



Case No: C5/2008/2047

Neutral Citation Number: [2009] EWCA Civ 137
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No AA/03211/2007]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 28th January 2009

Before:

LORD JUSTICE AIKENS

Between:

JH-N (IRAN)

Appellant

- and -

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

Respondent

(DAR Transcript of
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Tel No: 020 7404 1400 Fax No: 020 7831 8838
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THE APPELLANT APPEARED IN PERSON

THE RESPONDENT DID NOT APPEAR AND WAS NOT REPRESENTED

Judgment

(As Approved by the Court)

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Lord Justice Aikens:

1. This is an application for permission to appeal out of time by the applicant (whom I will call “Mr JH-N”) from the decision of Senior Immigration Judge Batiste on 6 March 2008. Mr JH-N acts in person, although he does so through an interpreter. He has appeared this afternoon in person. He has told me there is nothing he wishes to add orally to his application in writing and to the documents which he has put before the court.
2. The application is made under Section 103B(3)(b) of the Nationality, Immigration and Asylum Act 2002 as amended, the decision of the Immigration and Asylum Tribunal having been considered by a Senior Immigration Judge, who concluded that there was no point of law that arose, therefore refusing leave to appeal.
3. The history of this matter, in briefest terms, is as follows. Mr JH-N is a young man. His precise age has been disputed. The findings of the immigration judge, DJB Trotter, was that he was over eighteen in 2007. His nationality is also in dispute. He says that he is Iranian. The finding of Immigration Judge Trotter is that he is an Iraqi National. Mr JH-N arrived in the United Kingdom clandestinely on 17 December 2006. He had come from France. He returned to France on 18 December and re-entered the United Kingdom on 3 January 2007. He applied for asylum on 4 January 2007. He was assessed for age and there was a screening interview at that stage, and an asylum interview took place on 20 January 2007.
4. Mr JH-N was refused asylum and sent a “reason for refusal” letter on behalf of the Secretary of State for the Home Department on 27 February 2007. Mr JH-N appealed that decision and the matter came before an immigration judge on 23 April 2007. That first determination was subsequently set aside by Senior Immigration Judge Chalkley on 3 September 2007. The matter was reheard by Immigration Judge Trotter on 10 January 2008.
5. Mr JH-N appealed the decision of Secretary of State for the Home Department on three grounds. First, that he was a refugee; secondly, that he was entitled to humanitarian protection; and thirdly, that his removal from the United Kingdom would be contrary to his rights under the European Convention on Human Rights.
6. Immigration Judge Trotter set out his determination and reasons on 28 January 2008. Mr JH-N gave oral evidence before Immigration Judge Trotter. The judge made findings of facts to which I will return shortly. The upshot was that the judge dismissed the appeal of Mr JH-N in respect of all three of the grounds I have just stated.
7. Mr JH-N then applied for that decision to be reconsidered on the ground that the immigration judge had made an error of law. That error was not identified in Mr JH-N’s application notice. The matter was considered by Senior

Immigration Judge Batiste on 6 March 2008, as I have already mentioned. He refused the application.

8. MR JH-N then applied to the Court of Appeal for permission to appeal the immigration judge's decision. That matter was considered on paper by the Right Honourable Sir Richard Buxton on 27 October 2008. He rejected the application. Mr JH-N was due to renew this application on 15 January 2009. However, because of an administrative error in the Court of Appeal office, no interpreter was arranged for that hearing. Mr JH-N had a wasted journey from Middlesbrough. Mr JH-N now renews that application orally today.
9. The relevant findings of fact of Immigration Judge Trotter are as follows. He concluded that Mr JH-N had lied about his name, his age and his nationality, both upon entry to the United Kingdom in January 2007 and subsequently. The judge held that Mr JH-N is over 18, is actually called Ali Ahmed Mohammed and that he is an Iraqi national. Immigration Judge Trotter found that the story of how Mr JH-N came to leave Iran, as he said in evidence, and fled to the United Kingdom was "wholly incredible". The story was that he, Mr JH-N, is of Kurdish origin and that his father had been a member of the Kurdish political group, the KDPI, and that his father had been arrested by the Iranian authorities, released and then killed by an Iranian intelligence organisation called the Hama-Shaida.
10. Mr JH-N said that after his father's death at their hands, the same intelligence organisation came searching his house and found notes indicating that Mr JH-N would join the KDPI when he became 18. He claimed that when the Hama-Shaida found a second note to the same effect, his uncle hid him and then arranged for his swift departure to Europe. The immigration judge also held that two photocopied summonses that Mr JH-N produced, apparently showing that he had been summoned to an Iranian court after he had in fact fled the country, were not genuine.
11. Immigration Judge Trotter found that the Iranian authorities had no interest in Mr JH-N at all. He said at paragraph 25 of his decision:

"On [Mr JH-N's] own account the Iraqi's authorities had no interest in him, he is not a refugee in need of international protection, he is a citizen of Iraq born on 1 January 1988."
12. Immigration Judge Trotter therefore concluded that Mr JH-N had failed to prove that there was a reasonable degree of likelihood that, as an adult Iraqi, his return to Iraq would expose him to a real risk of an act of persecution for a Geneva Convention reason. Looking at the case in the round, the judge found that, given his conclusion on the credibility of the applicant, the case on the need for humanitarian protection and human rights was also not made out.
13. Immigration Judge Trotter stated at paragraph 17 of his decision that, given his adverse conclusion on the credibility of Mr JH-N, he did not need to consider the country assessment which the Secretary of State for the Home Department had put before him. He said that he was, in any event, familiar

with it. It is not clear from the decision whether the country assessment was that of Iraq or Iran or both.

14. Mr JH-N seeks permission to appeal the decision of the immigration judge on the following matters, which he submits are matters of law: (1) he criticises the immigration judge's finding of fact concerning the key elements of the story from Mr JH-N's background and why he fled to the United Kingdom. (2) Mr JH-N says that he only gave inconsistent or wrong information to immigration officials when he was told to do so by the agent and then only in relation to specific matters. (3) He criticises the immigration judge's failure to assess the country information because that did not consider his evidence in the context of current human rights situation in Iran.
15. The Nationality, Immigration and Asylum Act 2002, by section 103A(4)(b), allows an application for an appeal from an immigration tribunal to be made out of time where it considers that the application could not reasonably practicably have been made within the requisite time period. It is clear in this case that there have been such difficulties, because the papers of Mr JH-N tried to lodge were returned to him once and he was sent somebody else's application in error on another occasion. That, combined with his lack of English, his lack of literacy and the fact that he was not represented, all leads me to the conclusion that I must permit the application to be made out of time.
16. However, an appeal can only be on a point of law (see section 103(b)(1) of the 2002 Act as amended). If a decision is perverse, irrational or unreasonable, then that raises a question of law. So too does a case where a decision or fact is made which is perverse, irrational or unreasonable or is wholly unsupported by the evidence. If there has been a mistake of fact which results in unfairness, that also is a point of law on which an appeal can be based. For present purposes, those are the only bases on which Immigration Judge Trotter's decision could be attacked.
17. However, the central issue before Immigration Judge Trotter was the credibility of the applicant and the credibility of his story of how he came to leave his country and came to the United Kingdom. In my view, the judge's findings are entirely reasonable, rational and based on the evidence that he had before him, which was effectively that of the applicant only. There is, in my view, no reasonable prospect that those findings would be upset on appeal. Therefore I must conclude that (a) there is no point of law which arises; and (b) applying the test set out in CPR Part 52.3(6), there is no basis upon which this permission to appeal can be granted.
18. I must therefore refuse permission to appeal.

Order: Application refused