

Immigration Team Legal Bulletin

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Case-law update

Particular Social Group – the recent case-law from the 'old' IAT and the Court of Appeal indicates an increasingly liberal interpretation of this Convention reason and practitioners should be mindful to ensure that such arguments are pursued. See *Liu v SSHD, CA The Times 15.4.05* (persecution may serve to create or identify a PSG, note the extensive reference to Australian and Canadian decisions in this regard). There are also a number of recent decisions which establish that women may be a member of a PSG in Somalia and Afghanistan.

Article 3 – we eagerly await the HL decision in *N* which is due any day now. The delay may be a sign for some optimism. In the mean time *JB (AIDS and Articles 3 and 8) Ghana (2005) UKIAT 00077* has clarified the important principle that in determining whether the lack of medical treatment is capable of meeting the Art 3 threshold the decision-maker must consider what would in fact happen to the individual in question – 'the composite picture' or 'mix of circumstances' is important.

Error of law – the CA and Tribunal have recently been at pains to emphasise that the old IAT appeals should only be allowed where there is an error of law. Review applications under the new system are bound to fail in the absence of the clear identification of why mistakes on the part of the AIT constitute material errors of law. The CA has been particularly robust at criticising the SSHD for bringing appeals where there was no error of law in the first place. One member of the team has recently successfully obtained a stay from the Administrative Court when the AIT refused to adjourn a matter which was the subject of judicial review proceedings on the basis that the old IAT had irrationally remitted a case when it merely disagreed with findings as opposed to finding any error of law.

Interviews – In *Dirshe v SSHD (2005) EWCA Civ 421* the CA has indicated that there is a real procedural unfairness if tape-recordings of interviews are not permitted in light of changes to LSC funding for legal representation at interview.

Legislation, Statutory Instruments etc

Practitioners are encouraged to attend court armed with the 2005 Procedure Rules, the Transitional Arrangements and the Practice Direction with a view to ensuring that immigration judges are complying with some of the more positive aspects of the new system eg. narrowing issues, obtaining concessions at the CMR hearings.

Lord Falconer has clarified the meaning of '*significant prospect*' for the purpose of determining whether or not practitioners should be given their costs (s 103D) for reviews and reconsideration hearings. Once the review application is successful (ie. there is an arguable material error of law) and the practitioner acted in good faith then costs should be awarded even if at reconsideration the appeal is dismissed. This position seems to have been endorsed by many of the immigration judges in discussions with members of the team.

Country updates, expert and objective evidence

Somalia – In *NM and others (Lone Women – Ashraf) Somalia CG (2005) UKIAT 00076* the 'old' IAT has made it clear that minority clan members are at risk and internal relocation is not an option. Practitioners should note the need to lead evidence and ask for findings in relation to area of origin and likely protection in Somalia for those not accepted to be members of the minority groups. The IAT accepted that there may be a real risk for those who are returned without protection in light of the inherent dangers in travelling in Somalia. Contrast with *DJ (Bantu – not generally at risk) Somalia CG (2005) UKIAT 00089* which should be appealed to the CA.

In relation to the position for those with HIV upon return to Zimbabwe **Tony Barnett** and **Jeanette Meadway** are very good.

Points to consider

- Any cases which indicate an irrational response to the failure to provide a *certificate of approval* in relation to proposed marriages? This legislation is ripe for human rights challenges.
- What is a '*procedural, ancillary or preliminary*' decision of the AIT. These must be challenged by JR and not review (s103(7)(a)).