

C5/2005/1919

Neutral Citation Number: [2005] EWCA Civ 1674  
IN THE SUPREME COURT OF JUDICATURE  
IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM ASYLUM & IMMIGRATION TRIBUNAL

Royal Courts of Justice  
Strand  
London, WC2

Monday, 5th December 2005

B E F O R E:

**LORD JUSTICE MOSES**

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**MAHSA ILKHANI**

**Claimant**

-v-

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

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(Computer-Aided Transcript of the Palantype Notes of  
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(Official Shorthand Writers to the Court)

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**MS J FISHER** (instructed by Messrs Lawrence Lupin) appeared on behalf of the  
APPLICANT

The RESPONDENT did not attend and was not represented

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J U D G M E N T  
(As Approved by the Court)

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1. LORD JUSTICE MOSES: This is a renewed application for permission to appeal following refusal in writing by myself. The grounds of the appeal are that the immigration judge, be it noted the second time around, found that the applicant was not a truthful witness on the basis of inconsistencies which, so it is contended, were not inconsistencies. Now that I have had the benefit of Miss Fisher's submissions, I am persuaded that there was more to this than met my eye and that the discrepancies on which the immigration judge relied are, it is strongly arguable, either too flimsy to rely upon for a credibility finding or not, it is strongly arguable, discrepancies at all.
2. The decision of the immigration judge is not assisted by the inaccurate mantra he recites at paragraphs 5.3 and 5.4 of his decision that "a truthful witness will be a consistent witness." That is not always the case. It depends upon the detail; there is a real danger that a mere trivial inconsistency will form the basis of a finding as to incredibility. Most immigration judges are well aware that that is not a sufficient basis for finding that an appellant is not telling the truth.
3. The first inconsistency to which the immigration judge draws attention is set out at 5.3 of the determination. The inconsistency, it is said, is that during a clash at Buali University between Hezbollah and the students, her first account suggested that she was inside the dormitory where she was visiting and her second account suggested she was outside. The first point to be made about this is that it seems such a trivial distinction that it is not one which should properly found a finding of lack of credibility.
4. In fact, when one looks at the two accounts firstly the SEF's statement and secondly the asylum interview, it is by no means clear that there was any such inconsistency. Of course, whether there was an inconsistency is a matter for the fact-finding Tribunal, but the reasons that he gives for finding that inconsistency do not, so it is strongly arguable, suggest that there was any such inconsistency at all. As I have said, even if there was, it seems to me strongly arguable that it was too trivial to make the finding of incredibility. It is strongly arguable that to rest the conclusion that the appellant is not a truthful witness upon such an account is insufficient.
5. The second ground was one that I initially thought had greater substance. The applicant's account was that she had learned that she was at risk because of her activities in distributing leaflets at the university, because her mother had contacted her on the telephone; she said that in her SEF account, but in her asylum interview she referred to getting in touch with her mother when she wanted to return.
6. The immigration judge concluded that that was an inconsistency which led to this conclusion she was not truthful. However, when one looks at the raw material upon which he based such a finding, she first of all said at question 14 in her interview that:

"In fact I wanted to go back but when I got in touch with my mother, she informed me that they searched my house."

At question 64, when she was asked when she was due to go back, she said:

"It was Saturday 14th February because of my mother's phone call I decided not to return."

In other words, in that second question she was giving an account exactly consistent with her original SEF account.

7. Of course it was up to the immigration judge to decide whether that was an inconsistency and a significant one, but bearing in mind that these cases require what is said to be anxious scrutiny, it is striking that the immigration judge makes no reference whatever to that later question, which it is strongly arguable was consistent with the original account.
8. I accept that the matter is significant. If this applicant was at risk on return, one would have thought her mother would not wait for her daughter to contact her but rather would contact her daughter to warn her.
9. Finally, the immigration judge found an inconsistency when the appellant told the interviewing officer that she did not know the reason for her friend's arrest. She said that she had had a conversation with her friend, Rezvan, who told her that members of the student union, in whose company she had been distributing leaflets, had been caught whilst distributing leaflets. This was said to be an inconsistency. In the answer that she gave to the interviewing officer at question 17 she describes being a member of a students union with friends, distributing literature. She says she thinks that that is the reason that the government were after her and then adds:

"I still do not know the reason for my friend's arrest."

Of course, the only reason that she knew was by inference from what she had been told by her friend, Rezvan. In my judgment, it is strongly arguable that that too, when one reads the whole of her answer, was not an inconsistency on which a finding of lack of credibility could fairly be found.

10. In my judgment, there is a real prospect of success in this appeal and, in those circumstances contrary to my original view, I shall give permission.

Order: Costs reserved. Application allowed.