



Case No: C5/2008/0306

**Neutral Citation Number: [2009] EWCA Civ 56**  
**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL**  
**[AIT No: AA/13868/2006]**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Thursday, 22<sup>nd</sup> January 2009

**Before:**

**LORD JUSTICE LAWS**  
**LORD JUSTICE SCOTT BAKER**  
and  
**LORD JUSTICE GOLDRING**

**Between:**

**AD (GUINEA)**

**Appellant**

**- and -**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Respondent**

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(DAR Transcript of  
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THE APPELLANT APPEARED IN PERSON ASSISTED BY AN INTERPRETER AND  
LAWYER OF THIS COURT, MR H OUAHES.

Mr J Auburn (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

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**Judgment**

**(As Approved by the Court)**

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## **Lord Justice Laws:**

1. This is an appeal with permission granted by the Asylum and Immigration Tribunal (the AIT) against both the first and second stage statutory reconsideration decisions of the AIT. At the second stage the AIT dismissed the appellant's appeal brought on asylum, human rights and humanitarian protection grounds against the Secretary of State's refusal on 23 November 2006 to grant her leave to enter or remain in the United Kingdom.
2. The appellant claims to be a citizen of Guinea, born on 4 October 1980, named AD. She arrived at Gatwick airport from Morocco on 23 October 2006 with no evidence of identity or travel documents. She was accompanied by two children. She claimed asylum on arrival. She claims to be a Muslim from Conakry in Guinea. She said she had been forced into an arranged marriage. She said she had been ill-treated by her husband and had fled Guinea because her husband and his family were insisting that her younger daughter should be circumcised; that is, subjected to female genital mutilation. She claimed that her first daughter had died as a result of such treatment. She said that she had stayed in a friend's house for two months and in that time her mother arranged for her to leave Guinea. The Secretary of State concluded in his decision letter that the appellant could safely and reasonably relocate in another part of Guinea and so refused her asylum claim.
3. Her appeal against this refusal first came before Immigration Judge Thorndike. He stated that credibility was not an issue before him. He rejected the Secretary of State's case as to internal relocation, and by a determination of 12 January 2007 allowed the appeal on all the grounds put forward. The Secretary of State sought a reconsideration. At a stage one reconsideration on 26 October 2007, Senior Immigration Judge Nichols found that Immigration Judge Thorndike's decision was flawed by a series of material errors of law. Immigration Judge Thorndike had been wrong to hold that credibility was not in issue. He failed to give reasons (or legally adequate reasons) for important conclusions. He failed to explain any basis for holding that the risk of enforced mutilation would be persecution for a Convention reason. SIJ Nichols adjourned the case for a second stage reconsideration at which "all issues will be reconsidered afresh". And so the matter came before Immigration Judge Dearden for the second stage. As I have said, he dismissed the appeal. He found that internal relocation was properly available to the appellant and gave reasons (paragraph 34). However, the appellant assaults his determination of 21 November 2007 as lacking a proper evidential foundation and inadequately reasoned.
4. The Secretary of State agrees with this. She accepts that the decision of 21 November 2007 is "unsustainable and completely flawed" and, until recent developments which I will explain transformed the case, indicated that she was willing that the matter be remitted for a rehearing. The appellant declined however to accept that position. She desired to argue that the original decision of Immigration Judge Thorndike was not marred by any error of law, so that there was no case for a reconsideration at all and

Immigration Judge Thorndike's decision allowing the appeal should stand; this despite the fact that at stage one the appellant's representative conceded that the first IJ's approach was legally flawed.

5. However, these arguments have been overtaken by events. There is new evidence which, with permission granted by Deputy Master Young, the Secretary of State brings before the court. It is contained in two witness statements by Wendy Foy, with some 28 exhibits. This material shows that the appellant is not AD, but Mariama Barry; that she has travelled with her husband on frequent business trips to locations in Asia, Europe and the United Kingdom; that the whole family came to the United Kingdom on a visitor's visa some ten days before she claimed asylum in the false name of AD; her date of birth is not 4 October 1980 as she claimed, but 20 May 1974; she has twice been refused entry into the United States, though she told the United Kingdom authorities that she had never been refused entry to another country. On claiming asylum here she stated she had just arrived from Guinea, fleeing her husband, though as I have said she had come here ten days before that with her husband and children.
6. These matters came to light when, shortly before this appeal was first due to be heard on 11 June 2008, information was received from the United States authorities showing that the appellant's fingerprints were identical with those of a woman, Marianna Barry. This was discovered as a result, we are told, of a recent initiative in the use of finger prints that has been set in train by the Secretary of State in co-operation with the United States authorities. Further investigations followed and all the evidence which Miss Wendy Foy now deploys became available.
7. The appellant has appeared before us today in person. Efforts, as I understand it, had been made to obtain an interpreter in the African language which she speaks, or claims to speak. There were difficulties, however, in achieving that. A lawyer on the court staff, however, is fluent in French, and he has assisted the court by interpreting the proceedings in French for the appellant's benefit. Since she has been at pains to tell us that she would prefer to deal with the whole matter in what she calls her own language, it is important that I should record that it is entirely plain and obvious that she understood perfectly clearly the French being spoken to her by Mr Ouahes.
8. Asked about the merits of this new evidence she had very little to say. She said the man who brought her to England was not her husband. She said that she feared for her child. She said she had not lied. She was asked in terms whether she wished to say anything about all the particular points that are made in the new evidence, not least that relating to the fingerprints, but she had only these generalities to offer. We have done our best to give her every opportunity to confront this fresh material. For my part I am entirely satisfied that she knows what is said against her, has understood it and has no answer to it. In those circumstances I conclude that the decision in her favour made by Immigration Judge Thorndike was procured by fraud. It was therefore unlawfully arrived at. It follows that this appeal must be dismissed.

Immigration Judge Dearden was right to dismiss it, although for stronger reasons than he could have appreciated. I would therefore dismiss the appeal.

9. We have considered whether in these unusual circumstances the papers in the case should be referred to the Director of Public Prosecutions. On the face of it this was a thoroughgoing fraud. We think that the papers should be referred to the Director, but it is important that there be liaison between the Home Office and the Director of Public Prosecutions to see what is the best course to take in the public interest. The Secretary of State may feel that there is a powerful interest in removing this person from the United Kingdom sooner rather than later. That is a matter for those authorities to consider. For our part we would only in addition urge that any decision that is made should be made extremely quickly.

10. For all those reasons, then, I would dismiss the appeal and refer the papers to the Director of Public Prosecutions.

**Lord Justice Scott Baker:**

11. I agree.

**Lord Justice Goldring:**

12. I also agree.

**Order:** Appeal dismissed