

Scrutiny of fresh asylum claims

November 2006

Secretary of State must give “anxious scrutiny” to evidence of a fresh asylum claim

Court of Appeal: WM (DRC) v SSHD¹ 9th November 2006

In this case, the Court of Appeal required the Secretary of State to reconsider two cases that were refused on the grounds that the new evidence presented was not sufficient to warrant a fresh claim.

The court held that when considering fresh claims, the Secretary of State must both satisfy himself that the evidence is not new and that an immigration judge would not take the view that there was the risk of persecution if he were considering the case. Further, because of the seriousness of the risks of persecution the Secretary of State must give the evidence “anxious scrutiny”².

There were two similar cases heard together by the Court of Appeal.

In WM (DRC) v SSHD the Judge concluded the Secretary of State had applied the wrong test and said “the evidence cannot be dismissed as simply implausible and it is impossible to say that an adjudicator could not properly come to the conclusion that the claim is well-founded; so the evidence’s bearing on the case is a matter for the adjudicator, and not for the Secretary of State”. Thus it should have been treated as a new claim and as a result, even if refused, the applicant would still have had a right of appeal.

In AR (Afghanistan) v SSHD the judge said “I have to say that the necessary level of scrutiny was not applied to this evidence ... (as it) ...changed the whole complexion of the case, the Secretary of State had to tread very carefully before rejecting it to the extent that an adjudicator was not to be allowed to pass judgement on it”.

Sheona York, the solicitor at Hammersmith Law Centre handling the case, said:

“As the recently-published research by Amnesty International and Refugee Action “*The Destitution Trap*” shows, many thousands of “failed asylum-seekers” languish in destitution,

¹ WM (DRC) v Secretary of State for the Home Department [2006] EWCA Civ 1495 (09 November 2006)

² The Judge cited Lord Bridge of Harwich in *Regina v The Home Secretary ex parte Bugdaycay* “the court must be entitled to subject an administrative decision to the more rigorous examination to ensure that it is no way flawed according to the gravity of the issue which the decision determines. The most fundamental of all human rights is the individual right to life and when an administrative decision under challenge is said to be one which may put the applicant’s life at risk, the basis of the decision must surely call for the most anxious scrutiny”.

which in turn places an unacceptable burden on the hard-pressed communities who are supporting them. This judgment says that where fresh evidence gives a realistic prospect of success in court, the Home Office must “record” a fresh claim and provide accommodation and support to that asylum-seeker while that claim is properly considered and any appeal is heard.

“This is important both for the many “failed asylum-seekers” who have not been removed or are not removable after long delays following the dismissal of their claim, and for whom valid and credible fresh evidence needs to be considered before taking steps to remove them. And for the growing numbers whose applications are processed so quickly that they are unable to locate important witnesses or obtain vital medical or psychiatric evidence in time to be properly considered by the Home Office and immigration courts first time round.”

If you think you may be affected by this judgement seek legal advice.