

ECLI: NL: RBSGR: 2008: BC9095

Instance District Court of The Hague

Date of judgment 01-04-2008

Date of publication 09-04-2008

Case Number AWB 07/24358

Jurisdictions Immigration

Special Features First instance - multiple

Inhoudsindicatie

Repeated application / nova / FGM / Chad / 3 of the ECHR / state reasons

Plaintiff has submitted its third application for asylum based her daughter, born March 1, 2005, with expansion to Chad will be circumcised, and will be subjected to a treatment as defined in Article 3 of the ECHR. The court agrees with the defendant considers that there are new facts or changed circumstances within the meaning of Article 4:6 of the General Administrative Law Act . It is not disputed that the plaintiff and her daughter belong to the population of Hadjarai. FGM as such is under a risk as referred to in Article 3 of the ECHR, which risks need to be kind refinement. The rechtabnk notes, in this case a lot of uncertainty about FGM in Chad. Given the severity and nature of the infringing law could defendant not merely single consideration that the submitted appeal statement by the president of the Chadian League for Human Rights is based on information from "independent sources" without to know which sources they are and under which those resources are to be regarded as independent. There is no official report of Chad generally available. Having regard to the judgment of the European Court in Salah Sheekh case is more value to be attached to the report of U.S. Department of State March 8, 2006, which refers to getting a percentage of 93 Hadjarai women who are circumcised. Defendant had, in view of the above, in this case, in as much uncertainty or actually there is a 3 ECHR risk, the documents submitted by the plaintiff statements must examine, at least not enough to the ground that the statement of the Chadian League does not come from an objective source. Founded.

Repositories

Rechtspraak.nl

Statement

THE HAGUE TRIBUNAL

meeting in Utrecht

Administrative law

case number: AWB 07/24358 BEPTDN

decision of a single judge to treat immigration cases dated April 1, 2008

on

[Claimant], born on [date] 1976, and her minor children [child 1], born on [date] 2000, [Child 2], born on [date] 2002, [Child 3], born on [date] 2005 [Child 4], born on [date] 2006, all of Chadian nationality,

Plaintiff,

Agent: Mr. LM Straver, of the Utrecht,

against a decision of

the State Secretary of Justice, the defendant,

Agent: JW Kreumer, working in the fields covered by respondent Immigration and Naturalization Service in The Hague.

Introduction

1.1 By decision of 5 June 2007, the respondent, the third application of the plaintiff by August 10, 2006 to grant a residence permit for asylum turned down for some time. Plaintiff here has appealed to this court.

1.2 The case is handled in court on February 19, 2007, which Plaintiff appeared in person. Plaintiff and defendant are hearing through their representatives explained their positions.

Considerations

2.1 The dispute is whether the plaintiff and her daughter [Child 3] eligible for a residence permit for a fixed period under Article 29, first paragraph, heading and b of the Aliens Act 2000 (Vw) and that the three minor sons plaintiff eligible for a residence permit for a fixed period under Article 29, first paragraph, introduction and e under the Aliens Act.

2.2 The applicant has submitted the application for this permit basis that her daughter [Child 3], born on [date] 2005, with expansion to Chad will be circumcised, and will be subjected to inhuman treatment prohibited by Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

2.3 The defendant in the contested decision in so far as relevant and summarized, considered that eiseresses asylum story is apocryphal. The assessment of the credibility of the asylum request as such is not used as the basis for the judgment on Article 29, opening words and under b of the Aliens Act. Is not motivated indicate why the background of the parents of Plaintiff leads to the conclusion that the claimant can find shelter with her daughter a place anywhere in Chad in writing the Chadian League May 11, 2007, nor does the statement concrete and recent information on whether the parents of the plaintiff at all interested in circumcising their granddaughter. The information is always of a general nature and equivalent to what has been introduced earlier. On Article 7, second paragraph, of the Qualification Directive, the defendant considers that dealt with the protection of the

plaintiff by the state or parties or organizations in the plan and concluded that protection capabilities for the plaintiff in Chad.

2.4 Plaintiff against this decision has argued that the decision came about carelessly. Plaintiff and her daughter are Hadjarai women from Chad. Defendant denies that circumcision is a matter of tradition, ethnicity and religion. Precisely the Hadjarai take this very strongly to it. In any case, the decision can not pass the legitimacy test, now the plan does not contain all the grounds for the rejection of her third request for asylum. The intention is not known addresses of Article 7, second paragraph, of the Qualification Directive. Defendant The decision is not provided with an adequate statement of reasons with respect to which the plaintiff has brought about the absence of a comprehensive country report on Chad forward and the existence of the country desk of Common Knowledge Group as well as its reliance on land-based asylum policy for Sudan because of the consistency equality and the situation of FGM in Chad. Defendant can not reasonably take the view that the asylum story is apocryphal, now defendant not 2005/55 decided. According WBV Eiseresses story is basically internally consistent, and the statements of the plaintiff are consistent with what is known about the practice of FGM in Chad. Plaintiff is able to prove her story with evidence at least they have statements from objectively verifiable sources (statements of ACDIDH of August 21, 2006, August 25, 2006 and February 8, 2007 and a statement of the Chadian League May 11, 2007) submitted making her story is not lacking in realism. Respondent has the position after withdrawal of the decision in the AC procedure substantively changed from insufficient substantial credibility in which the defendant has insufficient. If the defendant as to the accuracy of the content of the declaration in doubt or a thing like check lies partly in view Administrative Article 3:2 of the General Administrative Law Act (AWB) and the duty of cooperation under Article 4 of the Qualification Directive on defendants road this in order to gain further information. By letter dated September 24, 2007, the Plaintiff a statement from the president of the Chadian League for Human Rights dated August 30, 2007 submitted. According to this statement [Child 3] will be with deportation to Chad run the real risk of being circumcised. , The decision regarding the real risk that [child 3] runs on FGM in returning to Chad at least a lack of reasoning.

2.5 With regard to the assessment framework to handle the court considers the following.

2.6 The assessment of the present case, the court is based on the following facts. On December 11, 2001, plaintiff filed an application for asylum. This application was rejected on August 28, 2002. By judgment of 21 November 2002, the Tribunal, sitting, Assen, fall under Article 8:54 of the General Administrative Law Act the appeal against inadmissible for failure to comply with the provisions of Article 6:5 of the General Administrative Law Act and not restoring the omission within the given deadline. By judgment of 17 March 2003, this court, sitting, Assen, dismissed the appeal as unfounded.

2.7 On 18 August 2003, Plaintiff again applied for asylum. This application was rejected on 18 August 2004. By judgment of 27 September 2005, this court, sitting place Arnhem (AWB 04/38771), the action is directed against the rejection of the asylum application was upheld. By judgment of 21 March 2006, the Administrative Jurisdiction Division of the Council of State (ABRS) declared it's appeal against this judgment founded, the judgment of this court, meeting place Arnhem, 27 September 2005 in the case AWB 04/38771 destroyed and it to the court in case AWB declared 04/38771 set unfounded.

2.8 On 10 August 2006, plaintiff filed a third time for some time. An application for a residence permit for asylum

2.9 Pursuant to the provisions of Article 4:6 GALA is, if, after a full or partial rejection decision a new request is made, the applicant shows new mention. facts or changed circumstances If no new facts or changed circumstances, the administrative body may, without giving effect to Article 4:5 applies AWB reject the application having regard to its earlier decision.

2:10 According to the Explanatory Note to Article 4:6 GALA is an interested party who wishes Except in

case of objection and appeal to an administrative back from a final judgment and before a new application, to wear that (a) new facts and circumstances have been able to play a role in the treatment of the first application, and (b) of such a nature that they can give. rise to a different decision

2.11 The governing body is then obliged to examine the significance and so it can not comply with the (repeated) request to explain why the alleged new facts or changed circumstances may result. To a different outcome

2:12 In assessing the present repeated application for a residence permit for a fixed period under Article 29, first paragraph, heading and b of the Aliens Act, the court is limited to whether plaintiff relies on new facts or changed circumstances within the meaning of Article 4:6 GALA .

2:13 Beneath should be understood facts or circumstances which have occurred after taking the previous decision or who could not before making that decision, and therefore, having regard to Article 31, first paragraph of the Aliens Act, ought to be supplied, as well as among other evidence of earlier facts or circumstances that could not before taking the earlier decision and, therefore, in view of the latter provision, ought to be provided. Has been satisfied, it is nevertheless no new facts or changed circumstances that a renewed judicial review justified, if it is impossible that what still landed or submitted to reverse the earlier decision and the grounds for that in advance rest (including ABRS, May 19, 2004, JV 2004/313).

2.14 For the judicial review it makes no difference that the governing body is in the grounds of his decision outside the (limited) testing framework Nova entered (ABRS April 4, 2003, JB 2003/139 and JV 2003/219). Given this case Article 4:6 of the needs AWB will be automatically reviewed by the court.

2.15 The court will be considering the aforementioned assessment framework first assess whether there are new facts or changed circumstances in the sense described.

2:16 Plaintiff relied on her asylum application and repeated in the present proceedings, the following facts and circumstances:

- The birth of her daughter on [date] 2005
- Statements of ACDIDH of August 21, 2006, August 25, 2006 and February 8, 2007
- Statements of the Chadian League for Human Rights of May 11, 2007 and August 30, 2007
- Report from the U.S. Department of State on March 8, 2006 by Chad
- Various reports on FGM in Chad

2.17 The court is the defendant considers that there are new facts or changed circumstances within the meaning of Article 4:6 of the General Administrative Law Act .

2:18 According to Article 13, opening words and under a and c, of the Aliens Act, an application for the granting of a residence permit will only be granted if international obligations or compelling humanitarian reasons so demand.

2:19 According to an asylum residence permit, for present purposes, be granted to an alien who has to have to assume that he runs a real risk of deportation to be subjected to torture or to inhuman legitimate reason acceptable to Article 29 of the Aliens Act or degrading treatment or punishment.

The court finds as follows.

Not 2:20 disputed that Plaintiff and her daughter belong to the population of Hadjarai. Nor is it in

dispute that Plaintiff was circumcised.

2:21 In the report of U.S. Department of State on Chad on 8 March 2006 under the heading "Women" contains the following passage: "The law prohibits violence against women,-including the practice of female genital mutilation (FGM); However, FGM was widespread and deeply rooted in tradition. According to a 2004 government report by the National Institute of Statistics, Economic and Demographic Studies, 45 percent of local women had undergone excision. The rates of FGM by ethnic groups included: Arabs (95 percent), Hadjarai (93 percent) and Oauddai (90 percent) (...) Under the law, FGM can be persecuted as a form of assault, and charges can be Brought against. the parents of FGM victims, medical practitioners, or others Involved in the action; However, few suits were Brought during the year ".

2:22 Protection under Article 3 of the ECHR must be made on the basis of a full scrutiny. FGM as such is under a risk as referred to in Article 3 of the ECHR. By its nature requires that risk refinement. The Court finds that in this case a lot of uncertainty about FGM in Chad. Plaintiff has to submit an early proof that there is such a risk. Pieces by Given the severity and nature of the infringing law could defendant not merely single consideration that the submitted appeal statement by the president of the Chadian League for Human Rights is based on information from "independent sources" without understanding to know which sources they are and under which those resources are to be regarded as independent. In that regard, all the more that there is no general official report of Chad is available, which is at the risk and expense of the respondent to continue. Having regard to the judgment of 11 January 2007 the European Court of Human Rights in the Salah Sheekh case is more value to be attached to the report of U.S. Department of State that mounts on a percentage of 93 Hadjarai women who are circumcised. Defendant had, in view of the above, in this case, in as much uncertainty whether there actually exists a risk as referred to in Article 3 of the ECHR, the documents submitted by the plaintiff statements must examine, at least not enough to the ground that the statement the Chadian League does not come from an objective source.

2:23 The appeal is well founded. Can not be upheld and the contested decision should be annulled for breach of the obligation to state reasons laid down in Article 3:46 of the General Administrative Law Act . Defendant will be instructed to take respecting this statement a new decision.

2.24 The remaining grounds therefore require no discussion.

2:25 In this case, the court shall cause the defendant pursuant to Article 8:75, paragraph AWB to pay the legal costs incurred by the plaintiff. The administrative costs are set at € 644, pursuant to the provisions of the Decree costs - (1 point for appeal and 1 point to appear at the hearing, weighting 1 per point value € 322, -). As an addition has been granted under the Law on Legal Aid, the benefit of the plaintiff is under the second paragraph of Article 8:75 AWB be made to the Registrar. payment of this amount

Decision

The Court:

Dismisses the action as unfounded;

destroys the contested decision;

contributes defendant within six weeks after this ruling to decide on the application of the plaintiff, subject to the provisions of this statement is reconsidered;

condemns the defendant in the litigation of € 644, - under the designation of the State of the

Netherlands as a legal entity which these costs to the clerk of this court, side seat instead Utrecht, must comply.

Drawn up by Mr. H. Gorter, president and mrs. MP Glerum and A. Woltjer, members of the panel and the public on April 1, 2008

The Registrar, Mr. MM, of Luijk-Salomons

The Chairman: Mr. H. Gorter

copy sent to:

Remedy

Against this ruling parties within four weeks after this ruling may bring an appeal to the Administrative Jurisdiction Division of the Council of State, stating "Appeal Foreigners", PO Box 16113, 2500 BC The Hague. The appeal must contain. One or more grievances Article 6:6 of the General Administrative Law Act does not apply.

Note: Even if you are unsuccessful, the same in this statement (in part) may be important to establish the extent of the court which is expressly and unconditionally rejected and you do not want to rely on appeal.