

Neutral Citation Number: [2008] EWCA Civ 741
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AS/05257/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 12th June 2008

Before:

LORD JUSTICE LONGMORE
and
LORD JUSTICE MOSES

Between:

IA (SUDAN)

Appellant

- and -

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

Respondent

(DAR Transcript of
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Mr P Jorro (instructed by the Immigration Advisory Service) appeared on behalf of the
Appellant.
Ms L Giovannetti and Mr R Dunlop (instructed by the Treasury Solicitor) appeared on behalf
of the **Respondent.**

Judgment

Lord Justice Moses:

1. This is an application for permission to appeal against a determination on reconsideration of 9 October 2005. The applicant comes from Labado in Darfur and his father, as is accepted, is a village sheikh and leader in Labado, a place of some significance in this appeal. Labado was attacked by the Janjaweed and clearly had been an area associated particularly with rebels.
2. The AIT, in its reconsideration, dismissed the appeal and in particular dealt with that which forms the bases, save in one respect, of the application for permission advanced now by Mr Jorro. The first point that he raises relates to the very area where this applicant was born, Labado. The argument advanced was that Labado was a hot spot associated with rebel leadership and thus would place anyone emanating from that village or that area at the risk identified by the AIT in the Country Guidance case HGMO (Relocation to Khartoum) Sudan CG [2006] UKAIT 00062. The guidance given in HGMO spoke of the risk to which an applicant would be exposed were they to be associated with the place, itself associated with current rebel leadership.
3. The evidence was that Labado was an area which had been attacked because the rebels had occupied it and it was described in a Christian Aid news report as being a former rebel stronghold. The AIT considered that argument but stated that it was not a hot spot in the sense used by the AIT in HGMO: in other words was not a hot spot associated with the current rebel leadership. The argument is that that is falsified by the report to which I have just referred. In my judgment the AIT was entitled to conclude that whilst it was formerly associated with a centre of rebellious activity, it no longer was in the sense used by the AIT, which can only mean as being associated with the current rebel leadership. In those circumstances it was a conclusion, in my judgment, to which the tribunal was entitled to come and it is not arguable to the contrary.
4. The second argument, courageously advanced by Mr Jorro, is an argument that would have disposed of all the arguments in relation to those whom the United Kingdom propose to send back to Sudan. It is this: that it is beyond question that non-Arab Darfuris expelled by the ethnic cleansing carried out on behalf of the Sudanese government in Darfur would themselves be at risk of persecution anywhere else in Sudan in the sense that their second-category human rights such as an ability to work, an ability to go where he wishes and pursue his life and occupations as he wishes, would be prevented by reason of the discriminatory attitude of the government to those who have been displaced from Darfur; rather than being allowed to exercise those rights such people would be left in the degraded circumstances endorsed by HGMO and the House of Lords in AH (Sudan) v SSHD [2007] EWCA Civ 297 as being not unduly harsh in the camps. Such an argument, in my judgment, is not open to anyone in that unfortunate position following the decision of the House of Lords in Januzi v SSHD [2006] UKHL 5. The question of whether internal relocation is unduly harsh only arises where to be forced to go there is

not to be subjected to persecution. The question only arises as to whether it is unduly harsh if it is, apart from the question of undue harshness, a safe place in which a person may go the question then is whether it is reasonable for him to be expected to go there.

5. In those circumstances it is not open to anyone to argue that they can resurrect the issue of persecution under the issue of whether it would be unduly harsh to go to the place in question. Januzi, followed in HGMO as endorsed by the House of Lords in AH, in my judgment renders it unarguable to be allowed to contend that to be sent back to a camp in Khartoum, or indeed anywhere else in Sudan, would itself be to send someone in a place where they were at risk of persecution because of being deprived of their second-category rights. That issue was, in my view, disposed of in those cases to which I have already referred and for that reason I would refuse permission in relation to the second ground now advanced.
6. The final ground advanced related to the relationship of this applicant to his father who was in a leading position in Labado and his brothers, who it was accepted were fighting against the government of Sudan. The tribunal dealt with that argument at paragraphs 58 and 59 of that decision. There was nothing in the Country Guidance case in HGMO that suggested that a relationship with a man in the position of this appellant's father would itself place the returning applicant at risk. Similarly there was nothing in the consideration of that point in HGMO which suggested that, because relatives were fighting against the government, that would place at risk someone returning, even though it is beyond dispute that they would be questioned on return and must be expected to tell the truth and not required to lie. But those points were considered by the fact-finding body and dismissed and the manner of their dismissal does not suggest to me any arguable error of law.
7. Finally it was contended that the issue of relocation suggested that it would be unduly harsh to return him since the evidence shown in a United Nations Office for Coordination of Humanitarian Affairs report, dated 17 August 2006, spoke of increasing forced relocations which had become common in and around Khartoum because land values had skyrocketed. This forced millions of primarily southern Sudanese to move further away from the city to desert areas and slums that lack even basic services. This at first blush might prove a promising source for anyone to contend not only that it would be unduly harsh to expect someone, at risk of being moved, to go back but also that their Article 3 rights would be infringed. Not so. Anyone who thought that could not have read the decision in HGMO, endorsed by the House of Lords in AH, in which indeed such circumstances as Miss Giovannetti demonstrates today were before the tribunal in HGMO and considered by the Court of Appeal in the decision that was overturned by the House of Lords in AH. Such conditions were specifically set out both in paragraphs 43 and in 44, although 44 was said to be the government's attempt to show that conditions were not quite so harsh. All of those conditions -- for example a water bladder as the only source of water with no food or other life-sustaining goods provided; paper, cardboard box, textile and plastic pieces as shelter failing to provide sufficient protection from rainy or cold weather -- were endorsed by the

highest court in this country as being conditions which were not unduly harsh. It is in that context that, looking at the conditions described in the latest report entitles the fact-finding tribunal in this case, in my judgment, to say that it does not show a worsening situation or anything different from that which was found not to be unduly harsh in HGMO.

8. Whilst I for my part would question the entitlement of the tribunal to reject that additional evidence on the basis that it had not been verified, I would nonetheless take the view that it is not arguable with any reasonable prospect of success to say that the conditions exposed in that report are any worse than the conditions exposed earlier. For that reason I would reject that final ground as a basis for permission.
9. I would refuse permission.

Lord Justice Longmore:

10. I agree. So permission will be refused in that case.

Order: Application refused