EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

Lord Eassie
Lord Menzies
Lord Brodie

[2008] CSIH 29
XA152/06

OPINION OF THE COURT

delivered by LORD BRODIE

in

APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 103B OF THE NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

by

N.O.

Applicant;

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent:

Act: Forrest; Drummond Miller LLP (Applicant)
Alt: Lindsay; Office of the Solicitor to the Advocate General (Respondent)

28 March 2008

Introduction

[1] This is an application for permission to appeal against a decision of an Immigration Judge following upon a reconsideration of an appeal against refusal of a claim for asylum. The applicant is a 30 year old male who is a national of Sudan and

who comes from the Darfur region. He is a member of the Massaleit tribe. The respondent is the Secretary of State for the Home Department.

[2] The applicant entered the United Kingdom on 5 October 2004. He claimed asylum on 6 October 2004. By decision letter dated 28 November 2004 the respondent refused the applicant's claim. The same letter also expressed the respondent's decision that the United Kingdom would not be in breach of its obligations under the European Convention on Human Rights if the applicant was removed and returned to Sudan. The applicant appealed. That appeal was refused in terms of a determination by an adjudicator dated 9 March 2005. The applicant applied for a reconsideration. After a hearing on 7 October 2005 the Asylum and Immigration Tribunal adjourned the matter and transferred it to Glasgow for further reconsideration by way of a complete rehearing of the appeal. That appeal was refused by the Immigration Judge in terms of a determination dated 6 April 2006.

[3] The applicant applied to the Asylum and Immigration Tribunal for permission to appeal the decision of the Immigration Judge to this court on a point of law. Permission was refused by the Senior Immigration Judge on 24 July 2006. The application was renewed, on refusal by the Tribunal, by an application to this court under section 103B(3)(b) of the Nationality, Immigration and Asylum Act 2002, as amended, in terms of an Application lodged on 7 September 2006.

[4] The application appeared before us for hearing on the Summar Roll on 5 March 2008. Mr Forrest appeared on behalf of the applicant. Mr Lindsay appeared on behalf of the respondent. Mr Forrest invited us (1) to grant permission to appeal; (2) to treat the application as an appeal; (3) to grant the appeal; and (4) to remit to the Tribunal for further reconsideration. Mr Lindsay indicated that he would argue that there had been no error of law on the part of the Immigration Judge but from the

perspective of the respondent, it was of no matter whether the issue was determined on an application for permission to appeal or on the appeal itself.

The decision by the Immigration Judge

[5] Our understanding of the determination by the Immigration Judge is that although he disbelieved certain aspects of the applicant's account of how he left Darfur and arrived in the United Kingdom (paragraph 19) and although he considered that the applicant had exaggerated when giving evidence in support of his claim, he accepted that there was a real risk that the applicant would face persecution for a reason (his race) which was relevant to the 1951 Convention Relating to the Status of Refugees if he were returned to Darfur. Equally the Immigration Judge considered that there would be a real risk of contravention of the applicant's rights as guaranteed by Article 3 of the European Convention on Human Rights if he were returned to that region (determination paragraph 23). However, when the adjudicator turned to the question as to whether the alternative of internal relocation was available to the applicant, he concluded that were the applicant to be returned to Khartoum, rather than Darfur, the United Kingdom would not be in breach of its obligations, either under the Refugee Convention or the European Convention on Human Rights. The Immigration Judge introduced his consideration of the issue by the final sentence in paragraph 23 of the determination: "The real question is whether he could be expected to relocate to Khartoum". The Immigration Judge then turned his attention to the current country guideline cases. He noted that at the time of the hearing the applicable case was *AE (Relocation-Darfur-Khartoum an option) Sudan CG* [2005] UKAIT 00101, whereas a further guideline case had been promulgated after the date of the hearing but before the date of his determination, *MH (Darfurians: Relocation to Khartoum?) Sudan CG* [2006] UKAIT 00033. However, the Immigration Judge did

not discern a material difference between these cases and noted that in the more recent case the Tribunal had concluded on reviewing the background country material past and present that relocation to Khartoum was still in general a viable option for those from Darfur. The Immigration Judge then continued as follows:

> "26. The argument against Khartoum is that it is the capital of a persecutory regime and it would be unreasonable to expect anyone persecuted by that regime, elsewhere in Sudan, to go there; and also that the conditions in camps for the internally displaced are so unpleasant that the appellant should not have to live there.
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> 27. While it is true that conditions in the camps are grim, and the current regime in Sudan has assisted the Janjaweed in their nefarious activities, the country guidelines cases confirm that people can be returned to live in Khartoum. In this particular case, the appellant is a young man with no dependants. He abandoned his parents and his brother's children, on his account, without stopping to look for them and there is no reason to believe that he would put himself in the way of any danger to find them on return. He is fit and resourceful, as can be seen by his journey to this country. He will not be able to follow his normal work as a farmer, but he does not pretend to be an educated man and he should be able to turn to physical labour. He must have had access to considerable resources to come to this country. He has mentioned his cousin in Libya, to whom I consider that he can again turn for assistance. I did not believe that he had somehow lost touch with the cousin, or that he would quite like to be repaid for the trip, but only if they happened to bump into each other at some future time. If the appellant ran out of his house in Darfur and made his way to Libya to see his cousin, he obviously has the

> means of finding him. I see no credible reason why the authorities, having assisted the Janjaweed in their sinister purpose of driving the appellant off the land as with so many others, would have any continuing interest in him. Returning him to Khartoum would not place the United Kingdom in breach of its obligations under either Convention."

The submissions of parties

[6] Mr Forrest had two submissions. The first, foreshadowed in paragraph 5.1 of the Application, was that the Immigration Judge failed to take into account all the relevant circumstances in considering the question as to whether the applicant could be expected to relocate to Khartoum. In developing that submission, Mr Forrest suggested it was irrational of the Immigration Judge, having found the applicant neither credible or reliable when it comes to his description of how he came to flee from Darfur (paragraph 19), to have regard to the personal circumstances of the applicant as disclosed in his evidence. The second submission, foreshadowed in paragraph 5.2 of the Application, was that, when considering whether the applicant could be expected to relocate to Khartoum, the Immigration Judge had failed to pose the question as to whether it would be unduly harsh to expect the applicant to do so. In response Mr Lindsay submitted that the determination by the Immigration Judge disclosed no error in law.

Decision

[7] As is very familiar, a claim such as that which has been made by the applicant is to the effect that he requires international protection because he is at a real risk of persecution for a relevant reason or that he is at risk that his human rights will be contravened in his home country. However, international protection is not needed if the claimant can obtain protection by moving elsewhere in his own country. Hence it

is always relevant in such cases to consider whether moving elsewhere in the home country (otherwise "internal relocation") is available as an alternative to a grant of asylum. It was because the Immigration Judge considered that were the applicant to relocate to Khartoum he would not be at risk of persecution or abuse of his human rights that he refused the applicant's appeal. As we understood Mr Forrest's submissions, the second related to what was the appropriate test for determining whether an internal relocation alternative was reasonable and the first submission related to what factors should be had regard to when applying this test. There does not appear to us to have been any error on the part of the Immigration Judge either in identifying the correct test or applying it. As Mr Forrest explained, the correct test gets a recent and authoritative expression in the opinions delivered in the House of Lords in *Januzi v Home Secretary* [2006] AC 426. At paragraph 21 of his opinion in *Januzi* (*supra* at 449H) Lord Bingham of Cornhill says this:

> "The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

At paragraph 47 of his opinion (*supra* at 457G) Lord Hope of Craighead puts it this way:

> "The question where the issue of internal location is raised can, then, be defined quite simply ... it is whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words 'unduly harsh' set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there

judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there."

It appears to us that the Immigration Judge appreciated that that was the test. At paragraph 8 of his determination the Immigration Judge puts it this way:

"Internal relocation is possible where it would not be unduly harsh to send an asylum seeker back to a safe haven in the country of nationality".

By way of explanation as to what should be taken into account in determining whether it would be unduly harsh to expect a claimant to relocate in another part of his home country, Mr Forrest drew our attention to paragraph 5 of the opinion of Lord Bingham in *AH and others (Sudan) v Secretary of State for the Home Department* [2007] 3 WLR 832 at 836A. There, Lord Bingham says this:

"In para 21 of my opinion in *Januzi* I summarised the correct approach to the problem of internal relocation in terms with which all my noble and learned friends agreed:

'The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so ... The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls ... All must depend on a fair assessment of the relevant facts'.

Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the rule could be more simply or clearly expressed. It is, or should be, evident that

> the inquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant's way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is."

Thus, in determining whether it would be unduly harsh to expect the claimant to relocate to part of his home country other than that in which he experienced persecution, regard must be had to all the circumstances, both general circumstances and circumstances particular to the claimant. It appears to us that this is exactly what the Immigration Judge has done in the present case. He does not shrink from recognising that the conditions in the camps for displaced persons in and about Khartoum are grim or that the current regime in the Sudan has assisted those who are responsible for persecution of persons such as the applicant. However, having had regard to the country guidance cases and the other material listed in paragraph 4 of his determination which relates to general conditions in Sudan, in paragraph 27 he has had regard to the particular circumstances of the applicant before concluding that to return the applicant to Khartoum would not place the United Kingdom in breach of its obligations under either of the two International Conventions which had been relied

upon. It was not in any way irrational for the Immigration Judge to reject the applicant's evidence of how he came to flee Darfur and yet to accept such evidence as he provided about his personal circumstances, much of which was self-evident given the applicant's age, appearance and presence in the United Kingdom.

[8] As we have indicated, we detect no error in law in the approach of the Immigration Judge. Permission to appeal his decision is accordingly refused.