Case No: C5/2008/0530

Neutral Citation Number: [2009] EWCA Civ 705
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TIBUNAL
[AIT No AA/03624/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday, 7th April 2009

Before:

LORD JUSTICE LAWS
LORD JUSTICE RIMER
and
LORD JUSTICE SULLIVAN

- -

Between:

AA (IRAN)

Appellant

- and -

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

- -

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Mr P Morris (instructed by North Kensington) appeared on behalf of the **Appellant**.
Mr A Payne (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Laws:

1. This is an appeal with permission granted by Senior Immigration Judge Freeman on 21 December 2008 against a decision of Immigration Judge Wiseman promulgated on 14 January 2008, by which he dismissed the appellant's appeal against a refusal on 13 March 2007 of the Secretary of State to grant him asylum.

2. The appellant is a national of Iran, born on 4 October1985. He arrived in the United Kingdom, it seems, on 20 February 2007 and claimed asylum the same day. Following the Secretary of State's refusal on 13 March 2007, he appealed. The appeal was heard by Immigration Judge Gurung-Thapa on 20 April 2007. The immigration judge dismissed the appeal on 21 April 2007. The appellant applied for reconsideration. That was ordered by the Asylum and Immigration Tribunal ("the AIT") on 11 June 2007. At a first stage reconsideration on 26 September 2007 the AIT held that the immigration judge had perpetrated a material error of law in virtue of her treatment of the standard of proof. So the matter went to a second stage reconsideration. That led to the determination of Immigration Judge Wiseman now under appeal. There has, since then, been a flurry of procedural activity, but it is convenient first to explain the nature of the case as it was before Immigration Judge Wiseman.

3. The appellant, as I have said, claimed asylum upon arriving in the United Kingdom. He underwent a screening interview followed by a full asylum interview on 6 March 2007. The essence of his case was that he was a Christian convert and would be liable to be persecuted on account of his religion if he were returned to Iran. That was because he would be likely to proselytise or evangelise. Before Immigration Judge Wiseman he confirmed, or purported to confirm, the accuracy of what he had said in interview. He then gave quite a detailed account. He claimed in the interview to have met a man called Soroush in June 2006 who, it emerged, was a Christian. As time went on they discussed Christianity. Soroush gave him books to read and a film. The appellant claims to have decided to convert -- he had been brought up a Muslim -- about two months after meeting Soroush. He said he actually converted in November 2006. He met Soroush regularly and another Christian friend called Salim. Some weeks after his conversion he spoke of his faith to a close friend called Hussein and gave him some notes on Christianity.

4. He had, he claimed, no difficulty with the Iranian authorities until 3 February 2007, when he and Salim were at the latter's house waiting for Soroush to arrive. Soroush telephoned and told the appellant that his life was in danger, he should not return home. His -- that is, the appellant's -- house had been raided. The appellant said that he phoned home and spoke to his mother, who said the house had indeed been raided and the authorities had taken his books and notes. He feared he would be severely punished if a particular book he had was taken. It had been given him by Soroush and, in some respects, criticised certain interpretations of the Koran. The appellant was to surmise in interview that he had been delated to the authorities after his

friend Hussein's father had found the notes which he had given Hussein. Hussein's family were very religious -- that is, in their pursuit of Islam. Faced with these critical events revealed over the telephone, the appellant's case was that, initially with assistance provided by his friend Salim, he escaped Iran effectively at once and travelled over land through Turkey, at length reaching the United Kingdom on 20 February 2007. In this country he soon became active at an evangelical church at Catford. He had spoken, he said, on the telephone to his mother, who said that his father had been detained but subsequently released on condition that if he (the appellant) returned, he (the father) would inform the authorities, and the appellant's father was, it was said, a devout Muslim.

5. The appellant filed a baptism certificate with the AIT dated 25 March 2007 together with a letter from what was called the Pure Message Kensington Temple London City Church. The author of that letter was a Mr Abel Chogani, who gave oral evidence before Immigration Judge Wiseman. It is convenient to note the text of the letter, which is quite short. It is addressed "To Whom It May Concern" and dated 23 October 2007. It reads as follows:

> "This is to confirm that [Mr A] has been a member of 'The Pure Message' which is the evangelical group. This group has performed for Iranians and other nationalities in different events.
>
> Briefly he is an active member of the church and participates in evangelical activities. He is well known among the Iranian society.
>
> **We firmly believe that his life would be placed in danger if he is forced to go back to Iran.** He will be subject to the government's persecution and oppression as he will be seen as an active evangelical Christian.
>
> Any assistance that can be provided will be greatly appreciated.
>
> Please do not hesitate to contact me if you require further assistance."

6. Mr Chogani told the immigration judge that he had particular charge of the Iranian group associated with the church. He had first met the appellant in June 2007 and had seen him many times since (see paragraph 7.13 of the immigration judge's determination). In the course of argument before the judge, as he noted at paragraph 7.21:

> "It was accepted that the appellant probably fell into the category of an ordinary convert but he was obliged to evangelise as a result of his conversion

> here and that would be the same if he went back. He could not simply keep it all private."

The immigration judge, for his part, accepted (paragraph 9.9) that:

> "…this appellant had settled genuinely within the Christian religion in this country."

7. However (see paragraph 9.10) this was far from decisive of the issue of risk on return. Specific findings have to be made as to the appellant's history in Iran and what he would do on return so as properly to apply the country guidance case of FS (Iran) [2004] UK IAT 00303. It is convenient at this stage to give these short citations from FS, which are set out in the respondent's skeleton argument prepared by Mr Payne.

> "175. On the current state of the evidence, we would draw a distinction between those converts who would simply attend Church, associate with Christians and study the Bible, and those who would become leaders, lay or ordained, or Pastors, or who would actively and openly proselytise or who would wear in public outward manifestations of their faith such as a visible crucifix. We would put into this category those who, whether seen by the Churches as proselytisers or not, would be so overt in their discussions of their faith with Muslims that they would be likely to be seen as proselytisers by the various forms of authorities in Iran; these might be called evangelists.
>
> 187. For the ordinary convert, who is neither a leader, lay or ordained, nor a Pastor, nor a proselytiser or evangelist, the actual degree of risk of persecution or treatment breaching Article 3 is not sufficient to warrant the protection of either Convention. The reality is that a social and economic life can be maintained; Christianity can be practised, if necessary, cautiously at times, by Church attendance, association with Christians and Bible study. There may well be monitoring of services and identity checks. They would be able to practise, however, as most Iranians do.
>
> 189. We would regard the more active convert, Pastor, church leader, proselytiser or evangelist as being at a real risk. Their higher profile and role would be more likely to attract the malevolence of the licensed zealot and the serious adverse attention of the theocratic state when it sought, as it will do on some occasions, to repress conversions from

> Islam which it sees as a menace and an affront to the state and God.
>
> 190. Where an ordinary individual convert had additional risk factors, they too may well be at a real risk. We have already said that we accept that the conversions would become known to the authorities, but that is not of itself an additional factor because it is the very assumption upon which we are assessing risk."

Immigration Judge Wiseman proceeded to reason as follows:

> "9.16 A related but perhaps greater difficulty is that this is a case reliant entirely upon the appellant's credibility as there is no supporting evidence of any kind for the sequence of events that he has described. Of course even on his own version of events he never had any contact with the authorities at all on the issue of his religion and (even if what he says is true) he is relying entirely upon a telephone call from a friend who warned him that he might be in difficulties and a follow up telephone call to his mother who said that the authorities had been to search their home and were looking for him. This was all that it took, he says, for him to make immediate arrangements to leave his home country for good.
>
> 9.17 That sequence of events is so clearly self-serving and impossible to independently check that one looks for any form of corroboration that it was indeed true. Unfortunately there is none.
>
> 9.20 I am forced to the conclusion that in reality this kind of supporting evidence has not been sought and the only reason I can give credence to in that respect is because a significant proportion of the history put forward is simply not true.
>
> 9.21 There was a stage in the appellant's own evidence to me (I have highlighted it in the appropriate place in his determination) where the appellant virtually lost track of what his own story was supposed to be. He was forced to speculate when asked about how the authorities came to have any knowledge of him at all by suggesting that a third kind rather shadowy friend called Hussein had a father who might have informed to the authorities. No reasoning whatsoever was put forward in this

connection and I think the appellant was simply forced to think, initially at his interview, for a reason why the authorities might know of him. He himself clearly had no idea whether what he was saying was true or not.

9.22 I also consider that very little would have happened in terms of his own conversion during the few months in Iran that are clearly now the only relevant ones; I did note that in his statement of the 6th April 2007 the appellant was happy to adopt the favourable but incorrect assertion in the refusal letter that he had been involved with the Christian religion for at least fifteen months.

9.23 He knew that the respondent had misunderstood this point (the refusal letter is dated the 7th March 2007) but not only did he not correct this misunderstanding in his statement but he took advantage of it to further his own case.

9.24 This I believe is clear evidence that the appellant had a greater interest in remaining in the United Kingdom that he did in ensuring that the true position in relation to his history in Iran was known.

9.26 The distinction between what truly happened and what the appellant felt it right to say in support of his asylum claim is a difficult distinction to draw but my impression of the totality of the evidence was that it was extremely unlikely that the authorities had any knowledge or information about the appellant at all, still less that they would be interested in his current whereabouts.

9.29 The appellant will I am sure have appreciated that he would have to add something to his case to bring him within a risk category. In real terms he could only say that his membership of an evangelical church meant that he would feel constrained to proselytise on return to Iran to Iran in a fashion so open that it would bring him immediately within a higher risk category.

9.30 I do not accept this position for one moment; the appellant has been involved with the Christian religion either in Iran or in this country for so short a period of time that he would not yet even have come near completing the period of time that would lead to him really being trusted in that respect in

> Iran and not suspected of being 'planted' by the authorities.
>
> 9.31 I am sure that he still has a great deal to learn about the Christian religion in terms of his own position and status there and I simply do not believe that he would feel constrained to publicly proselytise in a way that would invite prosecution.
>
> 9.34 I believe therefore that the appellant's case as put forward is a subtle intermingling of facts or events that may be true coupled with significant exaggeration of his own beliefs to suit asylum requirements. Given his own extremely modest history of involvement with the Christian religion in Iran, I simply do not accept that he would have left the country immediately on receipt of a telephone call in the way that he says that he did and I think it more than likely that he became determined at some stage to leave Iran for this country in any event and that his history (and indeed future suggested risk) have been tailored to meet the Geneva Convention requirements.
>
> 9.35 I do not believe that he is at significant risk of serious harm on return and I believe that he falls within the category of 'ordinary convert' the members of which accordingly to me country guidance case in operation at present, can be safely returned."

8. So the appeal was dismissed. The appellant sought leave to appeal on three grounds. First, the immigration judge should not have dismissed the appeal merely for want of corroborative evidence; secondly, the immigration judge failed to make findings on certain essential matters, namely (a) whether the appellant had actually sought to convert his friend Hussein to Christianity; (b) whether the authorities in fact raided his home; and (c) whether his father had been arrested; and then third and last, that the immigration judge had given no reasons for his conclusion (paragraph 9.26) that the authorities had no knowledge of, or interest in, the appellant. Granting permission to appeal to this court, Senior Immigration Judge Freeman said this:

> "1.f the lack of supporting evidence had been the only reason the judge rejected the appellant's personal credibility then that would have been arguably wrong but there were many other reasons – see paragraphs 9-21 to 9-34 not dealt with in the grounds apart from paragraphs 22 and 26 as to which see 2 and 3 below.

> 2. (Blank)
>
> 3. While the judge did *not* accept that the appellant had converted to Christianity while in Iran and in view of the history he gave – see paragraphs 3-12 to 3-15 – it would have been well open to him to reject his evidence of the interest he said had been taken in him and his family by the authorities arguably some more specific findings were required on that."

9. This is, with respect to the Senior Immigration Judge, to say the least Delphic. In any event, the appellant now seeks leave to amend his grounds of appeal, first so as to add to ground 2 a claim that the immigration judge failed to make a finding on the written and oral evidence of Mr Abel Chogani, such evidence being capable, it is said, of showing that the appellant was an "active convert" and therefore at risk on return to Iran, and the country guidance case of SS is referred to. The second proposed amendment would be to add to ground 3 a contention that the immigration judge failed to give legally adequate reasons for his conclusion that the appellant was an ordinary convert who could safely be returned. We have not formally ruled on the application for leave to amend, but my judgment will encompass the points that are there set out.

10. The appellant also seeks leave to adduce new evidence. In order to understand this it is necessary to refer to what I earlier called the flurry of procedural activity since Immigration Judge Wiseman's decision. The case was listed in this court for hearing on 9 October 2008. However, the North Kensington Law Centre, who were by this time acting for the appellant, had failed to put themselves on the record and the hearing date did not come to the attention of the solicitor acting in the matter. On 9 October 2008 the hearing was adjourned to 16 October 2008 with directions that both the appellant's present and past solicitors show cause why they should not bear the costs thrown away by the adjournment. On 16 October 2008 the appellant sought to adduce new evidence, essentially concerning the proselytising methods of the Kensington Temple London Church, because it was said that would throw light on the letter to which I have referred from Mr Abel Chogani and his evidence, all this being relevant to the appellant's claim to be an active evangelist and therefore at risk on return.

11. It was also sought to adduce evidence in the shape of letters from the appellant's mother, said to be relevant to whether the appellant had previously been known to the Iranian authorities. On 16 October 2008 this court -- myself and Wilson LJ -- ordered that the appeal be further adjourned, that the application to admit new evidence be considered at the adjourned hearing and that there would be no punitive costs orders but the Secretary of State would not in any event be liable for any costs relating to 9 or 16 October. I will deal with the new evidence application in due course. Thereafter, on 28 and 29 October 2008, the appellant's solicitors provided a file of fresh evidence to the Treasury Solicitor on all the topics set out above. Wilson LJ had suggested that the Secretary of State consider the material sought to be

relied on by the appellant before the adjourned hearing. The court allowed a further adjournment of the hearing of the appeal for the respondent to consider all this material. The Secretary of State responded to the material in a reasoned letter of 23 December 2008. The appellant now seeks to adduce all the evidence put before the Secretary of State and, in addition, a further statement of his own, which responds to the Secretary of State's letter of 23 December 2008.

12. In that letter, which is quite detailed, the Secretary of State asserts that the material advanced is not properly receivable by the Court of Appeal as fresh evidence, although it has been considered by the Secretary of State as a pragmatic course of action in line with the Court of Appeal's suggestion. It is also stated that it is the Secretary of State's view that, if he were returned to Iran, the appellant would not expose himself to risk by evangelising or proselytising. The further statement signed by the appellant asserts that he would indeed do exactly that if he were returned and explains his present state of mind in relation to his religion.

13. I may turn to the conclusions that I would reach in relation to the grounds of appeal, irrespective of the fresh evidence. First, the ground as to the immigration judge's treatment of the want of corroboration is not pursued by Mr Morris on behalf of the appellant. If I may say so, he is clearly right to take that course. Next, in my judgment the immigration judge did not fail to make findings of fact on essential matters. As regards the appellant's friend Hussein, the raid on his home and his father's alleged arrest, the immigration judge in truth had no need to make more specific findings given his overall and critical conclusion that the appellant's core account that he left the country on receipt of a phone call was incredible.

14. The immigration judge rejected the essence of the appellant's account for reasons that he gave. Nor can the judge be criticised for not making specific findings as to the detailed answers given by the appellant in interview, a matter upon which Mr Morris laid some emphasis this morning. Mr Morris says that those answers show a detailed knowledge of certain aspects of Christianity. This is, in my view, really a reasons challenge; but the judge is, as is well known, not required to spell out every relevant matter in the case. It is not arguable that the judge failed to take account of what had been said by the appellant in interview, nor did that material rule out a range the conclusions at which the learned judge arrived. As regards the alleged failure to make a finding on the written and oral evidence of Mr Abel Chogani, it is more convenient to come to that in a moment when I address the question of fresh evidence.

15. I turn to the ground asserting that the immigration judge's reasons for concluding that the authorities would not be interested in the appellant are insufficiently clear. The truth is that, on any view, the appellant's contact with Christianity had been short-lived. There was, on the judge's view of the case, simply nothing to suggest that the authorities would be concerned to seek him out. The judge was not required to do more, so to speak, in order to establish a negative. Mr Morris this morning connected this point with what he had to

say about the judge's treatment or the judge's failure to treat the evidence concerning the friend Hussein. But that gives this point no added force.

16. The proposed amendment would add to the last ground, as I have said, a contention that the immigration judge failed to give legally adequate reasons for his conclusion that the appellant was no more than an ordinary convert who can safely be returned. The nature of his conversion was in fact in part a matter of concession (see paragraph 7-21, which I have cited). As regards future risk and the kind of activity in which the appellant might engage if he were returned, I have set out the material paragraphs of the judge's reasoning and it seems to me that they are indeed legally well adequate. Mr Morris also submits this morning that the tenacity of the appellant's beliefs and the nature of the Christian organisation he joined support the view that he would in truth evangelise if he were returned to Iran. Some of this depends on the new evidence, which, for reasons I will give in just a moment, we have declined to admit. But in any case, there is nothing here, as I see it, to undermine the judge's conclusions as to future risk.

17. Turning last, then, to the new evidence, I see no basis for admitting any of it. Some of it, as Mr Morris frankly accepted, antedated the decision under appeal and could, with due diligence, have been placed before the immigration judge. However, the main thrust of Mr Morris's argument is that this welter of material concerning the nature of the Kensington Temple Church, its activities and the appellant's part of it, ought to be adduced in order to demonstrate the materiality of what Mr Morris said was an error of law perpetrated by the immigration judge, namely a failure by the judge to make findings of the evidence of the witness, Mr Chogani. As I have indicated, the judge described the letter written by Mr Chogani, and I have set out its terms; he will also describe Mr Chogani's evidence briefly. Mr Morris says that this was evidence intending to show that the appellant would proselytise if he were returned to Iran. The letter does not say that, and the judge's record of Mr Chogani's evidence does not disclose that Mr Chogani said it either. There is no material before us suggesting that the judge has misunderstood or only partly recited the evidence given by Mr Chogani, and it seems to me that we should proceed on the footing that his short summary of that testimony is accurate. On that basis, there is no want of a necessary finding of fact which the judge would have been required to make if he was to reach the conclusion which in fact he did reach. In those circumstances, the very premise on which the application to admit new evidence is raised falls away.

18. I should add that, while it was no doubt pragmatic good sense (as, with great respect, Wilson LJ clearly thought) for the appellant to put whatever material he relied on before the Secretary of State so that the Secretary of State might consider it on its merits, the overall result is, in my judgment, that this proposed fresh evidence simply has no impact on the legality of the immigration judge's decision, and that, of course, is the whole scope of our concern. That decision, in my view, was clearly reasoned and sustainable on the evidence before the judge. For all these reasons I, for my part, would dismiss the appeal.

Lord Justice Rimer:

19. I agree.

Lord Justice Sullivan:

20. I also agree.

Order: Appeal dismissed