

Appeal Rights

In **GH [2005] EWCA Civ 1182** the CA held that under the 2002 Act there is no free standing right of appeal against RDs which are set after the original decision to refuse leave to enter or remain. The appropriate remedy in such cases is Judicial Review. However, practitioners should note that there is arguably a statutory right of appeal if either (i) RDs are set at the same time as the refusal of leave to enter or remain or, (ii) in the absence of RDs the SSHD has committed himself through a policy statement etc to a particular method of route of return.

Basis of Reconsideration

A member of the team has recently been granted leave to appeal to the CA where Dr Storey in granting leave has suggested that the Court reconsidering the matter may wish to consider the correctness of the principles in YF (pre-commencement remittal - basis of reconsideration) Eritrea [2005] UKIAT 02126.

Sudan

The CA in **Hamid (1) Gaafar (2) Mohammed (3) v SSHD [2005] EWCA Civ 1219** revisited the issue of internal relocation in the context of Sudan. The Court held that there is no general principle or presumption that persecution by or on behalf of the state is incompatible with acceptable internal relocation. Further the Court re-affirmed the decision in AE & FE that in asylum claims humanitarian conditions are irrelevant when applying the 'unduly harsh' test; such considerations fall to be considered by reference to the ECHR. The CA went on to determine the individual appeals of the applicants, finding in each case no error of law.

This decision of the CA can and should be challenged on a number of bases;

- (i) absent an error of law the Court was restricted to the material before the first instance decision-maker and therefore did not consider any of the more recent objective evidence documenting the ill treatment of Darfurians in Khartoum;
- (ii) the CA did not itself undertake any analysis of the objective evidence it had before it and;
- (iii) the decision in AE (Relocation - Darfur - Khartoum) Sudan was applied without questioning its correctness.

In **MA (Operational Guidance - prison conditions - significance) Sudan [2005] UKIAT 00149** Dr Storey held that so long as the IND Operational Guidance Note on Sudan continues to view prison conditions in Sudan as being "likely to reach Article 3 threshold" the Tribunal will expect the Home Office to concede in all Article 3 appeals where it is accepted that the appellant has demonstrated a real risk of imprisonment. The same expectation applies to asylum appeals where such risk is related to a Convention reason. This is a helpful decision particularly if argued in conjunction with AM (Sudan Draft Evader) [2004] UKIAT 0035.

Country Guidance

In the CG case of **AA (Involuntary returns to Zimbabwe) Zimbabwe CG [2005] UKIAT 00144** the Tribunal held that failed asylum seekers if returned to Zimbabwe would be at real risk of persecution for a Convention reason and are therefore entitled to refugee status. The reasoning is in the main based on the practice adopted by the UK authorities in respect of involuntary returned to Zimbabwe. In view of the Tribunal's conclusion, fresh claims can legitimately be made on behalf of those individuals whose asylum claims have previously been rejected.

Funding

RS (Funding - meaning of 'significant prospect') Iran [2005] UKIAT 00138 confirms that in the majority of cases there is no difference in interpretation of the phrase 'significant prospect' in regulation 6(3) of The Community Legal Services (Asylum and Immigration Appeals) Regulations 2005 and of 'real possibility' in rule 26(6) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Thus practitioners seeking funding orders can argue that where an order for reconsideration has been made a SIJ has already taken the view that there was a real possibility/significant prospect that the appeal would be allowed upon reconsideration.

It is clear following the recent decision in **EB (no funding order - first stage reconsideration) Turkey [2005] UKIAT 00145** that S103D funding applications should not be made at the first stage hearing where a second stage reconsideration is ordered; such applications should be made at the conclusion of the second hearing.

Article 3

The HL in **R v SSHD (Appellant) ex parte (1) Adam (2) Limbuela (3) Tesema [2005] UKHL 66** has upheld the CA's decision concerning s.55 of the Nationality, Immigration and Asylum Act 2002. The case involves three asylum seekers who it is accepted did not claim asylum as soon as reasonably practicable. Pursuant to s.55 (1) the SSHD in each case withdrew NASS support. The HL held that there was an imminent prospect that such treatment would lead to a condition that was inhumane and degrading contrary to Article 3 ECHR.

The impact of the decision for those asylum seekers whose support has been withdrawn is obvious. However the decision has far wider implications with regards the nature of the treatment which is prohibited by Article 3. Lord Hope of Craighead firmly rejects the suggestion of a more exacting test for inhumane or degrading treatment which is a consequence of otherwise legitimate government policy. Further the Lords opine that the imminent prospect of sleeping rough may itself amount to treatment which triggers Article 3.

Article 8

The HL have granted leave to appeal against the CA's decision in Huang & Kashmiri.