

Immigration Team Legal Bulletin

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Case law update

The team has satisfied several immigration judges in Manchester and Bradford that a risk of forced military service in Sudan amounts to a risk of persecution or a violation of Art 3 because the conflicts in the south and in Darfur are contrary to international law. Solicitors should identify at the earliest stages whether clients are at risk of conscription on return and assert such risk in statements. See **MM [2005] UKIAT 00069**.

The Court of Appeal will in **SSHD v Haron** determine whether the Tribunal erred in law when it held that the risk of such conscription alone suffices to establish refugee status.

In **LL (China CG) [2005] UKAIT 00122** the Tribunal held that Falun Gong practitioners could succeed on the Convention reason of imputed political opinion, not particular social group. However, practitioners should note the degree of credible evidential detail which the Tribunal will expect before an appeal may be allowed.

Private practice with discretion will not suffice. Risk escalates with activities including the public practice of Falun Gong exercises, recruitment of new members, dissemination of Falun Gong information and an intention on return to defy previous warnings. Limited knowledge or involvement will undermine an asserted intention to undertake such activity on return.

The Court of Appeal in **R v Ahmed Benabbas [2005] EWCA Crim 2113** provided a helpful review of authorities on judicial recommendations for deportation and deprecated the view of Laws LJ in **Nazari [1980] 1 WLR 1366** that a recommendation for deportation should be automatic in the case of every overstayer.

The Court distinguished the offence of use of a forged passport (which on the facts justified the recommendation) and that of entering without a passport, which, in the case of asylum seekers, would not.

The use of a forged passport unconnected to an asylum claim was held to undermine the good order of society and was thus a present threat to the requirements of public policy.

As to s8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004, the Tribunal held in **SM (Section 8: Judge's process) Iran [2005] UKAIT00116** that the section does not require the behaviour to which it applies to be treated as the starting-point of the assessment of credibility.

It is the task of an official or judge to consider all evidence and determine whether it is sufficient to discharge the burden of

proof. All evidence must be considered in the round and 'despite section 8' is entitled to decide which issues of credibility are important and which less so.

Procedure

Practitioners are reminded that the deadline for lodging applications for orders for reconsideration at the High Court is now 16.00h on the relevant day. However practitioners should be prepared to argue that it was not reasonably practicable to lodge before that time in light of the widespread lack of knowledge as to the change. These words are generally construed restrictively in relation to Unfair Dismissal claims (see **Marks & Spencer Plc -v- Williams-Ryan [2005] IRLR 562 CA**). It remains to be seen whether the requirement of anxious scrutiny will ensure a more flexible approach in relation to immigration claims.

Objective evidence

Bangladesh: Amnesty International reports on a systematic failure of successive governments to stop harassment and killing of government critics such that further violence and killings are encouraged.

The report, Bangladesh Human Rights Defenders Under Attack, AI Index: ASA 13/004/2005, details a systematic failure to protect government critics. Torture is 'usual'.

See: <http://news.amnesty.org/index/ENGASA130062005>

Ukraine: Amnesty outlines at AI Index: EUR 50/005/2005 () persistent reports of torture and ill-treatment of individuals detained in police custody by law enforcement officials in Ukraine. Torture is widespread and routine. A culture of impunity is pervasive.

See: <http://web.amnesty.org/library/Index/ENGEUR500052005?open&of=ENG-UKR>

GCN Immigration Law Seminar 21/10/2005, Manchester

The seminar will focus on:

- (i) Preparing for hearings in the AIT in light of Country Guidance cases.
- (ii) What is an "error of law" for the purposes of reviews and reconsideration hearings?
- (iii) Practical guidance on review applications including renewal to the High Court;
- (iv) Practical guidance on reconsideration hearings.

For full details and booking form see www.gcnchambers.co.uk.