IMMIGRATION APPEAL TRIBUNAL

Date heard: 6/11/2001
Date notified: 19/12/2001

Before

Mr C M G Ockelton, Deputy President(Chair)
Dr H H Storey
Mr G Warr

Between

HAKEEM OLANREWAJU KEHINDE

APPELLANT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. We have 'starred' this determination because it raises two short but important and general points on the interpretation of section 65 of the Immigration and Asylum Act 1999. We give our decision on those points in paragraphs 7 and 9 below.

2. The Appellant, a citizen of Nigeria, appeals, with leave, against the Determination of an Adjudicator, Mr K Heynes, dismissing his appeal against the decision of the Respondent on 28 March 2001 refusing to revoke a deportation order made against him on 15 March 2000. Before us the Appellant was represented by Mr P Kishore, instructed by Osibanjo Ete & Co Solicitors, and the Respondent was represented by Mr C Buckley.

3. The facts are, briefly, as follows. The Appellant arrived in the United Kingdom on 28 June 1986. He was given leave to enter as a visitor for one month. He has had no subsequent leave. He sought, and was refused, leave to remain as a student. The refusal was in April 1987. He remained in the United Kingdom. He did not come to the notice of the Immigration Authorities until he was arrested on 11 March 1998 in connection with suspected criminal offences. On 15 June 1999 he was convicted of attempting to pervert the course of justice and obtaining property by deception. He was sentenced to 18 months imprisonment and recommended for deportation. On 15 March 2000 the deportation order was signed against him, and on 7 July 2000 the Respondent gave directions for his removal to Nigeria. There was an appeal against removal directions, which was dismissed. On 5 December 2000, there was an allegation made that his deportation would interfere with his private and family life.

That allegation was made on the basis of claims of a number of family relationships. The first relates to the Appellant's daughter, Shaina, born on 26 October 1991 to his former girlfriend Lyn Watson. Secondly, the Appellant is married to Zaroon, a British Citizen. The marriage was in 1996. The Appellant also makes reference in his notice of appeal to a daughter, Renee, born to a third woman, Angela Bradley, on 8 January 1999.

4. The appellant's appeal is on human rights grounds only and is accordingly brought under section 65 of the 1999 Act, which reads as follows:

> 65. Racial discrimination and breach of Human Rights
>
> (1) A person who alleges that an authority has, in taking any decision under the Immigration Acts relating to that person's entitlement to enter or remain in the United Kingdom, racially discriminated against him or acted in breach of his human rights may appeal to an adjudicator against that decision unless he has grounds for bringing an appeal against the decision under the Special Immigration Appeals Commission Act 1997.
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> (2) For the purpose of this Part-
>
> (a) an authority racially discriminates against a person if he acts, or fails to act, in relation to that other person in a way which is unlawful by virtue of section 19B of the Race Relations Act 1976; and
>
> (b) an authority acts in breach of a person's human rights if he acts, or fails to act, in relation to that other person in a way which is made unlawful by section 6(1) of the Human Rights Act 1986.
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> (2) Subsection (4) and (5) apply if, in proceedings before an adjudicator or the Immigration Appeal Tribunal on an appeal, a question arises as to whether an authority has, in taking any decision under the Immigration Acts relating to the appellant's entitlement to enter or remain in the United Kingdom, racially discriminated against the appellant or acted in breach of the appellant's human rights.
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> (4) The adjudicator, or the Tribunal, has jurisdiction to consider the question.
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> (5) If the adjudicator, or the Tribunal, decides that the authority concerned-
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> (a) racially discriminated against the appellant; or
>
> (b) acted in breach of the appellant's human rights,
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> the appeal may be allowed on the ground in question.
>
> (6) No appeal may be brought under this section by any person in respect of a decision if-
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> (a) that decision is already the subject of an appeal brought by him under the Special Immigration Appeals Commission Act 1997; and
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> (b) the appeal under that Act has not been determined.
>
> (7) 'Authority' means-
>
> (a) the Secretary of State;
>
> (b) an immigration officer;
>
> (c) a person responsible for the grant or refusal of entry clearance.

5. The first question is whether the Appellant in fact has a right of appeal under that section. Can he point to a decision relating to his entitlement to enter or remain in the United Kingdom?
On a narrow view the decision against which he now appeals does not "relate to his entitlement to enter or remain in the United Kingdom". He has had no such entitlement since 1986. The decision relates only to his removal. A wider interpretation, however, would note that it appears that the Act was intended to give a general right of appeal on human rights grounds against immigration decisions. We find it difficult to believe that it was intended to draw a distinction between (for example) the deportation of those who, until the making of the deportation order, were entitled to be in the United Kingdom and the deportation of those who, even before the deportation order, were not entitled to remain.

6. It appears to us that it is not necessary to take the narrow approach to the wording of section 65. In the case of a decision (like that under appeal in the present case) made after 1 October 2000, the person who made the decision was required to take into account the subject's human rights, and indeed could not lawfully make a decision in breach of the subject's human rights.

7. An appeal on human rights grounds against removal or exclusion from the United Kingdom is, essentially, an appeal on the grounds that such removal or exclusion was or would be, for human rights reasons, unlawful. If a person's removal or exclusion is unlawful, it follows that he has a right to remain or enter. Thus, as it appears to us, an appeal on human rights grounds against any decision which would cause the subject to be excluded or removed from the United Kingdom is indeed an appeal against a decision relating to that person's entitlement to enter or remain in the United Kingdom. It follows that any person who is the subject of an immigration decision which, if carried out, would cause him to be excluded or removed from the United Kingdom may, in principle, appeal under section 65.

8. The second question relates to the power or duty of the Appellate Authorities to take into account human rights claimed or alleged to be possessed by individuals who are not appellants before the authorities. Section 6 of the 1998 Act makes it unlawful for any public authority (including of course, a court, or the Tribunal, or an Adjudicator) to act in a way which is incompatible with a Convention right. That prohibition is quite general. It appears to indicate that, in making any judgement, a court, or the Tribunal, or the Adjudicator must have in mind not only those who are parties and whose cases have been argued, but also those who are not parties, and those whose cases have not been argued. In a case such as the present, it might be suggested that in order to make a judgement which was lawful, the Adjudicator (or the Tribunal) would need to ensure not merely that the Appellant's human rights were not being infringed, but also that the human rights of members of his family (who are not parties to his appeal) were not infringed. If the Authority did not conduct a full enquiry into the human rights of everybody who might conceivably be involved, it could be argued that there was a risk that the determination would itself be unlawful.

9. On this point we have been persuaded by the submissions of Mr Buckley. He points out that the appeal under section 65 is limited in its scope. The right of appeal is given to a person who alleges that a decision relating to *that person's* entitlement to enter or remain was in of breach of *his* human rights. An appellant under section 65 must be the

subject of the decision: and it is only his own human rights that he may plead under section 65 against the decision in question. In an appeal under section 65, therefore, there is no obligation to take into account claims made about the human rights of individuals other than the appellant or individuals who have not themselves been the subject of a decision which is under appeal. Such matters (save in so far as they relate to the human rights of the appellant himself) are irrelevant to the matter under consideration.

10. Mr Buckley suggested that section 65 is, or may be, inconsistent or incompatible with the 1998 Act. There is no incompatibility, because the right of appeal under the 1998 Act remains. The subject of the immigration decision has a right of appeal under section 65 of the 1999 Act. Anybody else who claims that, in making or proposing to carry out the decision a public authority will breach his or her human rights, may bring proceedings under section 7(1)(a) of the 1998 Act.

11. We turn now to the facts of this appeal. Leave to appeal was given on matters relating to Article 8 only. The Adjudicator appears not to have believed that the Appellant was married to Zaroon. We have seen the marriage certificate and it is not suggested that they have been divorced. There is a formal relationship between them. The Adjudicator noted that Zaroon did not attend the hearing before him and he rejected the Appellant's evidence about their matrimonial life. There was no statement from Zaroon before him, and there is none before us. There is no credible evidence that the marriage exists in anything other than a formal sense. The Appellant has failed to establish that, if he is removed to Nigeria, there will be any interference with his private or family life in respect of his relationship with Zaroon.

12. The evidence relating to Shaina was based on a letter from Lyn Watson who also did not attend the hearing. The Adjudicator's conclusions in that matter were as follows:

> "On the basis of the letter from Ms Watson, I accept as facts that the relationship between the Appellant and Ms Watson broke down in 1997, that Ms Watson moved from Manchester to London without the Appellant in 1986, has custody of Shaina and that Shaina has not seen the Appellant since 1999. I do not need to make a finding as to the veracity of the claims by the Appellant and Ms Watson that the Appellant made regular trips to London to stay with Shaina in a hotel because, upon a common sense definition of the term, it is evident from the letter that there is no family live subsisting as between the Appellant, Ms Watson and Shaina Watson."

13. Mr Kishore points out that "family life" does not necessarily mean living in a family. A prisoner, who is deprived of day-to-day contact with his family, may nevertheless have a family life. Those submissions have substance. On the other hand, we are concerned with the actual facts relating to this appeal. The Appellant claims to have had regular contact with Shaina until his imprisonment. Contact then stopped because it was thought inadvisable for Shaina to know that the Appellant was in prison. There is no evidence that it is in Shaina's interests to resume contact with the Appellant. The Appellant's contacts with Shaina have ceased and nothing in the material before us gives any reason to suppose that the Appellant's removal to Nigeria would affect his family life in respect of his relationship with Shaina.

14. Although as we noted, there is reference to another daughter, Renee Bradley, Mr Kishore told us that he had no information about her and made no submissions based on a relationship with her.

15. Looking at the matter as a whole, as we do, it appears to us that the Appellant's various claimed relationships were not, at the date of the decision, being maintained in any substantial sense. He has not shown that his removal to Nigeria would affect any of those relationships. As we have explained in paragraph 9, any human rights claimed by the other parties to each of those claimed relationships do not fall directly to be considered here. The Appellant's appeal based on Article 8 must therefore fail.

16. If we had been persuaded that there is (or was at the date of decision) any substance to the Appellant's relationships with his wife and his two daughters, by two other women, we should have noted that those relationships are on any account very tenuous. We should have had no hesitation in finding that, in view of the Appellant's flagrant breach of immigration laws, his conviction for criminal offences, and the need to maintain immigration control in the public interest, the interference with those tenuous relationships was amply justified under Article 8.2 and that his deportation would for that reason also not be unlawful.

17. This appeal is dismissed.

C M G OCKELTON (DEPUTY PRESIDENT)