

Immigration Team Legal Bulletin

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Case law update

R (A, H and AH) -v- SSHD [2006] EWHC 562 Admin has held that the manner in which the SSHD dealt with 3 Iraqi Kurdish claimants from the Government Controlled Area, was an 'abuse of power'. From 1991-2003 it was Home Office policy not to invoke internal relocation concerning such claims, which only came to light during the case of **Rashid** in 2004. Collins J rejected the SSHD's argument that the explanation of their conduct meant it was not an abuse, and held that :

'here there was systemic failure which not only affected the decision but also led to the appellate authority being misled. Thus the claimant was deprived of the chance of having a fair decision not only from the administrators but also from the independent appellate body ... coupled with the lack of any satisfactory explanation'

Claimants A and H were granted ILR. As AH should have been granted 4 years ELR in July 2001, he was therefore entitled to apply for ILR as if he had been granted the ELR.

RG (Ethiopia) -v- SSHD [2006] EWCA Civ 339 is an important majority Court of Appeal decision upholding a finding that unmarried females in Ethiopia face persecution on account of their being members of a 'particular social group'. The basis for this decision was 'serious discrimination attributable to cultural conditions and indeed reflected in certain legal provisions and ... a lack of state protection for them'. Significantly, the majority's conclusion was partially based upon recent objective evidence that had not been before the Adjudicator, which emphasises the need to include current materials in the CA bundle.

> [judgment](#)

However the scope for arguing 'mistake of fact' grounds remains restricted. In **Kaydanyunk -v- SSHD [2006] EWCA Civ 368** the Appellant's risk of suicide escalated after his appeal had been dismissed by the IAT. The Court of Appeal dismissed the Appellant's human rights appeal on the basis that there had been no 'mistake as to an existing fact at the time of the (IAT's) determination'. However, Maurice Kay LJ helpfully stated concerning the making of fresh claims :

'It seems to me that by restricting the remedial route of an appellant both within the Asylum and Immigration Tribunal and to the Court of Appeal to legal error, Parliament has increased the burden on the Secretary of State to give the most careful consideration to fresh applications'.

In **Collins -v- Secretary of State for Work and Pensions [2006] EWCA Civ 376** the 'habitual residence test' under social security law was held to be compatible with the law concerning the free movement of workers. The Court of Appeal firstly rejected an argument that the requirement of a 'genuine link' between an applicant and the UK employment market was the same as 'actively' seeking work under the

JSA Regulations 1996. It then held that the habitual residence test as defined in the earlier cases of **Nessa** and **Swaddling** was sufficiently flexible to meet the EU criteria. The Court of Appeal also overruled the requirement previously imposed upon the SSWP (in order to comply with the prohibition of discrimination on the grounds of nationality), of asking themselves prior to rejecting the Claimant's application, whether they had at that point 'become satisfied of the genuineness of the claimant's search for work' > [judgment](#)

Procedure

In **EY (DRC) [2006] UKAIT 00032** Hodge J has strongly criticised the SSHD's level of compliance with Rule 23 of the 2005 AIT Procedural Rules, which requires them to, firstly, serve a copy of the Tribunal's determination (if it concerns an asylum appeal) upon the Appellant 'not later than 28 days' after receiving it, and secondly, to notify the Tribunal 'as soon as reasonably practicable ... on what date and by what means it was served'. The AIT stated that 'it is consistently the case that the date of posting such determinations is unclear', with the result that it is impossible for the Appellant and the AIT to know when the appeal deadline will expire. The AIT recommended that the SSHD send a standard letter to the Appellant's representatives and the AIT, all dated and sent on the day of posting of the determination. > [judgment](#)

In **R (Adeli Abbas) -v- SSHD [2006] EWHC 474** the Administrative Court were confronted with an ambiguous IAT decision, which both the SSHD and the Appellant claimed was in their favour. The IAT made matters even worse by firstly stating in correspondence with the Appellant's solicitors that it had dismissed the SSHD's appeal, before then stating in a later letter that it had allowed it. The Administrative Court sensibly ignored the letters and construed the IAT's decision as having dismissed the SSHD's appeal. It therefore directed them to grant the Appellant ILR. Unsurprisingly, the IAT's conduct was criticised, with McCombe J stating :

'Such documents must be clear. Many litigants before the Tribunal (and before its successor body) will have limited (if any) recourse to legal representation ... it cannot be right that they would have been expected to comb the interstices of legal reasoning to determine the results of their cases'

> [judgment](#)

Zimbabwe

The hearing of the SSHD's appeal in **AA & LK** took place before Brooke, Laws and Sir Christopher Staughton on 6-7 March 2006. According to the Court Service website (http://www.hmcourts-service.gov.uk/cms/list_coacivil.htm), judgment will be handed down at 10.45 am on Wednesday 12 April 2006.