

IMMIGRATION APPEAL TRIBUNAL

Date heard: 15/2/2000
Date Determination notified: 25/2/2000

Before

The Honourable Mr Justice Collins (President)
Mr A F Hatt
Mr H J E Latter

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT
APPELLANT

and

AFTAB AHMED
RESPONDENT

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State against a determination by a Special Adjudicator, Mrs F C Bremner, following a hearing at Hatton Cross on 18 November of last year. By that determination she allowed the appeal of the Respondent, Aftab Ahmed, against the refusal by the Secretary of State of his asylum claim and the decision that removal directions should be given to remove him to Pakistan.

2. The details of the claim can be stated very briefly indeed. Suffice it to say for the purposes of this appeal that the Appellant, who was a lawyer, had involved himself in activities which drew him to the attention of the authorities in which he supported the aims of the JKLF. He had been arrested on some three occasions between 1992 and 1996 because he campaigned to end the cooperation as he saw it between Pakistan and India in relation to Kashmir and was an active campaigner for the independence of Kashmir. He produced to the Secretary of State a number of documents which he said supported his claim, in particular a detention order which referred to him alleging that he had been raising armed contingents in order to make successful the cause of the Liberation Front. This was back in March of 1992. Further in 1996 it was alleged that he, having been arrested at a demonstration, had had in his possession a loaded pistol. As a result of all this, he went into hiding and managed to escape the attentions of the police for a period of some eighteen months. He then decided that he would leave the country and seek asylum in the United Kingdom. He went to

Islamabad and managed to obtain a passport. The Secretary of State relied on his deception of the Entry Clearance Officer in order to obtain a visa, in that he stated to the Entry Clearance Officer that he was married and had not been involved in politics. We are bound to say that in an asylum claim it would not be surprising that someone in the position of the Appellant who was seeking to leave the country might be economical with the truth, and that particular ground for suggesting that his claim was not a valid one seems to us to carry very little weight.

3. Having heard the Appellant give evidence and in the course of that evidence having been cross-examined for a substantial period, the Special Adjudicator formed a favourable view on his credibility. Indeed as she records in her determination, at the close the evidence she was able to indicate that she was prepared to accept his evidence in its entirety. She notes that the Presenting Officer at the hearing accepted that there had been mistranslations of some of the documents and that the documents that had been produced did refer to the Appellant. Thus a substantial part of the Secretary of State's reasons for rejecting the Appellant's claim fell away. In the light of her findings on credibility she accepted that the Appellant had a well-founded fear of persecution. She records that the matter which gave her the most difficulty was the issue of internal flight because, as she put it, he seemed to have found a place of safety for a considerable time before he left Pakistan. She records, however, that the Appellant had gone to the mountains and could not reasonably be expected to remain in hiding in remote parts of Pakistan for an unspecified length of time until satisfied that the authorities were no longer interested in him. In those circumstances, as it seems to us, it cannot reasonably be considered that this is a case which gives rise to internal flight. The second ground of the appeal was a challenge to the Special Adjudicator's conclusion that the internal flight option was not available to the Appellant and a suggestion that that finding was perverse. In the light of the factual finding to which we have referred in our judgment that ground of appeal is simply unarguable and in fairness to Miss Annetts who has appeared on behalf of the Secretary of State, she did not press the argument very hard.

4. That leaves the first ground of appeal. It is we think convenient to read it. We quote:

“At the close of the appellant's evidence the Special Adjudicator announced that she was prepared to accept his evidence in its entirety. As a result she directed that the Presenting Officer restrict submissions to matters other than credibility. The Presenting Officer submitted that credibility was still an issue as far as the Respondent was concerned but the Special Adjudicator would not allow the Presenting Officer to attempt to persuade her on this issue. It is therefore submitted that by restricting the Presenting Officer's submission in this way the Respondent did not have the opportunity to put his case in full.”

We have examined the record of proceedings and have already referred to the sentence in the Special Adjudicator's determination in which she states that she indicated at the close of the evidence that she was prepared to accept the Appellant's evidence in its entirety. For the purposes of what we are proposing to say we assume that that ground is accurate. We say that because we have no direct evidence before us that that is indeed so and we should make this point very clearly. Grounds of appeal do not prove themselves. Where criticisms are made about the conduct of an Adjudicator those matters must be established before the Tribunal. That can be done in a number of ways. A statement, or if need be an affidavit, can be produced from a representative or another

person who attended the hearing who can state what happened so far as his or her recollection is concerned.

5. If there are criticisms of an Adjudicator it may be that the Tribunal of its own motion will ask the Adjudicator for comments. Those comments will be put to the parties and will form part of the material which is considered by the Tribunal. But some material, other than the mere statement in the grounds, must be placed before the Tribunal. In this case what we say is based upon the assumption that the ground of appeal is correct. If it is not, then what we say will affect any future cases heard by an Adjudicator and we hope that Mrs Bremner will forgive us for what we are assuming against her. If she acted as is alleged, she acted wrongly. An Adjudicator, indeed any Judge, must never prevent a representative from putting forward submissions which are properly available to that representative because the Adjudicator has formed a particular view on the evidence. In this case it is perfectly clear from the cross-examination that the Presenting Officer was challenging the evidence which had been given by the Appellant. In those circumstances it was perfectly proper for the Presenting Officer to put, or seek to put before the Adjudicator, matters which might affect her ultimate decision upon credibility. She for her part would have been entitled to have indicated that she had formed a preliminary view or to have sought assistance directed to particular matters which the Presenting Officer could rely on as showing that her preliminary view was wrong. What she was not entitled to do, if this is indeed what she did, was to refuse to listen to any submissions and we express the hope that never again will the Tribunal be troubled with an appeal based upon a refusal to listen to representations which can properly be made.

6. Of course there may be cases where it is plain that a representative is simply wasting the Tribunal's or Adjudicator's time and is putting forward matters which could not reasonably be put forward on the evidence that has been presented. In those circumstances an Adjudicator would be entitled to bring those submissions to an end and to refuse to listen to any further submissions based on the same matters. Equally, an Adjudicator is entitled to prevent repetition and in an appropriate case to place some sort of time limit upon representations, provided this is done in a way which ensures that the representative has a fair opportunity to put before the Adjudicator the matters which he is entitled to put forward. Having said that, even assuming that the Adjudicator did as is alleged in that first ground of appeal, it cannot have affected the outcome of this appeal. She was clearly entitled to reach the decision that she did on the credibility of this Appellant, and in the light of the material before her and the concessions made by the Presenting Officer, it was a decision which was not only open to her but one with which this Tribunal would agree.

7. In those circumstances the appeal by the Secretary of State must be dismissed.

MR JUSTICE COLLINS
PRESIDENT