Neutral Citation Number: [2007] EWCA Civ 460

Case No: C5/2006/2350

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
AS/07614/2004

Royal Courts of Justice
Strand, London, WC2A 2LL

17/05/2007

Before:

LORD JUSTICE AULD
LORD JUSTICE SEDLEY
and
LORD JUSTICE HUGHES

- -

Between:

SR (IRAN)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

(Transcript of the Handed Down Judgment of
WordWave International Ltd
A Merrill Communications Company
190 Fleet Street, London EC4A 2AG
Tel No: 020 7421 4040 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- -

Mr D Bazini (instructed by Messrs Leonard & Co) for the **Appellant**
Mr S Kovats (instructed by Treasury Solicitors) for the **Respondent**

Hearing date: Wednesday 2 May 2007

- -

Judgment

Lord Justice Sedley :

1. This is an appeal, brought by permission of Sir Henry Brooke, against the third of three successive decisions of the AIT dismissing the appellant's claim for asylum. She sought asylum on arrival in this country in January 2004. Following the Home Office's refusal, an adjudicator in May 2004 dismissed her appeal, but the IAT remitted it for rehearing. On the rehearing in October 2005 the appeal again failed, but following the grant of permission to appeal to this court the case was remitted by consent to what was by now the AIT. It is against the AIT's adverse determination in September 2006 on the remitted hearing that A now appeals.

2. The appellant is an Iranian woman who contends that, as a convert to Christianity, she faces both persecution and violation of her human rights if she is now returned. The single issue on the remitted hearing was the one which had been identified by Moses LJ in granting permission to appeal, namely whether the appellant would be at risk on return, as a Christian convert, because of a want of family and economic support.

3. Her account of conversion to Christianity was not the familiar one of an encounter while in the UK with an evangelical sect, but of having as a student in Azad University met and fallen in love with a Christian student, whose beliefs she eventually adopted. She has now become fully converted and active with an evangelical church in this country. Her account of having incurred a risk of persecution of a quite different kind was disbelieved on an earlier hearing and no longer features, save indirectly, in the case . What we are now concerned with is whether, in estimating such risks as the appellant now faced as a convert, the AIT adopted an incorrect mode of proof.

4. The passages of the determination to which this concern principally relates are these:

> 38. Therefore, as an ordinary convert to Christianity the issue is whether the appellant is likely to be at risk of persecution or treatment contrary to Article 3. We accept that her parents know about her conversion as we accept the appellant's evidence that she has told them. She told us that she has not made contact with any of her friends since she has been in the United Kingdom. This means that her friends do not know about her conversion. Evidence was not led as to whether other members of her family, such as aunties and uncles know about her conversion. The approach taken by *FS* at paragraph 159 was that "even if entry to Iran or the normal incidence of life did not lead to discovery of their conversion, the applicants would be likely to seek to attend protestant or evangelical church services. It is realistic to assess risk on the basis that the fact of conversion is likely to become known sooner or later to the authorities and hence to friends, family or colleagues. The principal risk to them is what would happen to them after discovery". This is the approach we intend to adopt.
>
> 41. Whilst we accept that she is likely to attend a protestant or evangelical church and that this would bring her to the attention of the authorities, we do find as in *FS*, that the risk associated with her attendance at church is not likely to lead to a real risk of persecution or treatment breaching Article 3. The appellant said in evidence that she has not made any contact with her friends because she is afraid. In the light of this evidence we do not accept that she will bear witness of her faith to her friends were she to return to Iran.

> If she has been afraid to contact them or bear witness to them in the safety of the United Kingdom, we do not find that she is likely to do so in Iran because of her fear. Indeed, the limitation on her activities in Iran appears to be prompted by this fear. Even if her friends were to find out and denounced her to the authorities, we do find that the harassment that would follow would amount to a real risk of persecution or treatment breaching Article 3.
>
> 46. In this appellant's case we note that her parents still live in Iran. She said in her chronology that she was born in Teheran. Accordingly it would be safe to assume that her parents continue to live in Iran. She said that her parents are both old and retired and have a small pension. They have a home which the appellant returned to in December 2003. We note that she had to pay for her studies and her evidence was that her parents borrowed money to finance her studies. In order to satisfy that debt they got her married to the money lender. The evidence that she was ever married was disbelieved as fabrication. This lack of credibility taints her evidence that her parents borrowed money to pay for her studies. She stated that her sister who is 25 years old is a student in Iran. Whilst we accept that her parents are in receipt of a pension, it does not necessarily mean that they would not economically be in a position to offer her protection were she to be prosecuted for reason in connection with her religion. The evidence is that her parents have been in regular contact with her and have shown that they care about her. Although disappointed with her because of her conversion, they have remained loyal to her and have not disowned her. This evidence does not support the appellant's claim that her parents would not be in a position to offer her economic or social protection if she needed it. She also claims that her aunts and uncles in Hamedan would also not provide her economic and social protection but again that is her belief, which in view of her propensity to lie about past events, does not instil in us any confidence to accept that her belief is well-founded.
>
> 47. The appellant is a well educated woman. She has a university degree which she obtained in Iran. She has been in the United Kingdom for three years, has studied English and we learned at the hearing that she speaks English relatively well, although she felt more comfortable giving her evidence through the Iranian interpreter. She has successfully completed a course in hair and commercial makeup. With her qualifications there is no reason to believe that the appellant would not be able to obtain employment in Iran.

5. Mr Bazini, for the appellant, submits that the AIT has nowhere reminded itself of the familiar guidelines found in *Sivakumaran* and *Kaja* and that this failure in itself represents an error of law. This is a submission that I would reject at the outset. Mr Bazini may be right to say that reference to these cases is customary, but to require every tribunal to recite it as a mantra would be to substitute formulaic for substantive justice. The issue is not whether the AIT went through the right motions but whether they asked themselves the right question. The right question, as Mr Kovats on behalf of the Home Secretary submits, was whether returning the appellant to Iran would put her at real risk of persecution or of treatment contrary to ECHR art 3.

6. Mr Bazini's argument on this issue seems to me to make the basic mistake of seeking to import the ultimate question of risk into the evaluation of each piece of evidence.

For example, he argues that the AIT, had it approached its task properly in §41, might well have accepted "that there was a real risk of [A's] bearing witness" in Iran. On this premise he criticises the finding that A was not likely to bear witness to her friends in Iran as setting too high a standard of proof.

7. It is evidently necessary to say something fairly basic about the key exercise of fact-finding and risk evaluation in asylum and human rights cases. In *Karanakaran* [2000] 3 AllER 449 this court gave guidance which included, at 479, the following:

> "No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it … The facts, so far as they can established, are signposts on the road to a conclusion on the issues; they are not themselves conclusions."

8. Applying this approach to the present case, it was the AIT's task, first, to discard any evidence judged to be of no value at all: here, for example, the account which, for better or for worse, had been disbelieved on an earlier hearing. For the rest, the AIT had to take each element of evidence into account for what it was worth. Some of the evidence was worth a good deal to the appellant: for example the in-country evidence adopted in §38 and expanded thereafter about how Christians are marginalised and subjected to discrimination in Iran. Some of it, in the AIT's judgment, was less compelling: for example that the appellant would expose herself to persecution by evangelising.

9. There is nothing wrong with the differential levels of proof or disproof of primary facts found by the tribunal. In §41, for example, they find it likely that the appellant would continue with Christian communion in Iran and that this would bring her to the attention of the authorities, but they do not accept that she would bear witness to her friends. In §46 they find that the fact that her parents are pensioners does not necessarily mean that they would be unable to protect her economically from persecution. The law does not demand, at least in this field, that each finding of fact, whatever its degree of certainty or uncertainty, be fitted into a single matrix of risk. The fact-finder's task is, to the extent made possible by the evidence, to find facts, and some facts are more certain than others. It would have been as unjust to the appellant to treat as mere possibilities things which, on the AIT's findings, were highly likely as it would have been to the respondent to treat possibilities of hardship as probabilities.

10. The critical adjudicative task is to assemble these findings into an evaluation which answers the question posed by law. In asylum and human rights claims, that is the question of real risk, and it is at the point of decision and not sooner that it arises. Thus far I am therefore in agreement with Mr Kovats' approach. But is it the approach which the AIT has adopted?

11. At the end of §41 they hold:

> "Even if her friends were to find out and denounced her to the authorities, we do not find that the harassment that would follow would amount to a real risk of persecution or treatment breaching article 3."

The basis of this conclusion is set out in the preceding two paragraphs of the determination, which set out the substance of the AIT's conclusions in *FS et al (Iran: Christian converts) Iran CG* [2004] UKIAT 00303. In essence these are that, while Christians in Iran face significant legal, social and economic discrimination, creating a climate of fear, they have the support of their own religious community and are generally able to live and practise their religion at a level which does not involve either persecution or denial of human rights. From there the tribunal go on in §41 to consider the appellant's own probable situation if she is returned. Although they make an assumption which overlooks and is rendered unnecessary by their earlier finding (in §38) that the authorities would probably get to know of her conversion, and in spite of some infelicitous phrasing, their conclusion is that the probable course of events would not amount to persecution or treatment in violation of art 3.

12. The tribunal, however, reach this conclusion before they have dealt with the additional risk factor relied on by the appellant: that she would be facing this prospective situation as a single woman able to turn for protection only to parents who were not well off and therefore themselves vulnerable. In §44 they remind themselves of the important conclusion of the AIT on this question in §190 of *FS:*

> "Where an ordinary individual convert has additional risk factors, they too may well be at a real risk. We have already said we accept 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. We would regard *NS* as falling into that category; she is at real risk of persecution for her religion, or of treatment which breaches Article 3. The role of the 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."

13. I have set out earlier in this judgment the tribunal's conclusions, in §46-48, on this aspect of the case. They include the finding that the parents' age and economic status "does not necessarily mean that they would not economically be in a position to offer her protection". This, for reasons I have given, is a perfectly acceptable finding as far as it goes – but it amounts, importantly, to a finding that the parents might well be unable or unwilling to help.

14. The rounded conclusion which was required was to assemble and evaluate, in terms of real risk, both the situation facing Christian converts and the ability of a single woman

to cope with it, by relating the findings about these matters to the findings about the appellant. The finding that her parents would not necessarily be unable to protect her, while central, has to be married up and evaluated with the other risk factors. So does the finding, a few lines later, that "the evidence does not support the claim that her parents would not be in a position to offer her economic or social protection if she needed it".

15. It is in §48-9 that the tribunal draws together its findings and sets out its conclusion on risk:

> "48. In conclusion we find that the appellant on return to Iran would not be seen as an active convert. She would be an ordinary convert. We adopt the conclusion in *FS* and find that as an ordinary convert, while the appellant might face discrimination, she will not be at risk of persecution or treatment which breaches article 3.
>
> 49. We find that there are no additional risk factors. Her family would be in a position to offer her economic and social protection were she to need it. Furthermore, the appellant is well educated enough to obtain employment in Iran."

16. The conclusion that the family "would be" able to protect the appellant if necessary is considerably more confident than the tentative finding in §46 from which it is derived. Does this matter? For two main reasons Mr Bazini submits it does.

17. The first reason is that it is not possible to say that, had the clear possibility implicit in §46 that the parents would <u>not</u> be able to help been fed in, as it needed to be, to the overall assessment of the risk facing a single woman returning to Iran as a Christian convert, the assessment might not have been the same. The second is that it was unfair for the tribunal, at the end of §46, to dismiss the appellant's evidence of what she anticipated would be the attitude of her uncles and aunts because the earlier rejection of her account of other matters demonstrated "a propensity to lie about past events". Leaving aside the fact that the believing and disbelieving of asylum-seekers' accounts, albeit usually legally conclusive, is fraught with the risk of error, the tribunal was now considering evidence, much of which came from the appellant herself, about her religious beliefs and activities and about the likely attitude of her family in Iran should she be returned there.

18. It might be thought harsh, but it was not improper to regard the fact that she had on another occasion been disbelieved about an episode in her life as establishing "a propensity to lie about past events", some of which had allegedly involved her family, such as to cast doubt on her stated belief about how her relatives would react to her conversion.

19. Turning therefore to the first criticism, it does seem to me unfortunate that the AIT have expressed their finding about the likelihood of economic support from the appellant's parents in markedly differing terms. But I am unable to accept that it is critical to the appraisal of risk. Mr Kovats points out that there is no predetermined level of economic and social support identified in *FS* as necessary to protect a single female convert in Iran from persecution: how much may be needed to reduce risk to a tolerable level has to be gauged case by case by the fact-finding tribunal. One relevant

consideration will usually be how much support the appellant is likely to need if trouble comes in the wake of her conversion. Here the view was taken that with her skills and experience the appellant would not be as needy as other women might be in her situation. The AIT were also evidently satisfied that the parents would be able to provide social support if needed.

20. In this situation I do not think it would be right to single out the AIT's differential descriptions of the economic support available from the appellant's parents as a vitiating factor in their determination. There are few determinations which might not, on close analysis, have been written better. But where, as here, it is apparent that the tribunal have approached the question of risk as a comprehensive appraisal of their individual findings and have reached a tenable conclusion, it would not be right to treat variations in expression as undermining their process of reasoning. The upshot of their decision was that the protection potentially available to the appellant against her vulnerability as a single woman convert was enough to place her, on return, below the threshold of real risk of persecution or of inhuman or degrading treatment.

21. I would therefore dismiss this appeal.

Lord Justice Hughes:

22. I agree.

Lord Justice Auld:

23. I agree, for the reasons given by Sedley LJ, that the appeal should be dismissed.