

Case No: C5/2008/0165

Neutral Citation Number: [2008] EWCA Civ 567
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/02545/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 30th April 2008

Before:

LORD JUSTICE MOORE-BICK

Between:

OD (IVORY COAST)

Appellant

- and -

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

(DAR Transcript of
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Ms C Kilroy (instructed by the Refugee Legal Centre) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

Judgment

(Approved by the court)

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Lord Justice Moore-Bick:

1. This is a renewed application for permission to appeal following refusal on paper by the single Lord Justice. The applicant is a national of the Ivory Coast, aged 30, who travelled to this country via Togo and France, entering the United Kingdom on 31 December 2006. He claimed asylum on 2 January 2007 on the grounds that he was at risk of persecution in the Ivory Coast on the grounds of his ethnicity and his religion (he is of Dioula-Malinke ethnicity and a Muslim) and also his political opinions, but his claim was rejected by the Secretary of State for reasons which were set out in a refusal letter dated 12 February 2007.
2. The applicant appealed to the Asylum and Immigration Tribunal against the refusal to grant him asylum. At the hearing he relied again upon his ethnicity and religion and he also described in some detail his activities in support of a body called the Rassemblement des Républicains (“RDR”). These involved organising marches, meetings and demonstrations, putting up posters and producing placards and banners. He said he took part in demonstrations from time to time.
3. The applicant said that in March 2004 he had been assaulted by the police at a demonstration and beaten with an iron bar, that his right arm had been broken and that he had suffered scarring on his head and knees resulting from ill-treatment. He was detained for two days during which he was beaten but was released after political and media pressure. The applicant said that in July 2005 the police searched his home area and rounded up a number of RDR activists. He himself managed to escape and did not return for about a month. In December 2006 he organised another demonstration. He and others were stopped by the police when returning from the funeral of an RDR activist wearing RDR T-shirts. He said he was taken with three others to an army camp where he was beaten and made to crawl on his knees and elbows. However, his ID card and his RDR membership cards which had been taken from him were later returned and he was taken to a civilian hospital for treatment. Although his room at the hospital was guarded, he managed to escape. Shortly afterwards he left the country.
4. Apart from the evidence of the applicant and a representative of the RDR in this country, a Mr Konate, the Immigration Judge hearing the appeal had available to him evidence of conditions in the Ivory Coast as described in the 2006 Human Rights Watch summary and the Home Office Operational Guidance Note published in November 2006.
5. The Immigration Judge accepted the truth of the applicant’s account and accepted that he may have considered himself to be at risk in July 2005, but he did not accept that the applicant had been specifically targeted at that time. He also accepted the truth of the applicant’s account of his experiences in December 2006, but he found that the fact that he had been removed to a civilian hospital and had been at best lightly guarded meant that he was not regarded as a significant opposition figure and was not someone at risk of

being targeted by the authorities in the future. He therefore dismissed the appeal.

6. The applicant applied for his case to be reconsidered and an order to that effect was made. At the first stage re-hearing it was agreed that the judge had erred in law in failing to make a finding as to whether the applicant would continue his political activities if he were returned to the Ivory Coast and in failing to make it clear whether in reaching his decision he had taken into account a number of factors including the applicant's ethnicity, his religion, the fact that he had originated from the north of the country and his political activities while in the United Kingdom. The parties agreed that the second stage reconsideration should be carried out by the Immigration Judge who had heard the original appeal.
7. In his decision at the second stage of the reconsideration the Immigration Judge heard evidence from the applicant and also from a Mr Kamagate Amadou, a former gendarme in the Ivory Coast. The applicant confirmed that he intended to remain politically active if he were returned to the Ivory Coast and said that he could not safely relocate to the north of the country because of the difficulties of travelling and the dangers he would face. On that occasion the Immigration Judge had before him the then current Operational Guidance Note issued by the Home Office and the recent decision of the AIT in the case of GG [2007] UKAIT 00086, to both of which he referred. The judge found that the applicant's ethnic origin, his Muslim name and religion and his northern birthplace were factors that, together with his political profile, could increase the risk of ill-treatment on his return, but held that they had to be considered in the context of the other evidence. He accepted that the applicant had been involved in political activity in this country. He found that he was a mid-ranking activist and had not shown that his work for the RDR in this country had significantly increased the risk to him on his return. The judge accepted that it was possible that the applicant's name might be held at the airport on a list of persons who had escaped from custody, but he did not find the evidence very strong. He was fortified in his conclusion that the applicant had not shown any real risk of ill-treatment on return by the fact that he had been able to pass through the airport without apparent difficulty only three weeks after his escape from hospital.
8. As to the applicant's potential activities on his return, the judge found that he was not a high-ranking member of the RDR and he noted that the tribunal in GG had said that a risk profile was attached to a person who was "something more than someone with an official position in the local branch of a party". The appeal was then dismissed.
9. The principal grounds upon which permission to appeal is sought in this case are that the Immigration Judge misunderstood and misapplied the decision in GG. In order to understand that submission it is necessary to refer briefly to a few passages from that decision. Paragraphs 84-86 read as follows:
 - “84. We consider that taken as a whole the background evidence does not bear out that political oppositionists in the Ivory Coast in

general face a real risk of persecution or serious harm or ill-treatment on return. However, where a person is able to establish a political profile as an activist political oppositionist (whether as a member from a southern political party (e.g. the RDR) or as a member from the northern-based FN), the position may well be different, at least so far as risk in that person's home area is concerned. For the sake of clarity we emphasise here that by activist or militant we mean something more than being someone with an official position in a local branch of a party. Likewise, a person who is not a member but merely a supporter of the RDR or the FN (or other oppositionist party or organisation) may, depending on the circumstances, be able to show a real risk if he or she is also an activist. Once again, however, that leaves the issue of whether he or she would have a viable option of internal relocation.

85. In reaching the above conclusions we acknowledge that there were more incidents of threats and violence directed against certain political opposition parties (including the RDR) in 2006 than in 2005. However, as before, it was primarily directed at oppositionist (especially RDR) leaders and activists and those closely involved with them. While the background evidence (including Mr Reeve's report) does bear out a continuing real risk of persecution or ill-treatment to high-level opposition party members or to activists, it does not demonstrate that low-level or medium-level members or supporters are at risk: the principal thrust of his report is that there is a serious risk on return to active members or supporters, not to low-level or medium-low-level oppositionists.
86. So far as the RDR is concerned (and in this regard its experiences appear typical of the other oppositionist parties), we find it significant that the reports of difficulties facing RDR members or those involved with the RDR predominantly relate to RDR leaders or activists or militants. Whilst there are also

references in the main reports which identify difficulties for RDR members and supporters generally, these are far from showing a consistent pattern of violence or adverse treatment meeting the threshold of persecution or serious harm or ill-treatment contrary to Article 3.”

10. In my view it is arguable that the Immigration Judge wrongly understood these paragraphs to mean that there was little risk to medium level *activists*, rather than simply to low- and medium-level members of the party who occupy administrative positions. For that reason I give permission to appeal on ground 1. Whether that error, if it can be established, can be shown to have affected the judge’s assessment of other aspects of the applicant’s case may be debatable, but I think he should be allowed to argue ground 2 as well, which is closely related to ground 1.
11. Ground 3, which alleges that the judge made contradictory findings in relation to the likelihood of there being a record available by which to identify the applicant at the airport, is, in my view, scarcely a separate ground at all and is not one on which I consider it appropriate to give permission to appeal. Ms Kilroy submitted that it could stand as a separate ground as a challenge to the findings of fact based on irrationality, but in my view that argument does not have any real prospect of success and I refuse permission on ground 3 insofar as it is sought to raise it as a separate ground.
12. Ground 4 is closely bound up with grounds 1 and 2 and therefore I think it right to give permission to appeal on that ground.
13. There is also a fifth ground. Although I do not find it particularly impressive, it too is closely connected with grounds 1 and 2 and I will give permission to argue that as well.
14. So there will be permission to appeal limited to grounds 1 and 2, 4 and 5 as set out in the grounds of appeal.

Order: Application granted in part.