

Immigration Team Legal Bulletin

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Case-law update

By now practitioners will all be aware of the narrow approach to Article 3 medical treatment cases adopted by the HL in **N (FC) v SSHD (2005) UKHL 31**. Practitioners should however be alert to the tendency of presenting officers purporting to re-characterise Article 3 cases which involve medical evidence e.g. Somali cases where minority membership is not accepted, as a straightforward medical treatment case bound by **N**. **N** addresses *exceptional circumstances* in the **D** sense.

The CA has recently reviewed the jurisdiction of the IAT as it was between June 2003 to 4 April 2005 in **Miftari v SSHD (2005) EWCA Civ 481**. It concluded that the IAT only had jurisdiction to consider the appeal if a point of law was found in the formulated grounds or if it was a *Robinson-obvious* point that the Tribunal identified for itself (particularly useful for SSHD grounds of appeal which very rarely identify grounds of appeal). Further, the CA also found that since the IAT's jurisdiction was limited to an error of law, it was bound to remit once an error of law was found. This calls into question the practice of the IAT to make factual findings and country guideline decisions when it had no such jurisdiction (paragraph 33). This and the ambit of the error of law jurisdiction generally were considered by the CA in a number of joined matters last week and judgment has been reserved.

In **R (on the application of I & O) v SSHD [2005] EWHC 1025 (Admin)**, Owen J found that the SSHD acted unlawfully in continuing to detain two minor asylum seekers during a period of about 7 days. The SSHD was wrong to reject the opinion of a consultant paediatrician that the applicants were minors, given that the doctor had also carried out dental examinations, which results in the age assessment being accurate within the range +/- 2 years, and not the +/- 5 years as asserted by the SSHD. Further, there was no rational reason for the SSHD to reject the doctor's detailed report, and to accept the asserted ages only after receiving a social services report, given that both reports contained descriptions of physical appearance and demeanour, and contained social and narrative histories. In that respect, the social services department report was no more detailed than the doctors; indeed, the SSHD had failed to give relevant weight to the doctor's extensive clinical experience.

The AIT has considered the relationship between deportation and Article 8 in **CM (Deportation-Article 8) Jamaica [2005] UKIAT 00103** and emphasised that paragraph 364 involves wider considerations than Art 8 (paras 34-36).

Legislation and Procedure

The AIT in **EA (Family visitor, directions, mistake of fact – unfairness) Ghana (2005) UKAIT 00108** takes into account fresh evidence where there has been a mistake of fact which may be useful for Claimants.

Country updates, objective and expert evidence

In the useful decision of **IN (draft evaders - evidence of risk) Eritrea [2005] UKIAT 00106** the AIT concluded that at present there is a real risk that those who have sought to avoid military service or are perceived to have done so, are at risk of treatment amounting to persecution and falling within Article 3. There is no material distinction to be drawn between deserters and draft evaders. The risk is not present for all returnees; only those who are suspected of having left to avoid the draft (and see paragraph 44 (ii) and (iii) for further qualification). The risk of harm applies equally to male and female draft evaders. The issue of military service has become politicised and actual or perceived evasion of military service is regarded by the Eritrean authorities as an expression of a political opinion.

The CG case of **SM and others (MDC – internal flight – risk categories) Zimbabwe CG (2005) UKIAT 00100** is comprehensive on the issue and should be read in full.

In **AM (Begedi - members generally at risk) Somalia [2005] UKIAT 00107**, the AIT dismissed a Home Office appeal on the basis an Adjudicator had been entitled to rely on expert evidence of Anita Adam and Dr Luling stating that the Begedi clan, whilst in strict genealogical terms being classified within the Digil, are in practice much more closely allied with the coastal Benadiri groups, and that they were effectively therefore a minority clan. The AIT were also of the view that once this had been established, the Adjudicator was not obliged to go on any further to consider the substance of the Appellant's claim in any greater detail. Contrast this with these decisions which appear to contain errors of law – **DJ (Bantu – not generally at risk) Somalia CG (2005) UKIAT 00089** and **YS and HA (midgan – not generally at risk) Somalia CG (2005) UKIAT 00088**.

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