

CO/6665/2008

Neutral Citation Number: [2008] EWHC 2876 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 28th August 2008

B e f o r e:

HIS HONOUR JUDGE BIRTLES

Between:

THE QUEEN ON THE APPLICATION OF HUSSANINI

Claimant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Ms Khan appeared on behalf of the **Claimant**

Mr Singh (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

J U D G M E N T
(Approved by the court)

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1. JUDGE BIRTLES: This is a renewed application for leave to apply for judicial review, the original application having been dealt with on paper by Blake J on 1st August 2008. Blake J made two observations. I will come to those in a moment.
2. The history of the matter is that on 14th September 2004 the Claimant claimed to have arrived in the United Kingdom. On 15th September 2004 he claimed asylum and was served with a notice to a person liable for removal notice. On 12th January 2005 his asylum claim was refused in a letter dated 1st January 2005. On 1st May 2005 his appeal was heard. It was dismissed on 4th July 2005. On 22nd July 2005 permission to appeal for a reconsideration hearing was refused. His appeal rights were exhausted on 20th October 2005. On 10th July 2008 he was detained and served removal directions set for 15th July 2008. On 10th July 2008 he made further submissions. On 15th July 2008 those further submissions were refused. The application for judicial review was lodged on 15th July 2008. On 22nd July 2008 there was a supplementary decision letter. The two decision letters are attached to the clip produced by the Treasury Solicitor on behalf of the Defendant.
3. What has happened since the Claimant came to this country is (I will take this from the letter of Reverend Maconochie in the Claimant's bundle at page 34) that, although originally coming from Afghanistan (the Claimant was a Muslim), he started coming to the St Thomas' Church, Philadelphia Campus in Sheffield in late 2006 and was baptised into the Christian faith on 24th June 2007.

A copy of the certificate of baptism appears in the Claimant's bundle at page 32. According to Reverend Maconochie, the Claimant received threats from the Afghan community in Sheffield following his baptism. Reverend Maconochie states in his letter of 10th July 2008 that he is satisfied, and his colleagues are satisfied, that there is a genuine conversion to Christianity. The Claimant is regularly involved in Sunday worship, and a midweek Bible study consisting of Iranians and Afghans:

"He [is] growing in his faith and very keen to share his faith in Jesus with others."

4. I agree that the Secretary of State's decision letters query the genuineness of the conversion in the light of the Immigration Judge's decision dated 8th July 2005. The Immigration Judge, Mr Sarsfield, heard the refusal of asylum appeal and rejected it. He found a number of matters which led him to conclude that the Claimant was not a reliable witness and, in any event, was of no interest to the authorities or remnants of the Taliban in Afghanistan. Immigration Judge Sarsfield did not consider the question of the Claimant's conversion to Christianity, because that took place after the decision was promulgated on 8th July 2005. However, his findings of credibility were relied upon by the Secretary of State in reaching her decision that this was not a genuine conversion.
5. I would agree with Blake J, in his reasons for refusing permission to apply for judicial review, that the Defendant was not entitled, on the evidence before her, to conclude that there is no real evidence that the conversion is a genuine one. He put it slightly more

conservatively, but it seems to me if this matter was reconsidered by an Immigration Judge then there would be evidence, and indeed additional evidence, which might well persuade an Immigration Judge to take a different view on the genuineness of the conversion.

6. However, that is not the end of the matter, because the Secretary of State did not stop there. She went on to consider, even if the conversion was genuine, whether or not the Claimant would be at risk upon return to Afghanistan if his conversion to Christianity was genuine. I have some disquiet about the original decision letter dated 15th July 2008, but it has been supplemented by a much more detailed five-page letter dated 22nd July 2008. That letter sets out the history of the Claimant on arrival in this country, refers to the substantial number of documents submitted by the Claimant's solicitors (letter paragraph 8), refers to the UK Border Agency's Operational Guidance Notes for Afghanistan dated 20th April 2007 (letter paragraphs 11 and 12), refers to the UNHCR eligibility guidelines for assessing the international protection needs and refers to the case of AR (Christians – Risk in Kabul) Afghanistan [2005] UKAIT 00035. It also refers to what I think must be one of the most recent, if not the most recent, decision involving Afghanistan in the Court of Appeal, the case of MT (Afghanistan) v Secretary of State for the Home Department [2008] EWCA Civ 65. Having referred to all of that information, the letter concludes in the following way at paragraphs 18 and 19:

"18. It is considered that even if your client has genuinely converted to the Christian faith, your client will not be at risk of persecution as your client has the option of practising his religion discreetly. Also the evidence indicates that the Government in Afghanistan are not pursuing the death penalty for apostasy.

19. Under the circumstances, it has not been accepted that Article 3 [of the] ECHR would be engaged in your client's case. It also follows that it is not considered that his life would be in danger if he was returned to Afghanistan and therefore removal would not breach Article 2 of the ECHR."

That is the decision of the Secretary of State.

7. There is no dispute about the law. Paragraph 353 of the Immigration Rules provides as follows:

"When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. 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.

This paragraph does not apply to claims made overseas."

8. Paragraph 353 has been considered by the Court of Appeal. The threshold is a modest one, but the question for the Secretary of State is whether there is a realistic prospect of success in an application before an Immigration Judge. The function of this court is to decide whether or not today there is an arguable case by the Claimant that the Secretary of State's determination is capable of being impugned on Wednesbury grounds. In other words, is there an arguable case that the Secretary of State's two decision letters are Wednesbury irrational?
9. Ms Khan has taken me to a number of documents in the Defendant's bundle, ones which are referred to in the Secretary of State's decision letter, and has sought to say that the Claimant, being an evangelical Christian, is at risk of persecution by the state authorities, and has referred me to a number of documents which refer to other cases. The difficulty is that there is no up-to-date evidence before me that if this Claimant was returned to Afghanistan, and practised his religion discreetly, and if necessary relocated to Kabul, as Blake J has indicated, he would be persecuted by the state authorities.
10. I find myself unable to say that there is an arguable case that the Secretary of State's two letters of 15th July 2008 and 22nd July 2008 are irrational or capable, in a full hearing, of being shown to be irrational. For those reasons I refuse the application.
11. Mr Singh?
12. MR SINGH: No applications, my Lord.
13. JUDGE BIRTLES: I will not say anything.
14. MR SINGH: Yes.
15. JUDGE BIRTLES: Thank you very much.