EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

Lord Osborne
Lord Kingarth
Sir David Edward, Q.C.

[2008] CSIH 37
XA70/06

OPINION OF THE COURT

delivered by LORD OSBORNE

in

Appeal to the Court of Session under the Nationality, Immigration and Asylum Act 2002, section 103B

by

SM

Appellant;

against

A Determination by the Immigration Appeal Tribunal

Act: Forrest, Advocate; Drummond Miller, W.S.
Alt: Lindsay, Advocate; Office of the Solicitor to the Advocate General

3 June 2008

[1] The appellant in this appeal, under section 103B of the Nationality, Immigration and Asylum Act 2002, arrived in the United Kingdom from Iran on 6 November 2004. She claimed asylum here on the ground of a well-founded fear of persecution in Iran on the grounds of her religious belief and political opinions. The latter is not now an issue in the case. Her application was refused on 14 December

2004 by the Secretary of State for the Home Department. The decision notice was served on the appellant on 13 January 2005. She appealed against that decision to an Adjudicator who, in a decision promulgated on 1 April 2005, dismissed the appeal. Thereafter she sought and obtained leave to appeal to the Asylum and Immigration Tribunal on 22 April 2005 for reconsideration. However, that Tribunal, in a decision dated 15 November 2005, dismissed the appeal, holding that there was no error of law in the Adjudicator's decision. The appellant then applied to the Asylum and Immigration Tribunal for permission to appeal to this court, but that was refused. She then made application to this court for such leave. By interlocutor of 30 November 2006, leave was granted. Under section 103B of the 2002 Act the appeal must, of course, be based on a point of law. It was indicated by counsel for the appellant that only certain of the grounds set out in the appeal document were to be founded upon. These were the matters referred to in paragraphs 3.2.1 and 3.2.2.

[2] Coming to the particulars of the appeal there was a discussion before us as to whether the appellant was a convert to Christianity, as that expression is construed in this country. The Adjudicator held in paragraph 19 of his decision that she was not. That finding appears to us perverse. In paragraph 18 of his decision, he made certain findings regarding the appellant's developing interest in Christianity prior to her departure from Iran. The appellant claimed that her interest in Christianity was fostered by her meeting with a nun, Sister Nora, whom she met while on nursing duty. She encouraged the appellant to attend church. The appellant began to teach herself and received teaching of various principles of Christianity from others; she claimed she regularly attended church at which there would be, on average, about 500 worshipers; she told her family of her interest in the faith in about 2002 or 2003. The appellant has five sisters, a brother and her mother still living in Iran. Before the

Adjudicator there was also adduced a letter dated 23 March 2005 from an elder of the Glasgow Iranian Church which is of some significance in this connection. In that letter it is said:

> "This is to confirm that SM has completed attending our Alpha course. This is a course teaching the basics of the Christian faith to new believers or unbelievers. This course is open to all people interested in the Christian faith. She has also been regularly attending our church services since autumn 2004 and openly confesses without hesitation in front of other people her faith as a Christian.
>
> Following completion of the Alpha course, we elders decided to invite her to the Beta course, a course run by invitation only, preparing new believers for an eventual baptism. Invitations are issued to people who showed a good understanding of the issues concerned in the Alpha course, made a confession of faith and show the beginnings of a new life as Christians."

Subsequently in the letter the writer says:

> "While I am therefore still unable to give personal witness of her standing as a Christian, I have no reason to doubt the sincerity of her convictions."

In these circumstances we think there was ample material to show that the appellant was indeed a practising Christian, although not baptised, in other words an adherent to the Christian church. We think that she could properly be described as a convert. We proceed upon that basis.

[3] That status alone would not be a basis for a well-founded fear based on religious belief. It was accepted in the debate before us that there had to be additional risk factors. In that connection reference was made to the decision of the Immigration Appeal Tribunal in the case of *FS and Others (Iran-Christian Converts) Iran CE*

[2004] UKIAT 00303, a decision made on 17 November 2004. In paragraph 190 of that decision Mr Justice Ouseley, the President, said:

> "Where an ordinary individual convert has additional risk factors, they too may well be at real risk. We have already said 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. These risk factors may not relate to religious views at all. It is the combination which may provoke persecutory attentions where, by itself, the individual conversion would have been allowed to pass without undue hindrance. A woman faces additional serious discrimination in Iran, though it falls short of being persecutory merely on the grounds of gender. But for a single woman, lacking such economic or social protection which a husband or other immediate family or friends might provide, the difficulties she faces as a convert are significantly compounded. Her legal status in any prosecution is much weaker; the risk of ill-treatment in any questioning is increased. This factor tips the overall nature of the treatment and risk into a real risk of persecution. ... The role of family as a source of protection should be examined carefully in individual cases. Similar support might also be provided by close friends or colleagues in employment."

The argument for the appellant focused upon the treatment of this particular aspect of the case by the Adjudicator and the Asylum and Immigration Tribunal. It was said that the Adjudicator was not entitled to hold as he did in paragraph 23 of his decision where he said:

> "I do not consider, for reasons which I have set out (above), that the appellant is at increased risk of malign attention because of her political views. Nor do I

> consider that her status as an unmarried woman renders her more vulnerable. This appellant is a trained nurse who has worked for a number of years in that profession. This appellant has a large family on whom she can rely. There is no indication of hostility to the appellant from any member of her family as a result of her involvement with Christianity. There is nothing to suggest that her brother became outraged with her rejection of Islam. He could hardly have done so having suffered for his own opposition to what he perceived as a harsh and theocratic state. The appellant's family therefore would be available for her on her return as a source of protection for her. There is no reason to believe that the appellant would be at any risk on return as a failed asylum seeker. ..."

[4] It was argued that, because of the insufficient basis for the inferences and conclusions drawn in that paragraph, the Adjudicator had committed an error of law. It was also alleged that he had failed to give careful examination to the matter of special risk factors. Looking at the contents of paragraph 18 of his decision, which has already been read, there are certain detailed findings concerning the appellant's family. As we have said, it is narrated there that she has five sisters, a brother and her mother still living in Iran. She looked after her mother who is now infirm. Her brother showed little interest in her conversion to Christianity. Her sisters were sympathetic to her views. Her mother has expressed some unhappiness at her decisions. The reference there is, of course, to her decision to become involved in Christianity.

[5] What was said on behalf of the appellant was that the Adjudicator had erred in law in making perverse and unfounded inferences in paragraph 23 of his decision. We do not agree. In the absence of any material to suggest that the appellant's family would not behave in a normally supportive way towards her, we consider that the

Adjudicator's findings in paragraph 23 were properly based. We find no support for the view that the Adjudicator failed to give careful examination to this aspect of the case. Thus we do not consider that the Asylum and Immigration Tribunal erred in law in taking a similar view.

[6] In short, we find ourselves in agreement with the observations of the Asylum and Immigration Tribunal in paragraphs 17 to 19 of their decision. These paragraphs are in these terms:

> "17. The core of the grounds of appeal was that there were additional factors that would mean that the appellant would be at risk on return. We consider that the Adjudicator properly dealt with these in paragraph 23 of the determination. The findings he made were fully sustainable. He pointed out that the appellant was a trained nurse who had worked for a number of years in that profession. We note that despite her claimed political involvement she was able to work as a nurse until she left Iran. There is nothing to suggest that she could not work as a nurse in the future. Although the grounds of appeal claim that because she is a Christian she would be denied such work there is nothing to back that assertion up and of course it is the case that the appellant claimed to have attended a Christian church for 5 years before she left at a time when she was working as a nurse.
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> 18. Similarly the Adjudicator's findings that the appellant would receive support from her family were again open to him to make. There is nothing to suggest that they did not accept her Christian faith and, as the Adjudicator points out, her brother appears to have been no friend of the Iranian theocratic regime.

19. We have found that the determination of the Adjudicator is based on clear, logical and sustainable findings of fact and that there is no error of law therein."

We would echo those views. We can detect no error of law in the decision of either the Adjudicator or the Asylum and Immigration Tribunal. The appeal is accordingly refused.