

# Immigration Team Legal Bulletin

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## Country Guidance

**AM (Burundi) [2005] UKIAT 00123** confirmed the continuing relevance of the general guidance given in [SS Burundi CG \[2004\] UKIAT 0029](#) but found that individual appellants from particular areas may still establish a well founded fear of return. The case also confirmed that if the facts reveal a real risk of rape for a Convention reason then the Appellant would succeed on asylum and human rights grounds.

In this case, the Tribunal again emphasised the importance of Immigration Judges considering cases individually rather than treating CG cases as determinative. Particular points to be taken from this case are that (1) SS is not determinative of the issues, (2) The Immigration Judge must explore the individual circumstances of each case and put each Appellant's case in its context against the background provided by SS, (3) The general guidance in SS notes a distinction between the general position in Burundi and particular security concerns in the Bujumbura area.

The question of internal relocation was also considered in this case and the Tribunal found that it would be unduly harsh to expect this Appellant to relocate. The relevant factors in this decision were that she had attempted unsuccessfully to relocate in the past, she would have to travel through a war zone to reach a safe area and would encounter a number of hazards such as land mines and banditry, she would have considerable difficulties in travelling as she had a very young child and that she only spoke a few words of Kirundi.

A member of the team will be appearing in a new Sudanese country guidance case in November. The case is to be heard by the President in Manchester and will revisit AE and consider the issue of internal flight. Practitioners may want to consider making applications for adjournments in Sudanese cases where these issues are in dispute.

## Procedure

### Two cases on the admission of fresh evidence:

**DM [2005] UKAIT 00130** deals with cases where evidence emerges after the decision relating to matters which were not put to the ECO. The court held that there was no general proposition of law that stated that an Immigration Judge cannot independently assess the question of an Appellant's intention on the basis of material provided after the decision where that material related to the Appellant's intention at the date of the decision (DR [2005] UKAIT 00038 affirmed). A note of caution – the court also stated that where evidence emerges after the ECO's decision then credibility issues may arise. The case also affirmed the need to focus on the intentions of the Appellant rather than those of the sponsor when cases are appealed.

**EB [2005] UKAIT 00131** deals with the position where fresh evidence of fraud has come to light. In this particular case, the evidence of fraud was only provided at the reconsideration hearing and had not been available to the ECO or the Immigration Judge who heard the appeal. The court followed the authority of [E & R v Secretary of State \[2004\] QB 1044](#) to hold that *"it would be remarkable if the Tribunal could not take into account the fresh evidence. A party who conceals the truth and puts forward a false case cannot be heard to complain if the falsity is discovered after the hearing."*

**Point to note** - the procedure set out in [LS \[2005\] UKAIT 00085](#) was confirmed in as far as the Tribunal stated that it was first necessary to identify a material error of law before considering the admission of fresh evidence. In this case, the material error of law was held to be the issuing of directions by the IJ. This case is somewhat problematic as the Appellant and/or his representatives did not attend. Practitioners may want to consider whether the issuing of directions actually constitute an error of law in the light of the jurisdiction of the IJ to consider the appeal at the date of the decision.

### Reconsideration – transitional provisions – findings of fact

In **YF [2005] UKAIT 00126**, the Tribunal provided guidance as to the correct approach to findings of fact made previously when an appeal has been remitted for a fresh hearing before April 2005 but the re-hearing has not taken place by that date. The relevant points are: (1) reconsiderations pending before 4 April 2005 come within Para 14.11 of the Practice Direction 2005; (2) the general or default position is that where a reconsideration is ordered unless otherwise directed, previous findings of fact are to stand; (3) If the previous findings of fact are not sufficient to enable the Tribunal to arrive at a fresh decision - i.e. where material issues had not been considered at all in the determination or where the previous findings are not reliable - an adjournment should be granted for evidence to be called; (4) With respect to reconsideration ordered before 4 April 2005, if there is no direction to the contrary, the Tribunal will proceed to rehear the appeal and arrive at their own findings of fact of the basis of the evidence adduced before them.

Please note that the Appellant in this case wanted to re-open the facts of the case. In a situation where there are positive credibility findings, the situation might be the opposite, in that practitioners may want these findings to bind the tribunal on reconsideration. Practitioners should therefore consider whether they should accept the construction put on the Rules in this case or whether they could challenge this on the basis of a purposive construction of the Transitional Order and Procedure Rules and following the case of [Ghanbarpar \[2005\] EWHC123 \(Admin\)](#).

### Reconsideration – situation where SSHD wishes to withdraw appeal.

**MS [2005] UKAIT 00129** notes that there is no provision in the current Asylum and Immigration Tribunal Rules for the SSHD to withdraw his appeal where reconsideration has been ordered. The court held that the appropriate course to be followed therefore is for the Home Office to inform the Tribunal and the Appellant in writing that he no longer wishes to pursue the appeal. The letter will then be placed before a Senior Judge who can determine the matter without a hearing under Rule 15(2) and serve a written determination to that effect.

## Objective Evidence

[Democratic Republic of Congo](#): Amnesty International reports on the increasing tensions in North Kivu and warns that there may be a renewal of widespread armed conflict. The report - *"North Kivu – Civilians pay the price for political and military rivalry"* [AI Index AFR 62/013/2005](#) – states that the parties involved in the transitional government in DRC have all contributed to the deteriorating situation and inflamed ethnic tension to advance their own interests.

See: <http://web.amnesty.org/library/Index/ENGAFR620132005?open&of=ENG-COD> .