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Appeal No. HX25996-2001
ME (Failed Asylum Seeker-Danian) Sudan CG [2002] UKIAT 00997

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 27 February 2002

Date Determination notified:

05.04.2002

Before:

Mr M W Rapinet (Chairman)
Mr R Baines
Mr A A Lloyd, JP

MAGDA ABDALLA HASSAN ABDELAZIZ ELSAYED
APPELLANT

and

Secretary of State for the Home Department
RESPONDENT

Representation

For the appellant : Mr P. Dovey of Peter Dovey & Co., solicitors

For the respondent : Mr D. Ekagha, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of the Sudan and appeals by leave of the Tribunal against the determination of an adjudicator (Mr A.W. Rose) dismissing her appeal against the decision of the respondent refusing leave to enter and asylum.
2. The appellant arrived in this country on her own passport on 15 January 1996 and immediately claimed asylum. The basis of her claim is set out in paragraphs 14 to 16 of the determination.
3. Her husband is in this country. He arrived in 1991 on his own passport with a valid UK entry visa for six months. He claimed asylum shortly before this period expired. On 6 May 1994 his appeal against refusal was dismissed by a special adjudicator. Leave to appeal to the Immigration Appeal Tribunal was

refused on 22 July of that year. Her husband continues to remain in this country.

4. The adjudicator found the appellant to be lacking in credibility, dismissed her claim that she was at risk of persecution by reason of her husband's activities and dismissed her claim under Articles 3 and 8 of the ECHR.
5. The grounds of appeal attack the adjudicator's findings, particularly so far as they relate to the husband's failed asylum application and appeal. It is common ground that the appellant had no political involvement prior to leaving the Sudan and therefore the basis of her claim was essentially risk of persecution by association with her husband.
6. Mr Dovey informed us that the husband was attempting to re-open his claim for asylum and to regularise his status in this country. He submitted that the basis of this application to the Home Office was that the appellant did not receive proper legal advice at the time he applied for asylum and during the course of his subsequent appeal. We indicated to Mr Dovey that this may or may not be so but was no concern of ours. So far as we were concerned, the husband's application for asylum had been refused by the Secretary of State, his appeal had been dismissed and leave to appeal to the Tribunal had been refused and the matter therefore ended there. Bearing in mind the fact that the wife's claim was based entirely upon association with her husband, that she herself had no political involvement in the Sudan, we did not consider it at all unreasonable that the adjudicator should have examined the basis upon which the husband's claim had been dismissed by another adjudicator in order to ascertain whether there was any possibility of a reasonable likelihood of persecution of the wife by reason of any of the matters found by that adjudicator in respect of the husband's failed appeal. We indicated to Mr Dovey that it was not our function to re-examine the husband's claim for asylum, this having been dealt with and was, so far as we were concerned, now closed. Mr Dovey accepted this position.
7. The basis of his submissions to us is that the appellant since arriving in this country has herself become involve in political activities because she has joined the UK branch of the DUP party and therefore there was a reasonable likelihood of persecution upon her return, irrespective of her motives in joining the DUP party in this country. In Mr Dovey's submission, the appellant was covered by the Court of Appeal decision in the case of Danian [2000] IAR 96. He also submitted that the adjudicator's assessment of the human rights claim was flawed.
8. Mr Ekagha drew our attention to the fact that the appellant had no political activity in the Sudan, she maintains that she had left the country because of her husband's position but that position had been rejected by an adjudicator. There is no evidence that the appellant has attended any demonstrations in this country and he drew our attention to the adjudicator's assessment of the appellant's claim to be a refugee sur place and in particular paragraphs 61 and 62 of the determination. He pointed out that the appellant arrived in this country after her husband's appeal had been dismissed and leave to appeal to the Tribunal had been refused, and that the husband had been in this country

since the refusal of leave to appeal to the Tribunal in 1994 in breach of the Immigration Rules and legislation. The wife's attempts to show that she is politically involved in this country is merely an attempt to bring herself within the provisions of Danian.

9. Notwithstanding what is contained in the grounds of appeal, Mr Dovey, in our view quite rightly, did not seek to persuade us that the adjudicator's findings with regard to the basis of the appellant's claim are perverse and should be overturned. We have carefully examined the determination and we consider that the adjudicator's findings in relation to the appellant's claim that she suffered persecution prior to arrival in this country lacked credibility are perfectly sound, for the reasons which are set out therein. Furthermore, we consider that the adjudicator's finding upon her claim that she is at risk upon return by reason of association with her husband's activities with the DUP and, apparently, his involvement in a coup, are in our view perfectly valid. The adjudicator has carefully considered the basis upon which the husband's claim was rejected on appeal to a special adjudicator, and refers to the determination of that adjudicator in his own determination. The husband was found to be lacking in credibility and his claim was rejected for that reason. We do not have the benefit of the adjudicator's determination in relation to the husband's claim before us but we are satisfied that the adjudicator in the instant appeal has carefully considered the implications upon the appellant of the husband's claim and the rejection of that claim. We can therefore see no reason to re-examine the adjudicator's finding that there was no reasonable likelihood of persecution of the appellant by association with her husband were she to return.
10. The essence of this claim is the appellant's dependence upon the judgment of the Court of Appeal in the case of Danian. It is not disputed that the appellant joined the UK branch of the DUP in this country. It would appear that she is a member of a women's committee of that party in this country. The objective evidence before the adjudicator indicates that there are instances of the DUP party in this country being infiltrated by representatives of the Sudanese government.
11. Lord Justice Brook gave the leading judgment in the case of Danian and states (at page 122) :

‘For all these reasons I do not accept the Tribunal's conclusion that a refugee sur place who has acted in bad faith falls outwith the Geneva Convention and can be deported to his home country, notwithstanding that he has a genuine and well-founded fear of persecution for a Convention reason and there is a real risk that such persecution may take place. Although his credibility is likely to be low and his claim must be rigorously scrutinised, he is still entitled to the protection of the Convention, and this country is not entitled to disregard the provisions of the Convention by which it is bound, if it should turn out that he does

indeed qualify for protection against refoulement at the time his application is considered.’

12. Later in the same judgement he states:

‘I wish to end this judgement by saying that nothing in it should be read as giving any kind of green light to bogus asylum seekers. If the UNHCR guidance is followed in the vast majority of cases of the type I have been considered, the claim for asylum will be peremptorily dismissed without any real difficulty. It is only what Lee J describes as an extraordinary case that a genuine entitlement to protection from refoulement may arise, and in such a case the claim should be tested on the principal basis that I have set out in this judgment. It should not be rejected peremptorily on a basis that appears to have no sound foundation in international law.’

13. The adjudicator has to all intents and purposes found that the appellant's involvement with the DUP in this country is ‘in order to enhance her claim to refugee status.’ He has given his reasons and we would not disagree with those reasons. We would emphasize that in finding that membership of the DUP is mala fide the following points have to be borne in mind:

- (a) The appellant had no political activity in the Sudan
- (b) Her claim to have been persecuted in that country has been dismissed by the adjudicator as lacking in credibility. This finding has not been seriously challenged before us.
- (c) The appellant arrived in this country two years after her husband's appeal against refusal of asylum had been dismissed and leave to appeal to the Tribunal had been refused.
- (d) Her husband had been found to be lacking in credibility.
- (e) Her husband has remained in this country since 1994 notwithstanding lack of proper immigration status and did not give evidence at the appellant's appeal.

14. Prima facie, these facts would lead to the conclusion that the appellant's activities in this country are self-serving and that she has acted in bad faith.

15. Notwithstanding this, we now come to consider whether Danian applies. It should be emphasised that their Lordships in the Danian case remitted the case for hearing by a differently constituted tribunal because the Tribunal had rejected peremptorily Mr Danian's claim without full examination of it, taking the view that his claim was based upon bad faith. What is clear to us from the Danian case is that, irrespective of the motive of an appellant, the obligation is upon the Tribunal to examine whether or not an appellant's activities in this country would be likely to give rise to a well-founded fear of persecution upon return. Brooke LJ in Danian quoted extensively from a letter which was before the Court of Appeal from the UNHCR. That quotation is contained on page 121 of the judgement. The UNHCR state:

‘Accordingly, even if the applicant has created a claim to refugee status by resorting to opportunistic post-flight activities, it would not be right to deprive him of international protection and return him/her to his country of origin if it is established that the consequences of such return may result in such persecution for one of the reasons enumerated in the 1951 Convention. The following paragraph, when dealing with the right of that letter refers to “opportunistic actions” stated “for this reason the UNHCR would not object to a more stringent evaluation of the well-foundedness of a person’s fear of persecution in cases involving opportunistic claims.”

In this connection it should be borne in mind that opportunistic post-flight activities would not necessarily create a real risk of persecution in the claimant’s home country, either because they will not come to the attention of the authorities of their country or because of the opportunistic nature of such activities will be apparent at all, including to those authorities.’

16. On the basis of their lordships judgments and those guidelines of the UNHCR, we examine whether or not there is a reasonable likelihood of the appellant being persecuted by reason of her activities in this country. As the adjudicator rightly points out, the appellant was unable to give any details as to the demonstrations she had attended in London, though it is apparent from the supporting evidence of one of her witnesses that one or more of these demonstrations was outside 10 Downing Street. There is objective material to indicate that the Sudanese authorities in this country do infiltrate the DUP and other anti-government organisations. However, the correspondence from the two witnesses, Mr Tarik Mohamed and Mr Mirghani which we have examined, both of whom are active and prominent members of the DUP organisation in London, assert generally that this infiltration takes place but does not give any indication that they are aware of infiltration in their particular branches and particularly that they are aware of infiltration into the women’s section to which the appellant belongs. Major General Mirghani states that he is aware that members of the Sudanese authority attend political activities. Whether this attendance is at demonstrations (which is more than possible) or the actual committee or party meetings is not clear. If the latter, it seems strange that those attending are not vetted before the meetings start. No evidence has been submitted that either the demonstration in Downing Street or any other demonstrations which the appellant claims she attended in London and in respect of which she can give no details, were filmed by the Sudanese authorities and in particular that, were they filmed, the appellant would have appeared on that film. Demonstrations against the Sudanese government in London generally and in front of the Sudanese Embassy in particular, would appear to be fairly common occurrences. There is nothing before us which would indicate that the position of the appellant is such that her activities would be brought to the attention of the Sudanese authorities in this country

and therefore back in Khartoum. Assertions made by the appellant are purely speculation. Although the appellant is a member of the women's committee, we have no information as to the size of that committee, and the appellant certainly does not claim to be an officer of that committee or indeed hold any prominent position within the DUP organisation in the United Kingdom.

17. As Brooke LJ rightly states 'Although his credibility is likely to be low and his claim must be rigorously scrutinised, he is still entitled to the protection of the Convention --.' The appellant's credibility is low in this particular case. She has been found to be lacking in credibility in relation to her own claim to have been persecuted in the Sudan, her claim to fear persecution by reason of her husband's activities has been rejected by the adjudicator, her husband's own claim in his own right to asylum has been rejected and leave to appeal refused. The appellant arrived in this country two years after her husband's claim had been rejected. The appellant's credibility in such circumstances must be low. Therefore, we must treat with circumspection her claim that her activities in this country will lead to persecution upon return. We take the view that they do not, for the reasons which we have given. And, although we accept that she was a member of the DUP in this country, by reason of her low credibility we do not consider that her claim that those activities will of themselves lead to persecution can be justified.
18. It is clear from the rejection of the husband's claim that the authorities in the Sudan have no interest in him. It is clear from the adjudicator's determination in the appellant's claim that the authorities have no interest in her. We cannot see, therefore, that whatever activities she may have indulged in in this country, they would have any interest in her by reason of those activities.
19. The appeal is dismissed.

**M W RAPINET
VICE PRESIDENT**