Case No: C5/2007/1311

Neutral Citation Number: [2008] EWCA Civ 766
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No. AA/05182/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 12th June 2008

Before:

LORD JUSTICE LONGMORE
and
LORD JUSTICE MOSES
- -

JB (SUDAN) **Appellant**

- and -

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

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Mr C Jacobs (instructed by the Immigration Advisory Service) appeared on behalf of the **Appellant**.
Ms L Giovanetti & Mr R Dunlop (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.
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Judgment

Lord Justice Moses:

1. This is an appeal, and associated with it an application, in relation to a decision of Senior Immigration Judge Baptiste of a determination of 26 March 2007, in which he concluded that Immigration Judge Gordon, on 8 May 2006, was not guilty of any error of law in dismissing the claim of the appellant to refugee status, and claiming on human rights ground in addition that he should be allowed to stay. It is therefore necessary to focus first upon the determination of the immigration judge. The appellant claimed to have come from Sudan and claimed to have come from Darfur, being a member of the Zaghawa tribe, and thus subject to persecution there when his village was attacked in February 2004.

2. I deal shortly with those outline facts because, in reality, the precise circumstances of this appellant, and in particular his age and how he came to be in the United Kingdom, remained unproved by him, even applying the lower standard of proof. That was particularly because the immigration judge was unable to find with any particularity how old he was; in reality, she said, she did not really know, and certainly did not accept that he was seventeen-and-a-half years old, as he asserted, but thought it could be, whilst he looked young, anything between seventeen-and-a-half and twenty. The appellant has only himself to blame for this state of doubt in the mind of the immigration judge, since the basis of disbelieving him was not confined to questions of his age. During the course of his description of his life within Sudan he referred to currency, and in particular to prices he had received for the sale of sheep in a currency -- namely Sudanese pounds -- which had ceased to be currency since 1999, when he would have been only ten years old. That was a factor on which the immigration judge was entitled to rely.

3. Further, he claimed to have been involved in farming sheep, goats or cattle, and yet the specific answers he gave in relation to that, in particular as to the period of gestation of sheep, led to the conclusion of the immigration judge that he had never been involved in those activities and knew next to nothing about them. She therefore concluded that she did not believe his account of how he had been mistreated and how he claimed to flee the country, or indeed when he had done so. She did, however, accept that he was a national from Darfur and of Zaghawan ethnicity, and that led to her consideration of whether he could internally relocate to Khartoum. In considering that question the immigration judge plainly regarded herself as bound by the case then current -- namely MH [2006] UKAIT 00033 -- in which it was found that it was not unduly harsh to internally relocate because relocating to that area would not infringe rights enshrined in Article 3.

4. It was that error, to conflate the issue of whether it was reasonable to relocate with infringement of the right enshrined in Article 3, which was corrected in their Lordships' House in Januzi v SSHD [2003] EWCA Civ 1188, and reiterated in their Lordships' House in AH. Nowadays it would be an egregious error to regard the test of whether it would be unduly harsh to relocate as the same as to whether there was a risk of rights being infringed under Article 3. It was that error which the Court of Appeal in AH had said

infected the conclusion of the AIT in HMGO (Relocation to Khartoum) Sudan [2006] UKAIT 00062, and it was that error of which the House of Lords found the tribunal in HMGO was not guilty.

5. The ground upon which reconsideration was ordered in order to determine whether Immigration Judge Gordon was guilty of any error of law related to the issue of credibility as to the agricultural work which the appellant claimed to have pursued. But, as Ms Giovanetti on behalf of the Secretary of State points out, although that was the ground upon which reconsideration was ordered, it is claimed that Senior Immigration Judge Baptiste did not confine his attention to that single ground, but permitted other arguments to be advanced. In particular, it was argued that the error of which Immigration Judge Gordon was guilty was demonstrated by reference to the country guidance case of HGMO which had, by the time of Senior Immigration Judge Baptiste's determination, been concluded. The Senior Immigration Judge said:

> "…the first issue raised with me was that the Appellant would be at real risk on return as a Zaghawa from Darfur and would have no viable internal relocation option to Khartoum, irrespective of the Immigration Judge [Judge Gordon's] adverse credibility findings. However, the Immigration Judge's conclusions in relation to this matter reflect current country guidance in HGMO… which is based upon broadly similar objective evidence to that before the Immigration Judge. Thus, I conclude, that, unless and until a higher court overturns HGMO, the Immigration Judge made no material error of law *in her assessment of the objective evidence* [my emphasis]…"

It should be noted that, at the time of the Senior Immigration Judge Baptiste's decision, there had been no concluded appeal in relation to HGMO.

6. Mr Jacobs contends that that conclusion was not open to the Senior Immigration Judge because there had been no consideration by any court of the individual circumstances of this young man from Darfur in the context of the conditions found to be those which he was likely to face in HGMO. At the very least this appellant, so it was contended, was entitled to such consideration, which, by virtue of misdirection of law of Immigration Judge Gordon, had never been afforded to him.

7. I would reject that argument. It is true that Immigration Judge Gordon had been guilty of an error of law in applying to the issue of internal relocation in Khartoum tests only appropriate to infringement of rights enshrined in Article 3, but in my judgment Senior Immigration Judge Baptiste was correct in saying that error was not material. All Senior Immigration Judge Baptiste was focusing attention on was the question of whether the objective evidence,

as disclosed in the original appeal, was any different from that which was described as not being unduly harsh in HGMO; and it was plain on the state of the evidence before him that there was no difference in the objective evidence as it applied to this applicant.

8. I can make that observation with some force since, due to the diligence of Mr Jacobs, we have had the advantage of a witness statement from this appellant that was placed before the Senior Immigration Judge, and dealt with the points that he would have liked to raised had he -- for procedural reasons, to which I shall turn shortly -- been able to advance then before. It is striking that whilst he picks up points that were potentially sources of criticism in relation to his screening interview and in relation to the original Immigration Judge Gordon's determination, nowhere does he contend that, by reason of this age and background conditions in Khartoum, would have a particular and serious impact on him, to be distinguished from the impact on those generally forced to live in those camps. That point was never made. It might have been, but it was not.

9. In those circumstances Senior Immigration Judge Baptiste, in my judgment, was perfectly correct in saying that nothing had been advanced which would demonstrate that there was a possibility of success should HGMO remain good law. As it happened, for a short period it was not good law. But, as a result of the decision of the House of Lords in AH, it plainly is. Therefore Senior Immigration Judge Baptiste's conclusion must, in my view, stand. Permission to appeal was given to this court but only on the basis that, at the time permission was given, AH in the Court of Appeal was thought to be correct and was clearly law at the time. But once that has gone, as indeed it has, the only question then remains as to whether there ought to have been a proper consideration -- as Mr Jacobs argues that there should have been -- in relation to the impact of the conditions in the camp on his particular client. But since he was not believed, in circumstances which cannot now be impugned, and since all that is known about him is that he is a young man from the Zaghawa tribe from Darfur, there is nothing to distinguish his case from the generality of those with whom HGMO dealt. In those circumstances, I, for my part, think Senior Immigration Judge Baptiste was right to reach the conclusion he did in paragraph 5 -- namely, though Immigration Judge Gordon's decision was wrong in law, it made no difference in fact.

10. I turn then in that context to the procedural complaint made. The complaint made is that, at the hearing before Immigration Judge Gordon, the solicitors had sought an adjournment but this had been refused on the basis that the justice of the case did not demand it. The immigration judge set out in full the reasons why an adjournment was refused and the history of disregard of timetables and management hearings (known as "the CMRs") by not just this appellant's representatives, experienced though they were in the field, but by the appellant himself. He was found to have shown a lackadaisical attitude once he had rejected his original solicitors and sought the assistance of another firm experienced in this field.

11. It requires no emphasis from me to say that decisions as to an adjournment are particularly for the judgment of those to whom the original request for adjournment is made, and it requires very exceptional circumstances for it to be demonstrated that there was any error of law in the rejection of an adjournment. No such striking or exceptional circumstances have been demonstrated in this case. Indeed, quite how such an adjournment might have helped has neither been explained originally to immigration judge, nor to the Senior Immigration Judge on the reconsideration, nor to us.

12. In those circumstances, I would refuse permission on that ground, and, for the reasons I have given, dismiss the appeal.

Lord Justice Longmore:

13. I agree. So the appeal will be dismissed and the permission application will be refused.

Order: Appeal dismissed. Application refused.