Case No: C5/2007/1274

Neutral Citation Number: [2008] EWCA Civ 318
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AA/07402/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 12th March 2008

Before:

LORD JUSTICE BUXTON
LORD JUSTICE LONGMORE
and
LORD JUSTICE RICHARDS

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Between:

NS (SUDAN)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Mr M Gill QC (instructed by Messrs Blakemores) appeared on behalf of the **Appellant**.

Mr J Johnson (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Longmore:

1. The appellant, NS, was born in Darfur, Sudan on 29 February 1976. He went to secondary school and university in Khartoum and lived in Khartoum thereafter. Whilst at university between 1995 and 2001 he joined a student group called Al-Malami which, we were told, was a branch of the student union associated with students from Darfur, or at any rate a part of Darfur. NS was born of a Darfuri mother and an Arab father and had Darfuri sympathies. There was no evidence that that student group was involved in any political activity until 2003, which was after NS had left university in 2001. However, from 2003 onwards the student group was involved in expressing opposition to government policy.

2. The appellant gave evidence to the Immigration Judge that he was arrested and detained in June 2003 for six months, in February 2004 again for six months, in September 2004 for four months and in February 2005 for about a year, and that he was ill-treated during those detentions; that he escaped from prison in March 2006 because his cousin was able to bribe one of the officers. He said that he left the Sudan on 18 March 2006 and arrived in the United Kingdom on 14 April. The account of arrest and detention was disbelieved by the Immigration Judge.

3. He applied for asylum on 19 April 2006 and by letter of 23 May his application was refused by the Secretary of State. He appealed and by a determination of 6 July 2006 his appeal was dismissed by IJ Billingham on both asylum and human rights grounds but on 2 August an order for reconsideration was made; and on 9 October 2006 SIJ Nichols found that IJ Billingham had made a material error of law in that he had not made clear findings or given adequate reasons for the findings that he had made. He therefore adjourned the hearing for a second-stage reconsideration at which all issues were to be reconsidered and none of the findings of the original Immigration Judge were to stand.

4. There then followed a hearing of a second-stage consideration and, by a determination of 17 January 2007, Immigration Judge Grimmett dismissed NS's appeal on both asylum and human rights grounds. It was agreed at the hearing that the issue was credibility and that questions of relocation to Khartoum did not arise.

5. Now Immigration Judge Grimmett identified a large number of discrepancies and anomalies in the appellant's account. She decided she was not satisfied that the appellant had been arrested or detained by the authorities as he had claimed. She found that he had not been honest about his reasons for leaving the country. She was prepared to accept that the appellant may have provided "low level" humanitarian assistance in Darfur but she was not satisfied that the authorities were aware of his existence and, accordingly, she dismissed the appeal. The flavour of her decision can be ascertained if I read a few paragraphs:

"16 The inconsistencies in this part of the Appellant's account give rise to doubts that he has been actively acting on behalf of the students' union after 2001 or that he has entered into any negotiations as a representative of that students union in the Darfur area.

…

22. I do accept that he was a student at the university in Khartoum and that whilst a student he was connected with the student union there. I am not satisfied however that he had any connection with it after 2001 when he graduated because the documents from the students' union do not suggest that he was working on their behalf after that time. Even though they refer to arrests they do not suggest that those arrests have any connection with the students' union.

23. I am not satisfied that the appellant was travelling to and from Darfur working to try and obtain peace and negotiation between the tribes and the authorities. His own evidence and interview was that he was talking to the tribes, that NGOs were not involved and that the authorities knew because there were meetings with tribes. He does not suggest that he actually ever spoke to anyone in authority in the Government of the Sudan and yet the documents he has produced suggest that he was negotiating at a very high level. I do not accept that to be the position.

24. I will accept that he may have travelled to and from Darfur in order to help in a humanitarian way in view of the letter from Action Contre la Faim but I am not satisfied that his activities on a humanitarian level were anything other than low level because his evidence, contrary to the letter, is that he was not involved with NGOs. It may be that he was known locally as someone trying to help in a very difficult situation but I am not satisfied that anyone other than the local tribes who were being persecuted by the authorities [was] aware of his existence.

25. I am not satisfied that he has ever been arrested or detained in the Sudan for carrying out activities perceived to be against the Government or on account of his race or his occupation."

I need not read any more of that paragraph but I will read paragraph 31:

> "In the light of the discrepancies in the Appellant's evidence and the discrepancies in the documents he has produced I am not satisfied that he has been detained by the authorities for reasons of his perceived political opinion as he claims. He does not claim ever to have been targeted as a result of his ethnicity or his profession. There is no evidence as to what if anything he did as a lawyer but he can only have acted as a lawyer for a very short period between leaving university and his first detention and in April 2004 which is when he says he last worked."

6. The Immigration Judge then turned to the question of risk on return and found assistance in the Country Guidance case of HGMO v SSHD [2006] UKIAT 00062 and she concluded in paragraph 33:

> "I am not satisfied that this Appellant has been identified in such a way by the authorities in Sudan as I do not believe that he has been honest about his reasons for leaving that country. I am not satisfied that the Appellant has shown that there is a reasonable likelihood or substantial grounds for believing that he is at risk of persecution, Article 3 or other form of ill-treatment if returned to Sudan now and thus I am not satisfied that he is in any need of international protection."

7. On 18 May permission to appeal from that decision was granted by Senior Immigration Judge Goldstein. He gave as his reason:

> "that the Immigration Judge may have erred in law and applied too high a standard or in failing to make clear findings of fact. See, for example [four numbered paragraphs].

8. There is a dispute between the parties which it is not necessary for us to resolve: whether when Immigration Judge Goldstein gave permission to appeal he did so by reference to the decision of Immigration Judge Grimmett or in error by reference to the decision of Immigration Judge Billingham. Whatever the true position as to that, the original grounds of appeal from Immigration Judge Grimmett have now been substantially reformulated by Mr Manjit Gill QC on behalf of the appellant and we have given leave for those reformulated grounds to be substituted for the original grounds.

9. In the light of these substituted grounds the submissions to this court have concentrated on the risk on return to NS on the basis that he is, as Mr Gill puts

it, an ex-student who was chairman of the Al-Malami branch of the students union and a lawyer described by Mr Gill in his skeleton argument as "a young and committed human rights activist". Thus the emphasis of the case has, to say the least, changed from being a case which was accepted at the AIT level as being about NS's credibility to a case where it is now said that, despite absence of credibility and positive findings that NS was never arrested and detained as he claimed, nevertheless by reason of his activities he will be at risk on return. The relevant findings for this purpose are:
(1) That he was, as I have said, a member and a chairman of the Al-Malami branch of the students union after 2001 but that he did not work for the student union after that time;
(2) That he travelled to Darfur and helped with low-level humanitarian assistance;
(3) No-one in Khartoum knew of his existence when he was in Darfur; and
(4) He never claimed to have been targeted because of his ethnicity, as having a Darfurian mother, or because of his profession as a lawyer.
One notes that the phrase "a young and committed human rights activist" is that of Mr Gill and not a phrase chosen by Immigration Judge Grimmett.

10. Mr Gill divided his submissions into three parts, all in support of the general submission that Immigration Judge Grimmett had not adequately considered NS's position on return as an involuntary returnee and, in particular, had not had regard to all the assistance that could be gained from the HGMO case in relation to Darfuri refugess. Mr Gill concentrated first on the student connection. He submitted that documents before the Immigration Judge showed, when read properly, that NS had been involved in activities for and on behalf of Darfuri students well after he ceased to be himself chairman of the Al-Malami branch of the union and, said Mr Gill, he had forged links between Darfuri students in Darfur and Darfuri students in Khartoum and also that he had been honoured by the league after he had left. Mr Gill then submitted that the Immigration Judge had not taken these documents into account and that paragraph 22 of her decision therefore contained errors of law. This submission in my judgment flies in the face of the facts which the Immigration Judge did find and which I have set out. She had all the documents referred to before her and, for the reasons she explained, particularly in paragraph 15 and 16 of her decision, she rejected the inference that he was acting on behalf of students after 2001. That was a conclusion open to her on the evidence and I can detect no error of law in her approach.

11. Mr Gill's second point was that while NS was involved, as he said, with negotiations with Sudanese authorities on behalf of Darfuri students and would thus be known to the authorities on his return, the Immigration Judge built his case up as being one where he was saying he was involved with non-governmental organisations and talking at a high level with ministers in the Sudan government and then, because she disbelieved this case, which Mr Gill said was not being made, she found against him in relation to negotiations altogether. Once again the Immigration Judge came to a decision on the evidence which was plainly open to her.

12. The documents referred to by Mr Gill at page 78 and 199 of the appellant's bundle were put forward by the appellant as evidence which was to be believed. On their face they suggest what the Immigration Judge thought they were suggesting. She was entitled to reject their face-value evidence for the reasons that she gave in paragraphs 15 and 17 of her determination and to come to the conclusion which she did in paragraph 24. Again I can see no error of law in her approach.

13. Thirdly, Mr Gill submitted that on any sensible view of the matter the Immigration Judge should have concluded that NS would be of interest to the authorities on his return even on the basis of the limited findings she did make, viz:

    (1) That he had held a high position in the branch of the student union associated with Darfur.
    (2) He had been involved in humanitarian activities.
    (3) He was a lawyer.
    4) He would self-evidently be an involuntary returnee who had sought but failed to obtain asylum.

14. We were referred to many other parts of the HGMO decision, not actually cited by the judge in her determination, but for my part I am not at all persuaded that the judge did not have in mind all the relevant parts of that decision, particularly the entirety of the section from which she made what were in my view the two most apt quotations, namely in paragraph 32 of her decision, paragraph 274 of the HGMO decision:

> "When analysed in detail the evidence about arrests and detentions does not demonstrate that all students…or intellectuals are being targeted but only those who have been identified through their political activity or their expression of anti Government views".

and paragraph 283 of that decision:

> "It cannot be said that the Sudanese government targets non-Arab Darfuris merely because they happen to have a professional qualification or to have shown some aptitude for commerce… On careful consideration, therefore, we consider that to an extent that students, merchants/traders, lawyers, journalists, trade unionists (and intellectuals) face risk it will be because they come within the [and she does put the next word 'activists' without the capital A with which it appears in the actual decision itself] activists category identified earlier. They do not constitute risk categories in their own right."

15. In my judgment Mr Gill's submission under this head falls foul of the finding of fact contained in paragraphs 24 and 33 that NS had never in the past been identified by authorities in Sudan. If that is right there is just no basis for saying that there is a real risk that he will be identified and persecuted on return. Mr Gill criticised the finding in paragraph 33 on the basis that the reason given for it was that the Immigration Judge did not believe NS had been honest about his reasons for leaving that country but since the reason he put forward was that he had been arrested and detained and that was why he was known to the Sudanese authorities, and that the reason given was found by the judge to be false, it is scarcely surprising that the Immigration Judge concluded that NS was in fact unknown to the authorities.

16. One has the uneasy feeling that NS's case today is being put in a way that was never put to Immigration Judge Grimmett, particularly when one reads in paragraph 29 of her decision that "a very large background bundle" had been prepared for the hearing but that she had not been referred to any of that background evidence. Nevertheless she did consider the risk on return. She referred to the essential part of the Country Guidance decision on the point, which demonstrated that neither students nor lawyers were at risk in themselves but only if they had been identified through their political activity or their expression of anti-government views. She concluded that NS had not been so identified, a conclusion which was open to her on the evidence, and concluded further that there was not a reasonable likelihood or substantial grounds for believing that NS was at risk of persecution. There is no error of law in that conclusion and in my view this appeal must be dismissed.

Lord Justice Richards:

17. I agree.

Lord Justice Buxton:

18. I also agree. It is therefore dismissed.

Order: Appeal dismissed.