Case No: C5/2008/0936

Neutral Citation Number: [2008] EWCA Civ 1484
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/02579/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 26th August 2008

Before:

LORD JUSTICE THOMAS

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Between:

AG (IRAN)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Ms V Laughton (instructed by Messrs Brar) appeared on behalf of the **Appellant**.

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED.

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Judgment

(As Approved)

Lord Justice Thomas:

1. This is a renewed application for permission to appeal against the decision of the Immigration Appeal Tribunal. The applicant is an Iranian national who arrived in the United Kingdom on 7 October 2006. He is now aged 22. He sought asylum on the basis he was fleeing from prosecution in Iran because he was discovered by the family of a person with whom he was in a homosexual relationship actually performing a sexual part of that relationship.

2. The applicant has set out in quite considerable detail the nature of that relationship in Iran: how he had conducted that relationship, how he had been discovered and how he had then had to flee. The immigration judge hearing the matter found:

> "86. I do not believe the appellant's account of what happened to him in Iran. I do not believe he had a long term homosexual relationship with [his partner] or that they were caught in flagrante as he claims. I do not believe that he was reported to the authorities or that they came to his house looking for him and left a warrant.
>
> 87. I do not accept the appellant left Iran as a direct result of his homosexuality. I came to the conclusion that the appellant left Iran for reasons other than being in need of international protection."

3. Very properly, Ms Laughton does not seek to say that there is any material error of law in relation to those findings. It seems, as Pill LJ observed, it would be hopeless to challenge such clear findings by a judge who had heard the relevant witnesses. But it is said on behalf of the applicant that he had a homosexual relationship with a Mr D in this country, and if he was to return to Iran he would not be able to carry on his life as a homosexual in a way which would render him free from persecution. He therefore sought to persuade a judge hearing this matter that even if his claim as to why he left Iran was not correct, he should nonetheless be entitled to be found at risk of persecution or to have his right to remain in this country protected by Article 8 because of the relationship with Mr D and the risk of persecution on his return.
4. The immigration judge made a number of findings in relation to the relationship. He found Mr D and the appellant were inconsistent about the length of their relationship, the accounts varying by several months. Mr D mentioned long term hopes for the relationship but these were not mentioned by the appellant. Mr D was vague and evasive when asked about the appellant's contact with his family in Iran. His claim they did not discuss Iran lacked credibility, given the fact the appellant's appeal was being reheard. They knew what the issues were and they apparently shared common concerns. Mr D was evasive when pressed about the dates of their relationship

at the hearing or whether he knew about the previous appeal. Overall he did not find the appellant or Mr D to be credible witnesses.

5. On the basis of those findings the judge went on to find in paragraphs 88 to 91 the following:

> "88. Whilst the appellant and Mr [D] may enjoy some form of homosexual relationship I do not believe that it is as permanent or as long standing as the appellant claims.
>
> 89. There is no evidence that the appellant left Iran illegally. In any event he could apply for temporary documentation to return. The appellant has his home, skilled occupation and family to return to in Iran. He has not credibly shown that he is of interest to the authorities and there is no reason why he should be identified on an entry as someone with outstanding business with the authorities and so liable to arrest or passport confiscation.
>
> 90. The appellant's circumstances in Iran are different to those of the individuals contained in Ms Enayat's report as the appellant was not involved in internet chatrooms or websites and there is no evidence that he pursues those avenues in the UK. He was not arrested or detained. He was not caught in flagrante.
>
> 91. Whilst there is repression of homosexuality in Iran even if the appellant's account were true he was able to conduct a gay relationship for fourteen months in his home, his mother's home and the family holiday home. The assertion that the appellant would not be able to live in Iran as he does in the UK is not determinative of the claim. That is not the test. The Country Guidance in relation to treatment of homosexuals in Iran remains RM and BB CG [2005] UKIAT 00117."

6. The judge went on to find that there was no breach of Article 8. Now, it is argued by Ms Laughton, on the basis of the decision in this court in J v SSHD [2006] EWCA Civ 1238 and in RM and BB (homosexuals) Iran CG to which I have referred, that the judge had not made specific enough factual findings that justified the conclusion that he would not be in fear of persecution if he returned to Iran. It is contended that the judge should have accepted the appellant's evidence that he was entitled to live the kind of life he would have led in this country and that, if he returned to Iran, he would be in risk of persecution.
7. The question, it seems to me, is whether the judge has made sufficiently detailed findings and whether it can be properly inferred from what has been

said by the judge that the applicant was not at risk of persecution if he returned. It seems to me that when Pill LJ considered this matter he expressed the matter succinctly in these terms:

> "The judge has not disbelieved that the applicant is homosexual but has found that he does not practise homosexuality in a way, considered in the authorities, which would put him at risk."

It seems to me that that is a correct summary of what the immigration judge decided. It is true that it might have been possible to express what the judge has found in slightly fuller terms but there is no doubt in my mind that what he concluded was as summarised by Pill LJ.

8. On the basis of the authorities to which I have been referred by Ms Laughton, who has argued the matter succinctly both orally and in writing, it seems to me that there is therefore no arguable error of law and that Pill LJ was correct in the conclusion to which he came. The Article 8 claim is, on the basis of the findings of fact made by the immigration judge, one that could not possibly succeed for reasons; that is sufficiently obvious from the terms of the judgment of the immigration judge that it is not necessary to set out in any length.

9. For those reasons, therefore, I refuse this renewed application for permission to appeal.

Order: Application refused