SECOND DIVISION, INNER HOUSE, COURT OF SESSION

Lord Justice Clerk
Lord Macfadyen
Lord Johnston

[2006] CSIH 6
XA174/04

OPINION OF THE COURT

delivered by LORD MACFADYEN

in

APPEAL

against

a decision of the Immigration Appeal Tribunal notified on 27 July 2004

by

VLADIMIR BARYCHEV
Appellant;

against

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT
Respondent:

_____

Act: Frain-Bell; Drummond Miller
Alt: Carmichael; Office of the Solicitor to the Advocate General

31 January 2006

Procedural history

[1] The appellant is a citizen of the Russian Federation. He is now 57 years of age. He and his wife arrived in the United Kingdom on 20 December 2002. They travelled

on their own valid passports, and entered on valid visitor visas. On 24 December 2002 they claimed asylum.

[2] The appellant's application for asylum was rejected on 7 August 2003, and thereafter removal directions for his and his wife's return to the Russian Federation were issued. He appealed against these decisions. His appeal was heard by an adjudicator, whose determination allowing the appeal was promulgated on 2 February 2004. The respondent then appealed against that decision to the Immigration Appeal Tribunal ("the Tribunal"). That appeal was allowed on 27 July 2004. The appellant now appeals, with the leave of this court, against the Tribunal's decision.

The undisputed circumstances

[3] The circumstances founded on by the appellant in support of his asylum claim are summarised by the adjudicator in paragraphs 7 to 26 of his determination, and by the Tribunal in paragraphs 2 to 15 of its determination. It is unnecessary to repeat them in detail here. The appellant and his wife lived in the city of Orel, about 360 kms from Moscow. The appellant was an engineering manager. His wife was a dentist. The origins of the appellant's claim lie in his involvement in a political party called *Liberalnaya Rossiya* (Liberal Russia) that was formed in 1999. In February 2002, at a political meeting at the factory where he was employed the appellant denounced a prominent politician, one Nicolas Volodin, whom he believed to be guilty of corruption. There followed a course of persecution, in which the militia of the Department of Internal Affairs took part. This involved serious physical violence against the appellant and his wife, and ultimately threats of death. The appellant was persuaded that, for his and his wife's safety, they required to leave Russia.

[4] It is a significant feature of the case that the adjudicator accepted the evidence of the appellant and his wife as fully credible. In paragraph 31 of his determination he summed up his findings in the following terms:

> " ... I have accepted that [the appellant] was threatened after the speech at the factory, subsequently assaulted and beaten, dismissed from his employ, assaulted again in August [2002], had no redress from the authorities for any of these events, sought to relocate elsewhere but permission was refused on the basis of his past problems in Orel, his wife was brutally assaulted, and he was threatened with murder in December [2002] only fortuitously escaping through the intervention of a traffic warden."

In paragraph 33 he added:

> "Viewing the Appellant's case as a whole, therefore, I am satisfied that the authorities have marked him down as a man to be watched, and if possible, eliminated."

The fact that the appellant had established (1) that he had been persecuted because of his political activities and (2) that he had a well-founded fear of such persecution if he were returned to the area of Russia from which he came, was not disputed before the Tribunal.

The issue in the appeal

[5] The only issue which the respondent raised before the Tribunal was whether the adjudicator had been entitled to conclude (as he did in paragraph 34 of his determination) that for the appellant internal flight, i.e. relocation within Russia, was not a viable alternative to seeking asylum. The question of internal relocation had been put in issue in paragraph 21 of the Home Office letter of 7 August 2003, and was therefore a matter which the appellant had to address.

[6] In terms of section 101(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") (as it applied at the material date), appeal to the Tribunal was available only on a point of law. It follows, as Miss Carmichael for the respondent accepted, that the Tribunal was entitled to interfere with the adjudicator's decision only if he erred in law. The conclusion reached by the Tribunal was that the adjudicator erred in one respect only, namely that there was no evidence before him to entitle him to draw the inference that internal relocation was not a viable course for the appellant. Before this court the issue is whether the Tribunal was right in reaching that conclusion, and in treating the adjudicator's error as one of law.

The evidence before the adjudicator and his conclusion

[7] In paragraphs 19 and 20 of his determination the adjudicator records that, during the period when he was suffering persecution in Orel, the appellant twice attempted to relocate, once to the city of Lepetzh, which is between 250 and 300 kms from Orel, and once to the city of Kursk, which is about 150 kms away. Both of these cities are in different administrative regions from Orel. Both attempts were unsuccessful. The reason for the failure of the appellant's attempts to relocate related to the operation of the registered residence system in force in Russia. A permit, still

colloquially known as a *propiska*, requires to be obtained for residence in a particular region. Application for a *propiska* must be made to the relevant local office of the Ministry of the Interior. On each occasion when he made such an application the appellant, instead of receiving a *propiska*, was advised that "he would have problems with a *propiska*" because it had been reported that he had led "a very active political life at home". He was advised that in the regions to which he was seeking to move, they would not be allowing him to do that. The appellant formed the view (the adjudicator at paragraph 20 added "not surprisingly") that the authorities in Lepetzh and Kursk had contacted those in Orel and made enquiries about his character and history. Having failed in his attempts to move, the appellant was compelled to return to Orel, where the persecution continued.

[8] There was also before the adjudicator the Home Office Country Information and Policy Unit Country Assessment for the Russian Federation dated April 2003. Our attention was drawn in particular to paragraphs 6.30 to 6.32 dealing with Freedom of Movement. Those passages confirm the operation of the *propiska* system, and mention corruption and bribery in its operation. That among other material affords a basis for the adjudicator's reference in paragraph 33 of his determination to a "pervasive culture of corruption".

[9] The respondent cited to the adjudicator the case of *Secretary of State for the Home Department* v *C (Russia)* [2003] UKIAT 00073, in which the respondent in that case relied on the *propiska* system as an answer to the suggestion that internal relocation was open to him. In the present case, the adjudicator distinguished *C (Russia)* on the basis of the present appellent's two failed attempts to move to other cities in different regions.

[10] In paragraph 21 of the letter of 7 August 2003 the Home Office, while acknowledging that "internal flight within the Russian Federation would not be as easy as a comparable relocation within the United Kingdom", went on to say:

> " ... the sheer size, number of people living in the Russian Federation and the fact that some areas have a more relaxed attitude to internal movement than other (*sic*) means that you would be able to move to a different part of the Russian Federation and escape from the people who you alleged attacked you".

The adjudicator dealt with that suggestion in paragraph 34 of his determination in the following terms:

> "The suggestion in the Reasons for Refusal Letter that the Appellant could somehow lose himself in the vastness of Russia has a fine Dostoyevskian ring about it, but in this day and age a telephone call from Siberia or Irkutsk will reveal the same information in the same time".

[11] The adjudicator concluded:

> "I am therefore satisfied, on the personal experience and evidence of the Appellant, that internal flight is not a viable option for him at this time."

The Tribunal's reasoning

[12] In paragraph 17 of its determination the Tribunal asserted that that it was not controversial that "the central Russian authorities are not interested in" the appellant. They vouch that by reference to the facts he was able to obtain passports and visitor visas and was not harassed while in Moscow to obtain them. No mention, however, is made of the involvement of the militia of the Department of Internal Affairs in the persecution of the appellant.

[13] In paragraph 18, the Tribunal points out that Volodin is a politician of local rather than national influence. In paragraph 19 it discusses the *propiska* system and points out that where a person obtains a *propiska* to settle in a new city, the authorities in the former place of residence must be informed, to secure de-registration there. The Tribunal acknowledges that that means there will be communication between the authorities in the new and old places of residence. In paragraph 20 it acknowledges the frequency of abuse and corruption in the system. In paragraph 21, it refers selectively to the evidence of an expert witness, Dr Moya Flynn of the Department of Central and East European Studies at the University of Glasgow, whose report was not before the adjudicator.

[14] In paragraph 24 the Tribunal professes difficulty in understanding why the appellant would be in danger of persecution at the instance of Volodin if he moved away from Orel. They say in paragraph 25: "One would have thought that the one place that Volodin did not want the claimant to be was Orel". It infers in paragraph 26 that the refusal of a *propiska* for transfer of residence to Lepetzh and Kursk was attributable to unwillingness of the authorities in those cities to have a man of the appellant's political background of opposition to Volodin resident there. In paragraph 27 it says:

> "We cannot see ... why that should remain the position if the claimant were to move several hundred or even thousand kilometres away from Orel. No one suggests that Volodin is a politician of national stature. It is not suggested that his power base is other than local. If it were not for the propiska system we do not see how it could even be arguable that the claimant could not safely relocate to a distant part of Russia where Volodin is of no consequence and the claimant's past would be unknown."

The Tribunal then in paragraph 28 poses as the remaining question whether the *propiska* system would lead to Volodin's henchmen tracing the appellant and pursuing him. It concludes that there is no real risk of that. It says in paragraph 30 that it cannot see that there is more than the "tiniest risk" that the appellant's de-registration in Orel would be referred back to Volodin, or that Volodin would pursue the appellant.

[15] The Tribunal concludes in paragraph 31 that "For all these reasons ... the adjudicator was ... in error when he concluded that the claimant could not relocate elsewhere in Russia".

Discussion

[16] It is, in our opinion, essential to bear in mind the scope of the statutory appeal from the decision of the adjudicator to the Tribunal. In terms of section 101(1) of the 2002 Act it was not for the Tribunal to consider whether the adjudicator had in general erred in his decision. The appeal to them was "on a point of law". They were therefore entitled to interfere with the adjudicator's decision on matters of fact only if there was no evidence before the adjudicator sufficient to support the conclusion which he reached, or the decision was irrational.

[17] It seems to us that the Tribunal has approached the question of internal flight as if it were a tribunal of first instance, or an appellate tribunal entitled to address matters of fact *de novo*. Although it is not a matter which we need decide, the Tribunal's reasoning may well provide support for a decision adverse to the appellant on the question of internal flight. But the fact that a case can be made for deciding the question against the appellant on a different interpretation of the evidence does not mean that it can be affirmed that the adjudicator's interpretation was one for which there was no sufficient support in the evidence. The issue comes to be whether the

adjudicator was entitled to infer from the evidence before him that internal flight was not an available option for the appellant. That issue is not resolved, as the Tribunal seeks to resolve it, by building a case for drawing a different inference.

[18] In our opinion, the adjudicator was entitled, on the evidence before him, to draw the inference that internal flight was not a viable option for the appellant. He was entitled to distinguish *C (Russia)* in the way he did. He had before him an appellant whose evidence as to the persecution he suffered was found to be wholly credible and was corroborated by his wife, who was also found to be wholly credible. He also, on the basis of the credible evidence of the appellant and his wife, found it established that the appellant had a well-founded fear of persecution if he returned to the part of Russia from which he had come. It is of significance, in our view, that the persecution which the appellant had suffered was at the hands of the militia of the Department of Internal Affairs (see paragraph 37 of the adjudicator's determination), and that the appellant had failed to obtain any redress from the authorities and had no rational expectation of such redress (see paragraph 32). That is the background against which the adjudicator was entitled to weigh the significance of the evidence that he had twice attempted to relocate within Russia, and twice failed because of his history of political activity. In our view, that evidence, against the background which we have mentioned, entitled the adjudicator to draw the inference that internal relocation was not a viable option for the appellant. Further failure to obtain a *propiska* to relocate would result in the appellant having to return to Orel, the very place in which he was at risk of persecution. Although it is possible to analyse the circumstances differently, as the Tribunal does in its determination, it cannot in our opinion be said that there was no sufficient basis in the evidence for the inference which the adjudicator drew. We are therefore of opinion that the Tribunal erred in finding that the adjudicator had

committed an error of law. The Tribunal was therefore in our opinion not entitled to substitute its view of the facts for that taken by the adjudicator.

Result

[19] In these circumstances, we allow the appellant's appeal against the determination of the Tribunal of 27 July 2004, and, in accordance with our power under section 103B(4)(b) of the 2002 Act (as amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004), read with section 102(1)(a) of the 2002 Act, affirm the adjudicator's determination of 2 February 2004.