just leaders and activists, as the adjudicator accepted) may face religious persecution."

4. In the claim for judicial review of that refusal the appellant drew attention to a number of puzzling passages in the adjudicator's decision. At paragraphs 4 and 5 of that decision the adjudicator said this:

> "4. The Appellant gave evidence in Egyptian, which was interpreted for the court. The interpreter indicated that they understood each other.
>
> 5. The Appellant's evidence consisted of his interview with the immigration officer and a statement that had been prepared for the hearing. Also handed in were two translations of warrants that the Appellant said were for his arrest if he returned to Egypt."

Subsequently, at paragraph 7, the adjudicator in summarising the submissions advanced on behalf of the Home Office, stated:

> "The real reason that he left Egypt was that he was in trouble with the police and this is what the alleged warrant referred to."

5. The appellant in his claim form for judicial review asserts that he does not come from Egypt and does not speak Egyptian. Certainly there is no reference to Egypt in his interview or in his witness statement, and it is not suggested today on behalf of the Home Office that the adjudicator was in any sense accurate in referring to Egypt or to the use of the Egyptian language. One notes indeed that the appellant's interview record records him as answering questions on that occasion in Urdu/Punjabi, as one might expect.

6. The adjudicator has clearly fallen into error in those respects, and indeed not only by reference to that language being used, but also by the several references to "Egypt" as the place which the appellant had left, where he was wanted by the police and to which he would be returned. It is of course right to note that elsewhere in his decision, as I have indicated, the adjudicator does refer to Pakistan.

7. The references to "Egypt" and "Egyptian" concerned Laws LJ before whom this application for permission to appeal came on paper. He adjourned this application to open court on notice to the Home Office, observing that he was "troubled by the assertion of bizarre mistakes by the Adjudicator, such as the suggestion that the applicant gave evidence in Egyptian. If such mistakes were made, it may be arguable that there has been no proper adjudication, whatever the merits."

8. This is one of the points emphasised now by Mr Cooray on behalf of the appellant. He also criticises the IAT's reasoning in the passage we have quoted from the refusal of leave. It is pointed out that the appellant in his interview and in his witness statement had not referred to the Cameroon islands but to going to Cameroon, a place which does exist; and so that part of the reasoning of the vice-president of the IAT is unjustified. Furthermore, Mr Cooray points out that the appellant had never said that he had flown direct from Karachi to the Cameroon, as the IAT appears to have believed and to which it seems to have attached some weight. I note that the adjudicator's decision merely says that the appellant "left Karachi and flew to the Cameroon islands", with no indication as to whether the flight was direct or indirect. Miss Grange, who appears today on behalf of the Secretary of State, does not seek to suggest that the appellant did at any time refer to a direct flight to the Cameroons. Mr Cooray criticises, therefore, the IAT's emphasis on the absence of a direct flight from Pakistan to the Cameroons.

9. Furthermore, Mr Cooray submits that the adjudicator's reasoning for disbelieving the appellant as to his role and activity in respect of the Ahmadi faith is inadequate. He points out that the statement is merely made as to the appellant having low credibility to that extent, with no statement as to why that conclusion had been arrived at by the adjudicator.

10. For the Home Secretary Miss Grange accepts that it would have been better if the adjudicator had spelt out his reasons for his credibility finding more fully. But she submits that what the adjudicator has said in paragraph 12 was and is adequate for the purpose. She places reliance in particular upon the reference to the appellant having travelled to London and then going on to Antigua before returning to London, which she describes as an unlikely story. Furthermore, she refers to the final sentence in the paragraph which I have quoted, namely the absence of any application by the appellant for asylum when he first arrived in London.

11. It is accepted on behalf of the Home Secretary that there are errors in the adjudicator's determination insofar as it refers to Egypt and to the use of the Egyptian language. It is, however, contended that those errors do not vitiate the decision, particularly because they do not occur in the determining paragraph, which I have quoted earlier. Miss Grange referred us to the decision in this court in *R v Immigration Appeal Tribunal ex parte Haile* [2001] EWCA Civ 663, where there had been what this court referred to as a "slipshod" manner of expression in the adjudicator's determination and yet this court took the view that the essence of the adjudicator's reasoning was nonetheless clear and sustainable and it dismissed that appeal.

12. I am bound to say that I regard this as a different case from that with which this court had to deal in *Haile*. The problem in *Haile* was simply that there were one or two expressions used which did not make very much sense, such as the use of the word "exhilarated", whereas clearly some different verb had been intended. I find the present case a rather more extreme one and somewhat strange, which gives me concern as it did Laws LJ. The reasoning of the adjudicator on the credibility issue is certainly thin. It might just have been sustainable in the way the judge below described along the lines which have been pressed upon us today by Miss Grange. But it does not stand alone. These cases are very dependent on the accuracy and reliability of the main fact-finding tribunal, that is to say the adjudicator, and that becomes particularly important where the crux of his determination is a decision about the credibility of the individual concerned. One cannot in this case know why the adjudicator made the peculiar but important errors of fact about Egypt and the Egyptian language, to which we have referred, and while errors of fact often will not require a decision to be upset, these errors are so strange as to leave one wondering what was happening when the adjudicator wrote his determination. It is possible that he was confusing this appellant with another appellant or this case with another case. In either event that would be most worrying since the case largely turned, as I have indicated, on the adjudicator's judgment of this particular appellant's credibility. As the adjudicator himself recognised, some of the more active Ahmadi are subject to persecution in Pakistan. The crucial issue was whether this appellant was to be believed when he asserted that he had preached the Ahmadi faith.

13. Looked at as a whole, I conclude that the reasoning in the adjudicator's determination is unsatisfactory, given those mistaken references to the place from which the appellant had come, the place where he was in trouble with the police, the place to which he would be returned and the language in which he was said to have given his evidence. When those are added to the thinness of the reasoning contained in paragraph 12 set out earlier, I find the reasoning in the determination to be unsatisfactory, and for that reason I would allow this appeal.

14. MR JUSTICE BENNETT: I agree that this appeal should be allowed for the reasons given by my Lord.