Case No: C5/2008/1390

Neutral Citation Number: [2008] EWCA Civ 1059
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No. AA/01073/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 26th August 2008

Before:

LORD JUSTICE KEENE

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Between:

ET (ERITREA)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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(DAR Transcript of
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The Appellant appeared in person, accompanied by Mackenzie friend Mr I Ferguson (instructed by Messrs Mangela & Kalum).

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED

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Judgment

(As Approved by the Court)

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Lord Justice Keene:

1. This is a renewed application for permission to appeal from the Asylum and Immigration Tribunal ("the AIT"), permission having been refused on the papers by Buxton LJ. An extension of time is needed for this application because the appellant's notice was not lodged until 9 April 2008, whereas the AIT's decision by HHJ Edwards was dispatched on 28 December 2007. However, it seems that there were attempts made by the applicant to file the appellant's notice in time. I understand that the notice was actually originally filed on 11 February 2008 but in the Administrative Court. It was then refiled on 22 February 2008 in this court, but the fees for the application were not paid. It was only subsequently in April that the matter was regularised.

2. On that basis I am prepared to consider how strong a case the applicant has on the merits before deciding on the application for an extension of time, because it seems to me that the sort of confusion which has arisen here about the filing of the notice is one which is understandable, particularly given the lack of any legal representation which the applicant has. The task of the immigration judge on reconsideration was to decide whether the applicant would so conduct herself if returned to Eritrea that she would risk persecution because of her religious beliefs. That was the extent of the reconsideration ordered in this case.

3. The applicant is a young woman, born in 1983, who is a citizen of Eritrea. She entered this country in November 2006 and claimed asylum on the basis of fearing persecution because of her religion. Her claim was that she was a committed member of the Pentecostal Church, which she had attended in this country. Her evidence was that her parents were Pentecostalists and that she had been baptised when 18 -- that is to say when she was still in Eritrea. She said that she would evangelise if she were returned there, and so she feared persecution.

4. There was some evidence in support of her claim to be a sincere Pentecostal Christian. The immigration judge found that the applicant's knowledge of Pentecostal Christianity was limited. He did not accept that she had evangelised while in Eritrea and he found that her knowledge was insufficient for getting involved in Evangelical activity. He accepted that she had attended an Eritrean Pentecostal church in the United Kingdom, but he found that that was more for social purposes and to strengthen her asylum claim. He did not accept that she was a genuinely believing Pentecostalist. Ultimately, he found that she would, if returned, not conduct herself in such a way as to draw the attention of the authorities to her, and consequently he dismissed her appeals under the Refugee Convention, the ECHR and in respect of humanitarian protection.

5. A number of matters are raised in the grounds of appeal which I will come to. This morning I have heard a minister -- a Mr Ian Ferguson -- speak on her behalf in a very moving way. He emphasised that the mistake referred to by the immigration judge about her knowledge of the Bible should not have had

such weight attached to it as the immigration judge attached. Mr Ferguson emphasises that the applicant was nervous at the time and that it would be heartbreaking for her to be returned to Eritrea, where there is a real risk to her. The problem with that submission is that the weight to be attached to a particular piece of evidence by an immigration judge is a matter effectively for the judgment and discretion of that judge. This court can only interfere with that aspect of the case if the finding is so wrong, so obviously unreasonable, that it could be categorised as perverse -- that is to say, one to which no reasonable decision maker could have come. It is not for me to say whether I would have arrived at the same decision on that particular aspect; my task is to see whether there is a properly arguable error of law which lies in that particular area. I cannot see that there is any mileage in the argument about the way in which the immigration judge treated her knowledge of the Bible.

6. In the written grounds it is said that the immigration judge failed to take account of changes since the original decision by Immigration Judge Brookfield, one which had been sent out in March 2007. In particular, it is argued that the applicant would be at risk on return as a suspected draft evader and as someone who had left Eritrea illegally. Reliance is placed on the Country Guidance case of MA (Draft evaders illegal departures -- risk) Eritrea [2007] UKAIT 00059 as showing this risk. That was a decision by the AIT made on 17 July 2007 after the order for reconsideration. Immigration Judge Brookfield had found that the applicant would not be at risk on return as a perceived draft evader because she had either completed her national service or had a valid exemption (see paragraph 9(viii) and (ix) of his decision). It is said in the written argument that that finding can no longer stand in the light of MA. The problem with this seems to me to be twofold. First, the scope of the reconsideration hearing was limited by the terms of the order for reconsideration. It is difficult to see how Immigration Judge Edwards can be said to have erred in law when he confined his attention to the issue as thus limited. As this court said in DK (Eritrea) (2006) EWCA Civ 1747; [2007] 2 All ER 483, the reconsidering tribunal will approach its task on the basis that any factual findings and inclusions unaffected by the identified error of law need not be revisited; only in the most exceptional cases will it be prepared to widen the scope of its reconsideration. Secondly, and of considerable importance, no application was made in the present case to Immigration Judge Edwards to widen the scope of his reconsideration. At that time the applicant was professionally represented. The hearing took place in late October 2007, long after the decision in MA had been promulgated; so this line of argument could have been raised then by those representing the applicant, but it was not. In my judgment it cannot now properly be advanced in the Court of Appeal.

7. Then there are challenges to Immigration Judge Edwards' decision on certain other matters. It is argued, for example, that he erred in law by applying a much higher standard of proof than that required, and that he rejected a letter in support of the applicant by Mr Ferguson because Mr Ferguson had not "examined the appellant's claims forensically as I have". It said in the written grounds of appeal that Immigration Judge Edwards thereby was requiring some sort of absolute presentation of the case before any evidence could be

accepted and that this went beyond the normally lower standard of proof applied in asylum cases. I am afraid I can see nothing at all of merit in this. The word "forensically", used there by the immigration judge, implies nothing about the standard of proof to be applied; it is simply dealing with the fact that the judge had been examining the matter, scrutinising it, independently at a hearing in court.

8. Finally, it is contended on the papers that the immigration judge went wrong in his reasons for rejecting the oral evidence of a witness for the applicant -- a Mr Kflom. It is said that the judge was wrong to have described as "unusual" the description given of methods used in a bible study group. For my part, I can see that that point may not have been well-founded, but the immigration judge was clearly unimpressed by Mr Kflom for other reasons as well, which he spells out in his decision. There is no error of law here that is in any way material.

9. Sympathetic though I may be personally to the applicant's position, I am constrained in my task which, as I have explained already, is to determine whether there is a properly arguable error of law in the decision made by Immigration Judge Edwards in this case. I am afraid that I can find no such properly arguable error of law and no real prospect of a successful appeal. In those circumstances I have no alternative but to dismiss both the application for an extension of time and therefore the application for permission to appeal.

Order: Application refused