

# Immigration Team Legal Bulletin

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## House of Lords

In **Januzi and others v SSHD (2006) UKHL 5** the House of Lords considered two issues:

(1) in judging undue harshness, should account be taken of any disparity between the civil, political and socio-economic human rights which the claimant would enjoy under the leading human rights conventions and covenants and those he would enjoy at the place of relocation?;

(2) what approach should be followed where the persecution suffered or to be suffered was or would be sanctioned or connived at by the authorities of the country of the appellants' nationality?

In relation to issue (1) their Lordships answered the question in the negative, preferring the approach adopted in *AE and another v SSHD (2003) EWCA 1032* (which should by now be well known to practitioners) to the Hathaway/ New Zealand approach. Their Lordships however approved of the UNHCR's guidelines (paragraph 20) in relation to this issue and recommended the approach of asking: 'Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue Hardship?'. In relation to issue (2) Lord Bingham observed (paragraph 21):

*'The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state.'*

Lord Hope also observed that persecution which emanates from the state raises other issues (paragraphs 48-49) and cases should be determined by an objective and fair assessment of their own facts.

The House therefore dismissed Januzi's appeal but allowed the appeal of the Appellants from Darfur to the extent that they remitted their cases to the AIT for reconsideration both in relation to internal relocation and the potential breach of Article 3 of the ECHR in relation to the conditions for IDPs in Khartoum.

Practitioners should therefore ensure that Sudanese appeals are fully and properly prepared pending further country guidance and that in the interim internal relocation and Article 3 should be fully argued by reference to the up to date evidence including the recent UNHCR report and UN Security Council report dated 30.1.06 ([www.ecoi.net](http://www.ecoi.net)).

## Court of Appeal

The Court of Appeal has very recently considered an issue which could have had far reaching consequences for reconsideration appeals which are appealed directly to the Court of Appeal in ***Hatungimana v Secretary of State for the Home Department [2006] All ER (D) 281 (Feb)*** ([more details](#)).

Having considered detailed skeleton arguments, Brooke LJ concluded that the Court of Appeal did not have, at the stage of applying for permission to appeal, jurisdiction to remit a case to the AIT to supplement its reasons. He noted that although there was such a power in employment cases (*Barke v SEETEC Business Technology Centre Ltd [2005] All ER (D) 216 (May)*), the statutory scheme regulating the Employment Appeal Tribunal and the Employment Tribunal was different from that regulating the Asylum and Immigration Tribunal and there was no equivalent power in respect of the latter.

The Court therefore went on to consider for itself the Appellant's submissions that the AIT had failed to give sufficient reasons and concluded that on the facts, the AIT had failed to deal adequately with the expert report on which the claimant had relied and its reasoning had been insufficient. The case was remitted to the AIT de novo.

## AIT

Practitioners are reminded of the importance in ensuring compliance with Rule 30 of the 2005 Procedure Rules as recently confirmed by the AIT in *SP (Time for Reply – Rule 30(2) and 45(4)(c)) (2006) UKAIT 00010*.

Where Counsel is instructed, practitioners should seek to ensure that briefs for reconsideration hearings by video link (in order to determine whether there is an error of law) are delivered in sufficient time for Counsel to consider whether a reply should be served (which must be served 5 days before the hearing).

## Legal training seminar

**“Entry clearance” – 3<sup>rd</sup> April 2006 in Manchester**

Members of Garden Court North Immigration team will present a seminar focusing on Entry clearance.

For more details please visit [www.gcnchambers.co.uk](http://www.gcnchambers.co.uk)