

Immigration Team Legal Bulletin

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Zimbabwe

In **AA and LK v SSHD [2006] EWCA Civ 401** the CA found that the AIT had materially erred in law and allowed the SSHD's appeals. In particular the CA held that the definition of "refugee" given by Article 1A requires that a well-founded fear of persecution should be the reason a person is outside the country of his nationality; the definition does not extend to persons who, if they chose, could return home with no risk. This finding seems to preclude, irrespective of the merits of the evidence, an involuntary returnee from claiming refugee status. However the CA did not consider the position under the HRA. In principle therefore it remains open to argue that an involuntary returnee faces a real risk of treatment contrary to Article 3.

The CA considered that the factual question of whether AA would be safe on his voluntary return was not concluded by the findings so far made by the AIT and thus remitted the matter. The CA stated that there is in particular a potential issue as to what might befall AA within Zimbabwe after he gets through the airport.

In the absence of an up-to-date country guideline determination it is open to practitioners to argue before the AIT that in the context of Zimbabwe: (1) an involuntary returnee faces a real risk of treatment contrary to Article 3 and, (2) that a voluntary returnee faces a real risk of persecution / treatment contrary to Article 3. Such submissions can only properly be made if relevant objective evidence is included within appellants' bundles – see Professor Ranger's report "Zimbabwe: General Report on Return, Resettlement and Food" dated 06.07.05 available on www.ein.org.uk. > [judgment](#).

Procedure

In **AH (Scope of s103A reconsideration) Sudan [2006] UKIAT 00038** the AIT considered whether the order for reconsideration limits the scope of the reconsideration. It held:

- i. The reconsideration is of the appeal as a whole;
- ii. It is not limited to the grounds for review or the grounds upon which reconsideration is ordered;
- iii. It is only limited to the original grounds of appeal to the AIT against the SSHD's decision;
- iv. No directions can limit the issues before the AIT on a reconsideration;
- v. However the way in which those issues are dealt with can be limited by directions;
- vi. The AIT can and probably should adopt any parts of its earlier determination that are not vitiated by error of law;
- vii. In deciding whether there is a material error of law the AIT is not restricted to matters raised in the grounds for review and any reply;
- viii. But at the first stage of reconsideration the AIT should be unwilling to allow parties to raise matters that they have not

raised previously, or that have been rejected as arguable in the order for reconsideration;

- ix. If the AIT wishes to raise issues of its own motion it will need to ensure that the parties are given adequate opportunity to deal with them.

Following **AH** it is important that the original grounds of appeal against the decision of the SSHD should contain all matters relied upon; if any matter is not included within the original draft, an application to vary the grounds should be made at the earliest opportunity pursuant to Rule 14 of the 2005 Rules.

Whilst the AIT's findings at (vii) and (ix) above may prove to be of assistance to some appellants, it would appear that the findings apply equally to applications for reconsideration made by the SSHD. Of concern is the AIT's attempt to distinguish the CA's decisions in *Miftari v SSHD* and *R (Iran) and Others V SSHD*, which held that in respect of an appeal by the SSHD the Tribunal only had jurisdiction to engage with matters raised within the grounds, on the basis that those decisions relate to the old IAT system. > [judgment](#).

In **BO and Others (Extension of time or appealing) Nigeria [2006] UKAIT 00035** the AIT gave guidance on the information required in written applications pursuant to Rule 10 to extend time for notices of appeals. The most important matter to address in the application is the explanation for the lateness of a late notice, which needs to be supported by evidence and cover the whole of the period of delay. The Tribunal held that if there is no explanation, or no satisfactory explanation, or an explanation unsupported by evidence, it is very unlikely that time will be extended. Other factors to be dealt with in the written application include: (i) the strength of the grounds of appeal, (ii) the consequences of the decision, (iii) the length of the delay, (iv) the prejudice to the Respondent and (v) mistakes, delays and breaches of the Rules by the Respondent. > [judgment](#).

EA (Timeous appeal treated as late) Ghana [2006] UKAIT 00036 confirms that Judicial Review is the appropriate remedy to challenge a decision by the AIT to refuse to extend time in respect of an out-of-time appeal. However the position is different in relation to a decision of the AIT that an appeal was lodged out of time. In such cases, where the evidence clearly demonstrates an in-time notice of appeal, practitioners should pursue reconsideration whereupon the Tribunal has the power to reverse its previous statement. > [judgment](#).

Human Rights Appeals

In **AS (Appeals raising Article 3 & 8) Iran [2006] UKAIT 00037** it was held that in a human rights appeal where an appeal is allowed under Article 8 that does not prevent an appellant from seeking an order for reconsideration on the grounds that the IJ erred in not allowing the appeal under Article 3. This is because certain benefits flow from a successful outcome of an appeal based on Article 3 as opposed to Article 8. > [judgment](#).