Neutral Citation Number: [2008] EWHC 3571 (Admin)

Case No: CO/4584/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Monday, 23rd June 2008

B e f o r e:

HIS HONOUR JUDGE MACKIE
(Sitting as a High Court Judge)

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Between:
THE QUEEN ON THE APPLICATION OF RAMANAKANTHAN
Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant

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Mr J Martin (instructed by Nag & Co) appeared on behalf of the **Claimant**
Mr R Dunlop (instructed by Tresury Solicitors) appeared on behalf of the **Defendant**

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J U D G M E N T

1. THE HIGH COURT JUDGE: This is a renewed application made on behalf of Mr Ramanakanthan for judicial review behalf by his counsel Mr Martin.

2. The claimant is a Sri Lankan of Tamil orgin who was born in May 1968. He originally sought to challenge a decision of 15th May, refusing further representations that he had made earlier that month as a fresh claim and the removal directions that ensued.

3. There was a supplemental letter on 19th October, which I will turn to shortly, which Mr Martin says shows an absence of anxious scrutiny. He submits that the need for the second letter is indicative of running repairs recognised as being necessary, to an unsatisfactory first letter.

4. The matter came before Sir George Newman, on paper, on 7th February and he refused permission.

5. It is submitted on behalf of the claimant that the Secretary of State has in effect paid only lip service to her duty to have regard to the test in paragraph 353 as explained in WM. That test, of course, requires the matter to be approached in the following way. Paragraph 353 says:

> "The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:
>
> i) had not already been considered; and
>
> ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection."

6. I have regard to the guidance about the approach in WM I have had from both counsel.

7. The claimant relies upon the fact that at the time of his asylum hearing, in 2003, a number of pertinent facts were accepted by the Tribunal to be correct. For example, the appellant claimed and it was accepted, that when returning to his home from work, he saw police vehicles parked outside his house and became frightened to go in and so he went to his uncle's house. He later found out that an LTTE member had committed suicide in front of his house and that his father had been arrested. The appellant was advised by his uncle to leave the country because of his involvement with LTTE. The Asylum Tribunal was also satisfied that the claimant had been detained in 1997, or had been on suspicion of assisting the LTTE and during that time he was beaten and that scars depicted in the photographs which are before the Tribunal were inflicted. It was accepted that he had been kept under some form of observation and following the discovery of medicines in his house in April 2001, he again had been suspected of assisting the LTTE. The Tribunal also found that there was no evidence that the appellant was on a "wanted" list at that time and raised certain other matters which had a significance during the cease fire, which is now very different indeed. That is the submission.

8. It was also said by the Tribunal however that enquiries, if they revealed detention in 1997, would have shown the circumstances of release indicating that the security forces had no information leading them to believe as opposed to suspect that he was an active member of the LTTE. As far as the position with regards to his later assistance in hiding medical supplies for the LTTE was concerned, such activities are at a relatively low level and not at such to cause the security services to prolong any detention.

9. The letter of 19th October is criticised, firstly, on the general ground that I have already mentioned. It is also suggested that at paragraph 7 there is inappropriate emphasis given to the absence of the applicant from a "wanted" list. Paragraph 7 says this:

> "...could not have provided any further evidence to suggest your client is currently on wanted list or that he is of any specific interest to Sri Lankan authorities. You have not provided any further evidence that your client would be at risk on return."

That is submitted by the claimant to be, as it were, an inappropriate preoccupation with the "wanted" list.

10. It is submitted on behalf of the Secretary of State that those lines have to be seen as a whole and that what the letter is directed at is the absence of any information to suggest that the claimant is of interest to Sri Lankan authorities or at risk on return.

11. Criticism is also made of paragraph 12, which says that many factors would be needed to demonstrate that the person returning to Sri Lanka would be considered to have a high risk profile. It is correctly submitted that the guidance in LP does not say that, because in some circumstances, as it says, a single factor will do.

12. Criticism is also made of paragraph 17 and the passage which reads as follows:

> "However, this does not show evidence of how the situation bears specific relevance to your client's case since he has not been in the country for the last six years and he has not provided any evidence to suggest he is wanted by the LTTE or the Sri Lankan authorities."

13. Again it is skilfully submitted on the claimant's behalf that that is not a particularly determinative matter, having regard to the length of absence which would not be seen to be a factor showing lack of future interest by the Sri Lankan authorities. Criticism is also made, as I say, of the fact that there is on the claimant's submission insufficient information to the relevant test to show that the Secretary of State has had regard to that test. In answer, reliance is placed on paragraphs 4 and 23 where there is reference to the fact that the test is that set out in 353 and must be taken to be a reference to what the "Immigration Judge Test". I agree.

14. I should also mention the reliance placed upon the decision of Sir George Newman in the case of R v Sivanesan. Counsel for the claimant cites this judgment of Collins J, setting out the 12 factors listed in LP, and submits that it is at least well arguable that his client falls within some of those. For example, he relies upon 4A, the previous

record, "is a suspected member or supporter at a level which would mean that the authorities would retain interest likely to bring this". He also scores he submits, as he does under 7 and 8, with the confirmatory element of scarring and the question of relatives. It is submitted by the defendant that the degree of involvement of relatives in the LTTE is limited to one brother-in-law. As one sees from the Tribunal decision it is a bit more than that.

15. Counsel for the defendant relies upon paragraph 4.1 of (inaudible) as to say which reads as follows:

> "The lesson to be learned from this case is that the central question is whether a real risk to a citizen where authorities would suspect the claimant having sufficiently significant link to the LTTE which would cause him to be detained on his return to Sri Lanka."

When one applies that lesson it is clear that this submission is without substance. While echoing the submissions made about the inadequacies of the first letter, in my judgment, it is not arguable that the Secretary of State applied the wrong test. It is not arguable that the Secretary of State failed to consider and properly evaluate whether or not there was a realistic prospect of success of an application before an immigration judge before reaching the conclusions set out. Despite the able submissions of Mr Martin, this application is refused.