Case No: C5/2008/1852

Neutral Citation Number: [2008] EWCA Civ 1234
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/06708/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 28th October 2008

Before:

LORD JUSTICE STANLEY BURNTON

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Between:

HH (SUDAN)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Ms N Mallick (instructed by Messrs Duncan Moghal) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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Judgment

(As Approved)

Lord Justice Stanley Burnton:

1. This is a renewed application for permission to appeal a decision of the Asylum and Immigration Tribunal rejecting the applicant's claim for asylum and the right to remain in this country under human rights and humanitarian protection grounds. He claims to be a citizen of and was accepted to be a citizen of Sudan and claims to be a non-Arab, black Darfurian of the Bargo tribe. His credibility was rejected, when he appealed to Immigration Judge Trevaskis, on cogent grounds. However, he sought reconsideration and reconsideration was ordered by Senior Immigration Judge Goldstein on 24 August 2007.

2. The grounds for reconsideration at that stage did not refer to his activities in this country in support of the plight of the Darfurians against the Sudanese government. The first immigration judge had made no finding as to those activities in this country or their implications. Reconsideration having been ordered, his appeal came before Immigration Judges Harmston and Hart. They did not interfere with the view taken by the first immigration judge as to the credibility of his account of his experiences in Sudan. However, they permitted his representatives to take the point that the first immigration judge had not made any finding of fact or assessment of the consequences of the applicant's activities in this country. Such activities might place him at risk if they were known to the Sudanese government. The Sudanese government might take him into custody on return and expose him to ill-treatment. That was a risk that was referred to in the country guidance case of HGMO (relocation to Khartoum) Sudan CT [2006] UKAIT 00062. The relevant paragraph from HGMO is cited in paragraph 20 of the immigration judges' decision. In paragraph 309(8)iv of HGMO the tribunal said:

> "Not all *sur place* activities conducted by a Sudanese citizen, whilst in the United Kingdom, will give rise to a real risk on return. Whilst the fact that a person has engaged in such activities may become known as a result of questioning, if not through the work of Sudanese intelligence agents, the authorities are reasonably likely to be concerned only about activities which they regard as significantly harmful to their interests and will not be concerned about a person who is in reality an apolitical opportunist. Nor will mere knowledge on the part of the Sudanese authorities about at least some details of a Sudanese asylum-seeker's claim (e.g. following publicity about a high-profile case) suffice."

3. The decision of 30 April 2008 of Immigration Judges Harmston and Hart addressed that matter and the failure of the first immigration judge to make a relevant finding of fact. They dealt with that matter at paragraph 34 of their

determination. They referred to the evidence put forward by the applicant of his participation in a demonstration organised by the JEN, a Darfurian protest movement, on 29 April 2007. They said:

> "Although we mind this as a matter on which the Judge might more usefully have made a finding, given the frequent participation of Darfurian applicants in activities in the United Kingdom, nevertheless he had properly identified the risk categories set out in [HGMO] by reference to activities being 'significantly harmful to its interests'. We find that without more to demonstrate that the appellant would fall within that risk category, the Judge was not required to make any such finding of fact. Having found the appellant generally to lack credibility in respect of his JEM activities in Khartoum, we find that he did not in any event make a material error of law in failing to find whether or not the appellant's participation in the demonstration would still put him in the risk category identified from [HGMO]. No reasonable Immigration Judge, after making adverse credibility findings about his activities in Sudan, and left with such evidence of his participation in the London demonstration would have concluded that this would have exposed him to risk as explained in paragraph [309(8)iv] of [HGMO]."

They therefore concluded that the judge made no material error of law.

4. On behalf of the applicant, Ms Mallick points out that, as has been held by the Court of Appeal, even opportunist activities of asylum seekers in this country, that is to say, one's activities conducted purely in order to establish a right to asylum rather than genuinely in favour of the protest movement in question, may give rise to a right of asylum. If a person can establish that, as a result of those activities, he faces a significant risk of exposure to persecution if returned to his country of nationality, he will have succeeded in establishing his right to asylum even though his activities in this country were carried out in bad faith. It remains the case that an assessment has to be made as to whether or not the activities of an applicant in this country do expose him to a reasonable risk of persecution or treatment contrary to Article 2 or Article 3. That is what the immigration Judges did in their decision of 30 April 2008. They expressly applied the country guidance case in HGMO. They were entitled to view the consequences of the applicant's participation in activities in this country against the findings of fact as to his lack of any such activities in Sudan, and they made a finding which effectively is an assessment but basically one of fact: that his activities, as demonstrated by the evidence he had put forward, could not arguably put him at risk.

5. That, in my judgment, is not an error of law. They applied HGMO and were entitled to make an assessment of the risk created by the applicant's activities in this country, which they did. Their conclusion in the last sentence of paragraph 34, it seems to me, is one they were entitled to make. Their decision is sufficiently reasoned and I see no basis for interfering with it. In those circumstances I refuse permission.

Order: Application refused