IN THE IMMIGRATION APPEAL TRIBUNAL

ZK (ABCD not to be followed) Georgia [2003] UKIAT 00141

Heard: 03.11.2003
Signed: 25.07.2013
Sent out: 11th November 2003

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)
and
Mrs AJF Cross de Chavannes

Between: Appellant

and:

Secretary of State for the Home Department,
Respondent

DECISION ON APPEAL

Mr S Taghavi (counsel instructed by Powell & Co) for the claimant
Mr G Phillips for the respondent

This is an appeal from a decision of an adjudicator (Mr RA Pullan), sitting at Taylor House on 1 May, dismissing an asylum and human rights appeal by a citizen of Georgia, now 33. Leave was given on the basis that a previous refusal had been quashed by consent, following the grant of leave for judicial review.

2. The claimant said he had got into trouble at home as a pacifist, being a member of the Dukhobor sect (more familiar in the Ukraine, whence many emigrated to Canada to avoid military service under the Tsars). This had led to his being forcibly rounded up by the military police in January 1993 to serve in the war with Abkhazia. When he told them he could not stand the sight of blood, one of them slashed him across the face with a knife. He was put in a cell for a week, and threatened with being hanged for treason, or being shot in the knee, if he refused to serve. After that he did agree to drive an ammunition lorry. There were further arrests for short periods on 26 May (Georgian Independence Day) in

1995, 1999 and 2001. Then the claimant came to this country, as a visitor with a visa, in August 2001.

3. It was while the claimant was here, on either 4 or 8 September 2001, that he said he had a phone call from his mother, telling him a military policeman had left a call-up notice at their house. The reason was said to be renewed fighting over Abkhazia. What was said to be the call-up letter was before the adjudicator; but there has been no background evidence about any renewed hostilities, either before him or us. There was also a report by a "country expert", Professor George Hewitt FBA of the London School of Oriental and African Studies.

4. The adjudicator accepted that the claimant is a pacifist Dukhobor, who had had the experiences he claimed in 1993; but he went on to deal with the evidence about the recent call-up as follows:

> *16. However I have grave doubts about the authenticity of the call up request, most obviously because it gives no date for him to report for service, only the time of day. I have not seen the original as it is with the Home Office, but I find it very unlikely that such a document would be issued in that form. I also note Professor Hewitt's observation on it: though he says it is "seemingly genuine as far as I can tell", he finds "fascinating to learn that call up papers were (?) unexpectedly being distributed to bolster the strength of the Georgian armed forces". Although he is an expert on the region he was not aware that reservists were being called up. My conclusions below do not require a finding on this point.*

5. That refers to the view the adjudicator took at § 22, as to what would happen if the claimant were in fact called up on return:

> *If the appellant was in fact sent to prison there is indeed a likelihood of serious ill-treatment. However, on the evidence before me I do not consider it reasonably likely that if put to the test, the appellant would actually refuse military service, any more than he did before.*

The trouble with that is that the claimant had refused military service before, only taking a non-combatant rôle under pressure of ill-treatment: whether what he had already suffered reached the minimum level of severity for article 3 may be arguable, but the threats certainly involved that. Mr Phillips did not seek to disturb our provisional view (following what had apparently happened on the judicial review application) that the adjudicator's decision could not be supported on this ground.

6. That leaves the point on which the adjudicator made his views very clear, but for some reason best known to himself expressly refrained from making a formal finding, at § 16. Once again we have to say that adjudicators in general should reach conclusions on all the issues before them: even though they may think there is one which answers the case as a whole, it does not always turn out that way on appeal. However, the adjudicator's views at § 16 are entirely sensible on the evidence before him; if it stood there, we should have had no difficulty in coming to our own conclusions on them.

7. The evidence however does not stand there, because with the application for leave to appeal came a supplementary statement by the claimant, in which he gives an explanation, said to have come in a phone call with his mother after he had got the adjudicator's decision, for the call-up notice produced having no reporting date on it. We shall say no more about that now, because someone is going to have to decide whether it is to be believed or not.

8. On the question of who had to establish the authenticity or otherwise of the call-up notice, Mr Taghavi astonished us by asking us to follow **ABC & D** (to which he referred, without citation, in his application for leave to appeal), in preference to **Tanveer Ahmed [2002] UKIAT 00439***. **Tanvir Ahmed** has been universally followed, so far as we know, in the Tribunal since it came out; and there are decisions of the Court of Appeal which approve not only the system of starred cases of which it forms part, but the principle of law it lays down. That is to say, a claimant in an asylum case must show, with what he says is an official document, as with any other piece of evidence in his case, that it is at least reasonably likely to be genuine, and its contents true.

9. Mr Taghavi invited us not to take what seemed to us the obvious course (given the history of this case) of sending it back to the adjudicator so he could take a view (preferably on oral evidence) on the truth or otherwise of what appears in the claimant's supplementary statement. Instead he invited us to dismiss the appeal ourselves, if we were not with him on the **Tanvir Ahmed/ABC&D** point. He spoke of this as if it were a live controversy, on which there was much anxious discussion before adjudicators. If there is, we can only say it is his fault for raising it in the first place, and the adjudicators' for being so indulgent as to listen to him. The whole point of the starred decisions system, as with the doctrine of precedent in general, is to avoid wasting time by endlessly rearguing points which have already been decided, so it can be used on the real issues in the individual case. We declined to hear Mr Taghavi on this point, and so should any adjudicator before whom he seeks to make it in future.

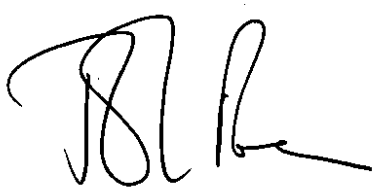
10. As there is no live controversy of law, there is in any case no purpose to be served in making our decision in a way which would allow the Court of Appeal to pronounce on it before any further fact-finding exercise. We have to say though that in our view this would have been putting the cart before the horse. That should have been plain enough to any experienced advocate (which Mr Taghavi most certainly is) for us to suspect that the real point of his invitation was to secure further delay for his client, rather than prompt resolution of the issues in the case, which is of course our main concern.

11. Since leave was given, following the judicial review proceedings, to argue the grounds of the application of which the claimant's supplementary statement formed a part, the truth or otherwise of what he says in it will, as we have already said, need to be decided. No-one (and certainly not us, as we should have to come back another day with an interpreter to hear oral evidence) is in as good a position to decide that as the adjudicator, who has heard this claimant at some length already.

12. Though the adjudicator was, as so often, put in a difficult position by the failure of the Home Office to field a presenting officer, he considered the credibility issues in the case with obvious care. He made a general finding in the claimant's favour, but indicated, with reasons, a negative view, on the evidence before him, on the authenticity of the call-up notice. What conclusions he now comes to, on the present evidence about that (including the presence or absence of any

background evidence to show a current need to call up reservists in Georgia) are entirely up to him; but we have no doubt that he is well capable of approaching the question with an open mind.

Appeal dismissed
Direction for resumed hearing ("remitted" to Mr Pullan)



John Freeman (chairman)