C5/2006/0685
Neutral Citation Number: [2007] EWCA Civ 129
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE IMMIGRATION APPEAL TRIBUNAL

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 31 January 2007

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Phillips of Worth Matravers)

LORD JUSTICE SCOTT BAKER

and

LORD JUSTICE THOMAS

– –

B E T W E E N:

BB (GUINEA)
Appellant
and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

– –

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MISS AMANDA WESTON (instructed by Messrs Browell Smith & Co, Newcastle upon Tyne) appeared on behalf of **THE APPELLANT**

MR MATTHEW BARNES (instructed by the Treasury Solicitor)

appeared on behalf of **THE RESPONDENT**

J U D G M E N T

Wednesday 31 January 2007

THE LORD CHIEF JUSTICE:

Introduction

1. This is an appeal against a decision of the Asylum and Immigration Tribunal under the new procedure, dated 31 January 2006. The AIT had allowed an appeal from the respondent against the determination of the immigration judge that asylum should be granted to the appellant and that her removal would breach her rights under the European Convention on Human Rights.

2. Permission to appeal was refused by the AIT but was granted by Laws LJ for the following reasons:

> "I am troubled by this case, concerning as it does a young girl at risk of serious ill-treatment by her own family. She may have an uphill struggle but I think she is entitled to test on a full appeal the AIT's treatment of the internal flight issue, in the light of the immigration judge's earlier favourable findings."

3. The internal flight issue is the only live issue on this appeal but, as will become apparent, counsel are not agreed as to the scope of that issue.

The application for asylum

4. The following facts are not in issue. The appellant is a citizen of Guinea, born on 25 February 1988. She entered the United Kingdom on 1 March 2005 and claimed asylum the following day.

5. In 2004 the appellant's father, a Muslim, proposed to marry her against her will to an elderly friend of his who already had three wives. In the months preceding the proposed wedding the appellant was forced to wear a burka and was not permitted to associate with her friends, on pain of physical abuse from her father and her brother. This followed a similar experience suffered by her sister.

6. During this period the appellant occasionally visited, and did odd jobs for, a Christian woman who was a neighbour. This woman indecently assaulted her, whereupon she appreciated that the woman was a lesbian and attempted to break off contact with her. The woman threatened to tell the appellant's father about her unless the visits resumed. In these circumstances the appellant was subjected to two further assaults. The appellant confided in another neighbour who, unhappily, told the appellant's father that she had done so. Her father and brother then tied her up and hit her with electric cables, leaving scarring on her back and legs. She was locked in the larder and told that she would be killed. Neighbours called the police, but they refused to become involved. They regarded it as a domestic incident of no concern to them.

7. A friend of the family then intervened. He helped her to escape and funded her travel with an agent to the United Kingdom, via France.

8. The appellant's witness statement in support of her application for asylum set out the facts that I have

just summarised and ended simply:

> "If I am returned to Guinea I will be killed by my own father and brother. I have no one there to protect me."

9. The evidence form completed by the appellant in support of her claim to asylum had a box that asked the following question:

> "Have you ever moved to a different town or village or to another part of your country to avoid the incidents you have described above? If not, why not? If yes, please provide details."

The answer to this was:

> "No, because I am 100% sure that my father would find me."

10. The Secretary of State refused the appellant's claim for asylum for reasons that included the following:

> "8. You stated that you were claiming asylum because your father wanted you to marry a man much older than yourself and when you refused your father and brother ill-treated you and threatened to kill you. You also claimed you were indecently assaulted by a woman [whose name is given]. The reason you have given for claiming a well-founded fear of persecution under the terms of the 1951 United Nations Convention relating to the Status of Refugees is not one that engages the United Kingdom's obligations under the Convention. Your claim is not based on a fear of persecution in Guinea because of race, religion, nationality, membership of a particular social group or political opinion.
>
> ....
>
> 10. According to the United States Department Report on Human Rights Practice for 2003 (USSD) the Constitution provides citizens with the right to travel freely within the country and to change their place of residence and work. You have related your alleged fear of return only to certain areas within Guinea. Irrespective of any other comments regarding the merits of your claim, you do not qualify for recognition as a refugee. This is because there is a part of Guinea in which you do not have a well-founded fear of persecution and to which it would be

reasonable to expect you to go."

11. The appeal was heard by a single immigration judge, Mr Sacks, whose decision was promulgated on 5 July 2005. The appellant was represented by counsel. The judge found that the appellant had a well-founded fear of persecution and was entitled to asylum. He held:

> "35. ....
>
> ...
>
> (f) .... I am satisfied that this appellant is a member of a particular social group, namely, a woman who is being forced, against her will, to enter into an arranged marriage and to this end I rely upon appeal number TB (PSG - Women) Iran [2005] UKIAT 00065. The appellant therefore, in my opinion, does enjoy the protection of the 1951 Refugee Convention. It may well be that the appellant would be further able to argue that she could be classed as a woman who has become involved in a lesbian relationship, albeit one-sided, and that this further would justify her being classed as a member of that particular social group.
>
> (g) So far as the sufficiency of protection is concerned, there is clear evidence within the objective evidence that the police do not intervene in domestic disputes within Guinea, and leave such disputes to be resolved by the family. I do not therefore consider that this appellant would be able to enlist the assistance of the authorities in Guinea to protect her against the acts of her father, brother and other members of her family."

No challenge is made of these findings, but it would not be right to infer that they are findings that have been endorsed by this court.

12. So far as the issue of internal flight was concerned, the judge summarised the appellant's evidence as follows:

> "20. It is asked of the appellant why, if she is returned to Guinea, she cannot live elsewhere. The appellant states that her parents and brother will find her wherever she is. The appellant states that Guinea is a Muslim country, and a single woman who does not enjoy the protection of either her family or of her husband will immediately attract attention, and there is a likelihood that here whereabouts will be identified to her family."

The submissions of her counsel were summarised by the judge on this issue as follows:

> "32. So far as internal relocation is concerned, it is argued that the appellant is a single, young female who to survive in Guinea would be required to work to live, and that this would bring her to the attention of the authorities. She would stand out as being a person who did not enjoy either the support of her family or a husband. There is every possibility that people would ask questions, and there would be the constant danger that they would inform her family who would feel obliged to carry out their initial threat of killing the appellant by way of an honour killing."

13. The judge's decision on internal flight appears in the following paragraph:

> "35. ....
>
> ....
>
> (h) So far as the question of internal flight is concerned, this appellant is a young lady without any means. In Guinea it is clear that those who do not enjoy either the protection of a family or the protection of a husband are extremely vulnerable. The appellant has no means by which to support herself if she is returned to Guinea, and this will therefore require her to seek some sort of employment to survive. This will clearly bring her to the attention of the authorities, and indeed the general population, and I am therefore satisfied that this will present a significant danger to the appellant, and there will always be the danger that because of this, there is a likelihood that her family will be made aware of her whereabouts. I am therefore satisfied that in this case internal relocation is not a viable option, and that this appellant will be in considerable danger and at risk if she is returned to another part of Guinea."

14. The Secretary of State applied for reconsideration of the immigration judge's decision and reconsideration was ordered in relation to the following four grounds:

> "4. In relation to the issue of internal relocation (paragraph 35(h)), the immigration judge finds that as the appellant has no means by which to support herself, she will be required to seek some sort of employment. She finds that this will clearly bring her to the attention of the authorities, and indeed the general population. She is satisfied that this will present a significant danger to the appellant, and there will always be the danger

> that because of this, there is a likelihood that family will be made aware of her whereabouts. The immigration judge has provided no reasons for finding that the appellant would come to the attention of the authorities in this way. There is no evidence to demonstrate that the appellant is of any interest to the authorities or that her family have contacted the authorities about the appellant. Furthermore, there is no evidence to establish she would come to the attention of the general population and even if she did the immigration judge has failed to establish why this would cause the appellant any difficulty. There is also no evidence to demonstrate that were the appellant to return to a different part of Guinea her immediate family would be made aware of her presence. There is no evidence to demonstrate that the appellant's family is in a position of authority, influence or power throughout Guinea to prevent the appellant from living anywhere in the country. The immigration judge has failed to establish why internal relocation is, therefore, not a viable option.
>
> 5. The immigration judge has also failed to acknowledge that the appellant could obtain support and assistance from [the friend who helped the appellant to escape to this country] on return to Guinea.
>
> 6. It is submitted that in light of the above grounds, the immigration judge has failed to adequately demonstrate the basis upon which the appellant's rights under the 1951 and 1950 Convention are breached.
>
> 7. It is submitted that such flaws in the immigration judge's determination are material and render the decision to allow the appeal unsustainable."

15. The reconsideration took place on 3 January 2006 and the determination and reasons were published on 31 January 2006. The material part of these reads as follows:

> "The crux of this appeal lies in the judge's treatment of whether the appellant could find adequate safety away from her parents and family in another part of Guinea."

The AIT then set out paragraph 35(h) of the judge's determination.

> "7. The grounds of application prepared by the Secretary of State challenge this finding. In particular, it is said that the immigration judge provided no adequate reasons for his finding that the appellant would come to the attention of the authorities by reason only of her working and that this would lead to her family ascertaining her whereabouts. The

grounds go on to assert that there was no evidence before the judge that the appellant's family was in a position of authority, influence or power throughout Guinea such as to prevent the appellant finding safety in another part of the country. It was not submitted before us on the appellant's behalf that her family was in such a position of authority, influence or power.

8. In the Guinea bulletin of August 2004 .... Guinea is described as a country covering some one-quarter of a million square kilometres and containing a population estimated at over 8 million, although estimates vary. In the course of his determination, the judge does not identify the background information that supports his assertion that those seeking employment come to the attention of the authorities in a way that will lead to her family ascertaining her whereabouts. In paragraph 32 of the determination, however, he had the benefit of submissions made to the effect that, as a single young female, the appellant would be required to work in order to survive and this would bering her to the attention of the authorities. As an income-earner, it may well be true that the appellant would be subject to taxation and that would, in this limited sense, bring her to the attention of the authorities. We are, however, only speculating upon what was meant by this submission or what the immigration judge meant when he accepted it in paragraph 35(h) of his determination. In our judgment, that is a far cry from saying that the authorities are likely to have any adverse interest in the appellant or that they would use that information to her detriment. Miss Doughney, who appeared on behalf of the appellant, did not draw to our attention any specific background information to that effect.

9. The appellant's representative also urged upon the immigration judge that the appellant would stand out as being a person who did not enjoy either the support of her family or a husband. It was submitted that there was every possibility that people would ask questions and that there would be the constant danger that they would inform her family who would feel obliged to carry out their initial threat of killing the appellant by way of an honour killing. This submission, found in paragraph 32, makes its way into the judge's conclusion in paragraph 35(h) of the determination that she would come to the attention of the general population and that this would present a significant danger to her and that there would always be a likelihood that her family will be made aware of her whereabouts. In our judgment, we are unable to find the basis upon which a single woman is likely to attract so much hostile attention or the mechanism by which neighbours hostile to her would be able to locate her parents or family or would have the inclination to do so with the intention that she would be harmed. In our judgment, it is simple speculation to assert that such ill-will is so widespread amongst the people of Guinea as to present an immediate danger to the appellant wherever she might settle. We can well understand that a single woman might find it difficult to relocate in a rural area. Similar considerations

> do not, in our judgment, arise were the appellant to select a more populated area. For these reasons, we find the judge made a material error of law."

16. Miss Amanda Weston, who now represents the appellant, has made submissions that I would attempt to summarise as follows:

(1) The AIT did not identify any valid basis in law for upsetting the finding of the immigration judge that there was no place in Guinea to which the appellant could relocate where she would be safe from persecution by her family.

(2) The AIT paid no regard to the fact that the immigration judge had given a further reason why internal relocation was not viable, namely that it was not reasonable to expect the appellant to go to live somewhere else in Guinea because of the hardship that this would involve.

17. Mr Matthew Barnes for the Secretary of State submitted that there had been only one issue in this case in respect of internal relocation. This was whether it would be unsafe for the appellant to go to live somewhere else in Guinea because of the likelihood that her family would discover her whereabouts. As to this, he submitted that the AIT was correct to find that the immigration judge had erred in law in finding in favour of the appellant when the evidence provided no basis for such a finding.

18. I shall start with the issue that was undoubtedly before the immigration judge. The position was as follows. The appellant lived with her family in a large country with a population of 8 million. She had to leave her family because of a reasonable fear that if she did not do so, they would cause her physical harm, or even kill her. The question immediately arises: why should the appellant have to flee to England rather than to go to live somewhere else in her own country? This question was raised by the Secretary of State. The appellant's answer was that as a single woman without a family, she would stand out as differing from the general population. Furthermore, having no resources, she would have to seek work and this would bring her to the attention of the authorities. In these circumstances there was a likelihood that her family would become aware of her whereabouts.

19. The immigration judge accepted this answer. The challenge made by the Secretary of State to his decision was not simply that he gave no reasons to explain why the situation of the appellant would be such that her whereabouts would be made known to her family, although at one point Miss Weston suggested that this was the position. The challenge to his decision was that there was no evidence upon which he could reach such a conclusion. In the absence of evidence of special circumstances there was no reason at all to believe that if the appellant went to live in another part of Guinea either members of the public where she went to live or the authorities would have any reason to trace her family and inform them of her whereabouts.

20. In my judgment this challenge was well made. There was no evidential basis for the judge's conclusion that if the appellant went to live somewhere else in Guinea, her family would be likely to track her down. The AIT was entitled to reverse this finding on the ground that the judge had erred in law in that there was no evidence that could support his finding.

21. I turn to the other issue in this appeal. This is whether the immigration judge found that it would not be reasonable to expect the appellant to go to live in some other part of Guinea because of the hardship that this would cause her. If he did, the AIT did not advance any reason why his finding should not stand and they were wrong to reverse his decision. If he did not, no challenge was made to the AIT in respect of his failure to do so. This cannot now be raised before us.

22. Miss Weston has relied in particular on one sentence in the findings of the immigration judge:

> "In Guinea it is clear that those who do not enjoy either the protection of a family or the protection of a husband are extremely vulnerable."

This, Miss Weston submitted, shows that the judge considered the hardship to which the appellant would be exposed if she had to go to live in another part of Guinea. His finding that internal relocation was not a viable option was thus made for two reasons: (1) because of the risk that her family would track her down; and (2) because the hardship that she would experience was such that it was unreasonable to expect her to adopt this course.

23. I do not accept Miss Weston's submission on this point. When the paragraph of the judge's findings that contains the sentence in question is read as a whole, it is clear that the reference to the vulnerability of those who are not protected by a family was only made in the context of the likelihood that this would set in train a chain of event that would lead the appellant's family to learn of her whereabouts.

24. The appellant did not submit, when making her initial application for asylum, that relocation would be unreasonable simply because of the hardship that it would involve. She did not so submit through her counsel to the immigration judge. The immigration judge did not so find. The Secretary of State did not raise the question of undue hardship in his application for reconsideration to the AIT and the AIT did not deal with that issue. The appellant placed a body of evidence before the AIT that demonstrated many aspects of life in Guinea that might make it a relatively unattractive country in which to live, especially for a woman. But as the AIT pointed out:

> "Whilst this material clearly demonstrates the relative hardship of life in Guinea, it does not support the principal contention made by the appellant that she cannot locate to a place in Guinea where she will not be at risk from the violence of her family."

25. Miss Weston relied upon the decision of this court in VNM v Secretary of State for the Home Department [2006] EWCA Civ 47. That is a case that has many similarities on the facts with the present case. The appellant had fled to this country from Kenya. The persecution that the appellant feared was from a notorious cultural and political sect. The immigration adjudicator had found that internal relocation was not viable because, wherever she went to live, that sect would become aware of the appellant's presence. The IAT reversed this decision on the ground that, in the absence of evidence to support it, it was not credible. This court held that this ruling was robust, but upheld it. It held, however, that the Tribunal had erred in law in not considering whether it would nevertheless be unreasonable to expect the appellant to relocate to a different part of Kenya.

26. The critical difference between that case and this was in the ruling of this court on a point of procedure. The Secretary of State argued that the issue of whether it would be unreasonable to expect the appellant to relocate had not been raised below, but this court ruled:

> "24. .... Although it often seems regrettably difficult for this court to discern precisely which points have been argued below, it is clear, as I have shown .... above, that, quite apart from the issue as to whether the appellant's different whereabouts in Kenya would be discovered, she and the Secretary of State were also expressly at odds as to whether it would be reasonable for her to relocate in a different area of Kenya."

That was from the leading judgment of Wilson LJ, with which Brooke and Moore-Bick LJJ agreed.

27. The issue of the reasonableness of internal relocation was not raised in the present case until it reached this court. That is far too late to raise it on what is an appeal against a ruling by the AIT on a point of law.

28. For these reasons I would dismiss this appeal.

29. **LORD JUSTICE SCOTT BAKER:** I agree.

30. **LORD JUSTICE THOMAS:** I also agree.

ORDER: Appeal dismissed; detailed assessment of the appellant's costs.