Case No: C5/2007/1244

Neutral Citation Number: [2008] EWCA Civ 504
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/03874/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 14th April 2008

Before:

LORD JUSTICE PILL
LADY JUSTICE ARDEN DBE
and
LORD JUSTICE LONGMORE

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Between:

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

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Mr B Bedford (instructed by Messrs Sultan Lloyd) appeared on behalf of the **Appellant**.

Mr J Hyam (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Longmore:

1. This appellant, whom I will call HH, asserts that Senior Immigration Judge Mather's decision on reconsideration, dated 5 April 2007, to the effect that the decision of Immigration Judge A W Khan of 25 April 2006 disclosed no material error of law, was itself wrong in law. The basis for the assertion is that Immigration Judge Khan erred in law in failing to adjourn the hearing before him so that the appellant, HH, could have legal representation.

2. The history of the matter can be summarised in the following way. HH was born on or about 11 January 1985. He claimed that in November 2005 the Iranian police came to look for him at his place of work and that there was then a 20 minute struggle and a car chase, after which he escaped into a park. He claimed to have received injuries. He then stayed with his grandfather for two months before leaving Iran clandestinely. He arrived in the United Kingdom on 25 February 2006, equally clandestinely, and three days later claimed asylum on the basis that he had a well-founded fear of persecution in Iran by reason of his political beliefs. Immigration Judge Khan disbelieved the appellant's account of events in Iran and said that he lacked any credibility, and he therefore dismissed the appeal.

3. Originally HH had been able to obtain the assistance of the Refugee Legal Centre in Dover who helped him to put together the appropriate statement of evidence form, which they sent to the Secretary of State together with a covering letter and a bundle of documents including objective country evidence. HH was then interviewed on behalf of the Secretary of State on 9 March, but his application for asylum was refused on 10 March 2006.

4. He was then sent to Birmingham, and the Refugee Legal Centre in Dover said that they could no longer represent him. They did, however, submit an appeal on his behalf, which they said they had done simply to preserve his right to appeal. They said that they had been able to secure an appointment for him with the Birmingham solicitors firm of Messrs Harbans Singh, but, for whatever reason, those solicitors did not go onto the record on HH's behalf. HH does not himself speak English but at some time he got in touch with an organisation in Birmingham called the Asylum Support and Immigration Resource Team ("ASIRT"). HH's appeal was then fixed for 25 April in Birmingham, and on 20 April ASIRT wrote to the Asylum and Immigration Tribunal asking for an adjournment so that they could have time to obtain and read HH's file before deciding whether they would represent him. That letter was put before a Senior Immigration Judge, whose initials are NWR, and he endorsed the file:

> "Application refused. ASIRT have not said they want to go on record as representing."

5. When the appeal came on for hearing, HH was therefore in person and he renewed his application for an adjournment. The record of

the proceedings shows that Immigration Judge Khan refused that renewed application. It is material to note that Rule 21 of the Asylum and Immigration Tribunal (Procedure) Rules provides that any party applying for an adjournment must show good reason why an adjournment is necessary and Rule 21(2) provides:

> "The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined."

6. After taking time to consider his decision Immigration Judge Khan dismissed HH's appeal on 4 May 2006, saying, as I have already noted, that he found the whole of HH's account of the events in Iran before he left to be unbelievable and incredible. He recorded that HH had never been involved in politics in Iran and was never a member of any political organisation. He had never been arrested or detained except for an offence of consuming alcohol, which did not expose him to a real risk of persecution.

7. On 23 May 2006 the AIT refused to order reconsideration, but on 9 August Crane J, sitting in the administrative court, did so order and recorded that HH had not been legally represented before Immigration Judge Khan. The reason for Crane J's order was that the judge had not arguably addressed, as it seemed to him, the issue whether HH was at risk on return merely because he would be returned as a failed asylum seeker. He did not order reconsideration on the basis that HH had not been represented. That was apparently because the papers before that learned judge did not contain the reasons for the refusal to adjourn. It now appears that Immigration Judge Khan did not give, at any rate in writing, any reasons for refusing the renewed application before him.

8. Be that as it may, when Senior Immigration Judge Mather conducted the reconsideration ordered by Crane J, Mr Becker Bedford of counsel did appear for HH and he then took as one of his grounds that an adjournment had been wrongly refused. In his decision of 5 April 2007, Senior Immigration Judge Mather dealt with the matter in this way in paragraph 12 of his decision:

> "Given the Tribunal's overriding objective, which is found at Rule 4 of the Asylum and Immigration Tribunal Procedure Rules 2005, and the provisions of Rule 21 of those rules which provide that the tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise justly be determined, then it is unsurprising that the Immigration Judge did not accede to the renewed application. There is nothing about the letter from ASIRT to suggest that there was an urgent need for representation. All the letter said was that, if they

> were able to get hold of a file, they would then look to see if they could assist. Immigration Judges are used to dealing with appellants in person and there was no suggestion that the appeal could not be justly determined on the basis of the appellant's own evidence and the documentation which had been produced during the preparation of his claim to asylum and its investigation. The question of adjournment was a discretionary matter for the Immigration Judge. Whilst it would have been better if he had given reasons for declining to adjourn, or even recorded the fact that he had been asked, it was not an error of law not to do so. However, given the nature of the request for the adjournment, and the Senior Immigration Judge's earlier brief reasons as endorsed on the file, and the lack of any fresh additional reasons put forward to the Immigration Judge, I cannot find any error of law in the way that he dealt with the application."

9. Mr Bedford for HH now attacks this decision by saying that Immigration Judge Khan committed procedural errors in failing: a) to enquire whether HH had had sufficient opportunity to obtain legal representation; and b) to record his decision to refuse his request for an adjournment and his reasons. But in my judgment there is nothing in those two points. In the first place, as Senior Immigration Judge Mather pointed out, it is common enough for tribunals to deal with unrepresented appellants if there is no point of law to be decided. Here the simple question was whether HH gave a truthful account of events in Iran; the judge found that he had not. Secondly, as Senior Immigration Judge Mather also pointed out, the formal record of the proceedings did record that a renewed application for an adjournment was made and was rejected. There was no need for a repetition of the reasons already given by the Senior Immigration Judge on 21 April.

10. Mr Bedford's substantive ground of appeal is that Immigration Judge Khan was obliged in law to allow the appellant legal representation, and his refusal to allow an adjournment for that purpose was wrong in law and in fact caused injustice. As a matter of domestic law that is, in my view, plainly wrong for the reasons given in the paragraph I have recited from Senior Immigration Judge Mather's decision, including the reason that the decision was a decision made in the course of the Immigration Judge's discretion. It is also impossible to see that there was any injustice in the result, having regard to the terms of the Immigration Judge's decision, which was all a decision on the facts.

11. Mr Bedford's substantive ground of appeal can therefore only be made good a) if the determination of HH's appeal was a determination of his civil rights and obligations under Article 6 of the European Convention on Human Rights and b) if he would have been entitled to have legal representation in respect of the determination pursuant to that convention. Paragraph 38 of Mr Bedford's

skeleton argument asserts that neither our domestic courts nor the European Court of Human Rights have ever ruled on the application of Article 6 to asylum claims and continues:

> "This is an important point which requires an authoritative ruling from the Court of Appeal."

12. No doubt it was for that reason that Sir Henry Brooke granted permission to appeal to this court, although he pointed out that Article 6 did not in itself entitle HH to free legal representation and that something more would be needed.

13. In fact paragraph 38 of Mr Bedford's skeleton is by no means a complete statement of the position because the European Court of Human Rights has repeatedly said that the assessment of refugee status is not a civil proceeding for the purpose or a determination of a person's civil rights for the purpose of Article 6. Senior Immigration Judge Mather himself referred to Agee v UK [1976] 7DR 164 and P v UK [2001] 2 FLR 261. Mr Bedford has himself referred also to Maaouia v France of 13 September 2000, [2001] 33 EHRR 42, in paragraph 40 of which this appears:

> "The court concludes that the decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him within the meaning of Article 6 (1) of the Convention."

14. Mr Bedford also referred us to a decision of the Immigration Appeal Tribunal headed by Collins J to the same effect, namely MNM v SSHD of 1 November 2000, [2000] INLR 576, where Collins J explained how the meaning of the word 'civil' in continental jurisprudence is rather different from the word 'civil' in our jurisprudence, because we use the word civil as an antonym to criminal whereas European jurisprudence uses it as an antonym to private in the sense of the distinction between private and public law.

15. Mr Bedford of course accepts that that was indeed the position in the early years of the current decade but he submits that all that has changed since the adoption of the Qualification Directive 2004/83/EC because, pursuant to that directive, he submits, the grant of refugee status is now a civil right. That directive confirms *inter alia* that if a refugee comes within the terms of the Geneva Convention he must be given refugee status and also confirms that when refugee status is granted to an applicant he must then become entitled to various rights in domestic law, such as the right to work and access to medical or other state services.

16. The interesting argument put before the court by Mr Bedford was to the effect that before that Qualification Directive no legal right to asylum existed in English law at all and that decisions that Article 6 therefore did not apply were understandable. Now, however, he says, there is a right to individuals in

European Union law to claim asylum and so Article 6 must apply. That would of course be an important point to determine if the application of the Convention were to make any difference on the facts of this case, so the question is whether this appeal, if the Convention applies, would be decided differently from the way it would be decided in a domestic context.

17. Mr Bedford's primary argument was that indeed it would be. He referred the court to the case of Airey v Ireland [1979] 2 EHRR 305, and in particular to paragraphs 24 and 26 of that decision. The flavour of that decision, which was in relation to legal representation or the absence of legal representation in the context of a petition for a judicial separation in the Irish High Court, can be ascertained from the following three short quotations. Firstly in paragraph 24:

> "Furthermore, litigation of this kind, in addition to involving complicated points of law, necessitates proof of adultery, unnatural practices or, as in the present case, cruelty; to establish the facts, expert evidence may have to be tendered and witnesses may have to be found, called and examined. What is more, marital disputes often entail an emotional involvement that is scarcely compatible with the degree of objectivity required by advocacy in court."

And then also in paragraph 24:

> "The court concludes from the foregoing that the possibility to appear in person before the High Court does not provide the applicant with an effective right of access."

And then in paragraph 26:

> "The conclusion appearing at the end of paragraph 24 above does not therefore imply that the State must provide free legal aid for every dispute relating to a 'civil right'.
>
> To hold that so far reaching an obligation exists would, the court agrees, sit ill with the fact that the Convention contains no provision on legal aid for these disputes, Article 6 (3)(c) dealing only with criminal proceedings. However despite the absence of a similar clause for civil litigation, Article 6 (1) may sometimes compel the state to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done in the domestic law of certain Contracting States of various types of

> litigation, or by reason of the complexity of the procedure or of the case."

18. As to that, the question is whether, taking into account the guidelines set out in the case of Airey v Ireland, legal representation was here required and it was necessary to adjourn for that purpose. It is in my view impossible to see how in a case of this kind legal representation could be said to be "indispensable". Mr Bedford did submit that there were complicated points of law such as whether a failed asylum seeker faced persecution on return. He also pointed out that a person seeking asylum is not the person best placed, within the phraseology of paragraph 24, to give his case the "degree of objectivity required by advocacy in court". But the truth is that there was no complicated point of law in this case. The only question was, as I have already said, the straightforward question whether the appellant's accounts of events in Iran was to be believed. Insofar as was a point on refused asylum seekers returning to Iran, that was in fact dealt with comprehensively by Senior Immigration Judge Mather in paragraph 18 of his decision, where he referred to the recent country guidance case of AD (Risk - Illegal Departure) Iran [2003] UKIAT 00107.

19. In developing his argument this afternoon Mr Bedford submitted that there was in fact such inequality of arms that the decision not to adjourn for legal representation cannot be left standing. He said first that Immigration Judge Khan ought to have asked whether the appellant had been to see the solicitors with whom the legal people in Dover had purported to put HH in touch. But the fact of the matter is that Immigration Judge Khan did deal with the ASIRT application that was made and, if relevant, Senior Immigration Judge Mather could have been informed as to what the position was with the solicitors who, for whatever reason, as I have said, decided not to come on the record.

20. Next Mr Bedford sought to say that effectively the appellant only knew of the case against him on the day when the Immigration Judge came to his decision, and he relied on a sentence in the decision to say that the appellant disagreed with the contents of the refusal letter. That, in my judgment, is to put far too much weight on that matter. Obviously the applicant had every opportunity to know what was in the refusal letter, particularly the fact that the Secretary of State had decided not to allow his application.

21. Then Mr Bedford said that the outcome might have been different if legal representation had been accorded to HH. That also seems to me impossible. When pressed on that matter Mr Bedford said that any lawyer would have advised HH to get medical evidence in respect to the alleged injuries he had suffered in Iran and would have sought corroborative evidence from Iran from the appellant's wider family, and he repeated that the appellant needed assistance on the question of failed asylum seekers returning to Iran. The truth of that matter is those are all matters that could have been put before Senior Immigration Judge Mather as making a difference to the outcome. It is much too late to assert those matters here for the first time a year later.

22. It is the duty of any court, on an application to adjourn for legal representation having been refused, to look overall at the matter and to decide whether any injustice was in fact caused by that refusal. I for my part am satisfied that Senior Immigration Judge Mather did just that, and here in this court I am also satisfied that there can have been on the facts of this case no injustice caused by the absence of legal representation. Despite Mr Bedford's forceful submissions on this case, I would dismiss this appeal.

Lady Justice Arden DBE:

23. I agree.

Lord Justice Pill:

24. I also agree.

Order: Appeal dismissed