



Case No: C5/2008/2031

Neutral Citation Number: [2008] EWCA Civ 1436
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/10121/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday, 14th November 2008

Before:

LORD JUSTICE RICHARDS

Between:

EM (SUDAN)

Appellant

- and -

**SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

(DAR Transcript 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 G Ward (instructed by Fadiga & Co) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

Judgment

(Approved)

Crown Copyright©

Lord Justice Richards:

1. The applicant is a young Sudanese national who left Sudan when she was aged 16 and is now aged 20. Her asylum appeal, together with her related humanitarian protection appeal and human rights appeal was dismissed by Designated Immigration Judge Manuell in November 2007. On a reconsideration, Senior Immigration Judge Gill held, in a decision dated 5 June 2008, that the Designated Immigration Judge did not make a material error of law and that his original decision should therefore stand. Permission to appeal was refused by SIJ Gill on the ground that the application was out of time. I doubt whether anything turns on that, since on the face of it an application for permission was then duly made to this court within time. In any event I propose to focus on the substance of the application rather than troubling myself with the issue of timing. The application was refused by Longmore LJ on the papers and has now been renewed before me by Miss Ward on the applicant's behalf.
2. The claim was based on the applicant's fear of her uncle, who was said to be a man of influence, at least locally. The family had lived on the first floor of a house owned by her father in Port Sudan. The uncle's family lived on the second floor. Following the disappearance of the applicant's father, the uncle had become the male head of the family. Her mother had taken a new husband but the uncle had told him not to come to the house. The uncle had arranged a marriage for the applicant with one of his sons, which was against her wishes. The applicant and her mother believed him to be motivated by the fact that she had a prospective share in the family home by way of inheritance

on her father's death. I put it that way because, as I understand the evidence, the father was only presumed dead and not confirmed to be dead, and a mere presumption of death did not give rise to any actual rights by way of inheritance but the applicant would obtain some share of the house if and when the father were confirmed to be dead.

3. The applicant's mother supported her in her refusal of marriage and arranged for her to leave the country. The applicant's case was that she was afraid to return because she would be unable to live alone and could not rejoin her family as her uncle would again force her to marry in accordance with his wishes. She had also lost contact with her mother and siblings, who had moved out of the family home and, on the evidence, had disappeared.
4. Since this is only a permission application I do not propose to set out the detailed reasoning of the Designated Immigration Judge or of the Senior Immigration Judge in finding that there was no material error of law in the Designated Immigration Judge's decision. In outline, however the Senior Immigration Judge read the Designated Immigration Judge's decision as containing findings that the applicant could not return to her former family home, of which the uncle was now in sole possession, but that she would not be at real risk from the uncle in Port Sudan outside the family home or in any other part of the country. There was an implicit finding by the Designated Immigration Judge that the applicant would not be at real risk of being forced into a marriage with her cousin or of suffering retribution from her uncle for having brought shame on him and his family by her refusal of marriage.

5. The Senior Immigration Judge referred to the Designated Immigration Judge's findings that the uncle had displayed a significant degree of tolerance towards the mother in relation to her new husband and that the uncle was only motivated by financial considerations. She held that the Designated Immigration Judge was entitled to find that the departure of the mother and siblings from the family home had left the uncle in sole possession of that home; that sole possession was the uncle's real motivation; and that his interest in the applicant had faded away now that he had got sole possession. So there were adequate findings as to risk from the uncle on return to Port Sudan.

6. In any event the Senior Immigration Judge held that the Designated Immigration Judge had been entitled to find that it would not be unduly harsh for the applicant to relocate elsewhere in Sudan. The Senior Immigration Judge did not consider that the guidance in HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062 was directly applicable, since it was largely considering the situation of Sudanese nationals of Darfuri origin or non-Arab/black African Darfuri origin. She held that the Designated Immigration Judge had given adequate reasons for rejecting the view in a report by an expert, Mr Verney, that the applicant would face severe problems on return. The Designated Immigration Judge had commented very favourably on the applicant's character, intelligence and education and had found that she would have reasonable prospects of finding employment on return. The Senior Immigration Judge considered that the Designated Immigration Judge had taken into account the objective material relating to the situation of woman in Sudan in reaching his conclusion about internal relocation. It was

therefore a conclusion that, as the Senior Immigration Judge held, the Designated Immigration Judge had been entitled to make.

7. Miss Ward challenges the Senior Immigration Judge's reasoning on both matters: that is to say, risk and internal relocation. She submits first that the Senior Immigration Judge erred in law in finding that the Designated Immigration Judge had adequately assessed the risk to the applicant if she returned to Port Sudan and in finding that the applicant could safely return there. Secondly she submits that the Senior Immigration Judge erred in law in finding that it would not be unduly harsh for the applicant to relocate away from her former family home.
8. I had understood the case originally, from the written material, to be advanced on the basis that these were separate matters and that Miss Ward would have to establish a real prospect of success on both limbs of the argument in order to get home. It has become clear from her oral submissions, however, that she does not treat these as alternatives. She submits that the internal relocation issues apply as much to return to Port Sudan to live outside the family home as to return to any other part of Sudan, such as Khartoum. She says that there is a real question as to whether it would be unduly harsh for the applicant to go back to Port Sudan in circumstances where she would not be living in the former family home.
9. But to deal with the issue of risk first, Miss Ward makes a number of submissions. As to the risk of retribution from the uncle she says that the reasoning process that the Senior Immigration Judge attributed to the Designated Immigration Judge was not spelled out by the Designated

Immigration Judge, but it was incumbent on him to spell it out and make a reasoned finding, and he was in error in failing to do so. She also submits that it did not follow that tolerance towards the mother would extend to tolerance towards the applicant who had run away to avoid marriage to her cousin, and she refers to the applicant's evidence of what the uncle had said to her about marrying her by force if necessary, which was inconsistent with any professed tolerance on his part and was not dealt with in either of the immigration judges' decisions.

10. As to the risk of forced marriage, she submits that it is difficult to see why the applicants' reappearance in the Port Sudan area with nowhere to go and with a prospective legal claim on the property occupied by the uncle would not constitute a threat to the uncle's economic interest and therefore reawaken his interest in the applicant. It is said that it is illogical to say that the applicant could not return to the former family home because of the risk that would arise from the uncle's reaction, yet to hold that there would be no similar problems if she returned to Port Sudan to live outside the family home.

11. There are really two aspects to these submissions. One is that the Senior Immigration Judge impermissibly expanded upon the Designated Immigration Judge's reasoning. The other is that the conclusions reached are not supported by the evidence or logical in themselves. The Designated Immigration Judge failed to make adequate findings as to risk on return and the only rational conclusion was that there would be such a risk.

12. Well presented though the submissions have been, I take the same view as Longmore LJ took when he considered the matter on the papers, and I am not

persuaded that the submissions are well founded. I accept that the Designated Immigration Judge's decision was not well-structured or well-expressed and that the Senior Immigration Judge's approach involved reading his decision as a whole, putting various passages together and spelling out certain matters that were implicit rather than stated explicitly by the Designated Immigration Judge. But in my judgment, what the Senior Immigration Judge did was to bring out and elucidate the Designated Immigration Judge's reasoning rather than to expand impermissibly upon it. Moreover, the reasoning process as so explained by the Senior Immigration Judge was adequate and intelligible.

13. Contrary to Miss Ward's submissions I take the view that it was reasonably open to the Designated Immigration Judge to make the findings that he did and, on the basis of those findings, to reach the conclusion that the applicant could return to Port Sudan without risk even though she could not return without risk to the former family home itself. The Senior Immigration Judge did not fall into any arguable error of law in her analysis of the Designated Immigration Judge's decision on those matters or in the conclusion that she reached in relation to it. It does seem to me that this is one of those cases where the guidance of the House of Lords as to the respect that ought to be paid to decisions of this specialist tribunal has a certain resonance.

14. As to internal relocation, Miss Ward submits that Sudan is a society in which women have been found to constitute a particular social group at risk of persecution, though it is not suggested that every single woman is at risk of persecution. It is submitted, however, that the applicant would face very serious problems as a young single woman returning alone with no male

protection or family support or social network, and although she has some education, she is not trained in any trade. It is difficult to see, submits Miss Ward, how she could cope even in Port Sudan, on the necessary hypothesis that she would be outside the sphere of her uncle's influence. If she were to be returned to Khartoum and stayed there, it is difficult to see what she could do otherwise than to go to a camp, as the expert, Mr Verney, concluded would happen. It is said that the finding that she would not encounter severe problems on return had an insufficient basis to it as a matter of reason and logic and was thus irrational. The main aspect of the Designated Immigration Judge's reasoning on this point was that there must be many households in Sudan headed by women. That may be the case, acknowledged Miss Ward, but she says that they may well be headed by women who have established family and social networks, which is to be contrasted with the applicant's position on return. There is a wealth of evidence about the position of women in Sudan and the difficulties that a young single female would face. That evidence is ignored in the Designated Immigration Judge's decision. Miss Ward also emphasises that it is not necessary to establish a risk of persecution before relocation can be said to be unduly harsh. The submission is made that the Senior Immigration Judge was therefore wrong in law in finding that the Designated Immigration Judge had given adequate reasons for concluding that internal relocation would not be unduly harsh and in concluding herself that this was the case.

15. Again, I agree with Longmore LJ in rejecting those submissions. It does seem to me that the Designated Immigration Judge gave a sufficiently reasoned basis, by reference to the particular attributes of this applicant, for rejecting the

view that there would be severe problems for the applicant on return and for concluding that despite her position as a young single woman it would not be unduly harsh for her to relocate. I do not think that the conclusion reached on that issue could be said to be an irrational one.

16. Overall, despite the submissions well made by Miss Ward, this case does not seem to me to be one that merits intervention by the court in relation to a decision made with evident care by the Senior Immigration Judge, nor indeed do I regard the basic features of the case as ones that ought to give rise to the same degree of concern as many Sudanese cases and of course many other asylum cases that come before these courts.

17. The conclusion I have reached is that the renewed application for permission must be refused.

Order: Application refused