

Asylum and Immigration Tribunal

HM (Risk factors for Burmese citizens) Burma CG [2006] UKAIT 00012

THE IMMIGRATION ACTS

**Heard at Field House
On 29 November 2005
Prepared**

Determination Promulgated

23 January 2006

Before

**Mr D K Allen, Senior Immigration Judge
Mr P R Lane, Senior Immigration Judge
The Rt. Hon the Countess of Mar**

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Cox, Counsel instructed by IAS

For the Respondent: Mr S Ouseley, Home Office Presenting Officer

The following comprise general guidelines in assessing risk on return to Burma of a Burmese citizen:

- (1) *A Burmese citizen who has left Burma illegally is in general at real risk on return to Burma of imprisonment in conditions which are reasonably likely to violate his rights under Article 3 of the ECHR. Exit will be illegal where it is done without authorisation from the Burmese authorities, however obtained, and will include travel to a country to which the person concerned was not permitted to go by the terms of an authorised exit. We consider it is proper to infer this conclusion from the effect in the Van Tha case of the employment of Article 5(j) of the Burma Emergency Act 1950, either on the basis of the application of that Article in that case or also as a consequence of a breach of the exit requirements we have set out in paragraph 83.*

- (2) *A Burmese citizen is in general at real risk of such imprisonment if he is returned to Burma from the United Kingdom without being in possession of a valid Burmese passport.*
- (3) *It is not reasonably likely that a Burmese citizen in the United Kingdom will be issued with a passport by the Burmese authorities in London, unless he is able to present to the Embassy an expired passport in his name.*
- (4) *If it comes to the attention of the Burmese authorities that a person falling within (1) or (2) is a failed asylum seeker, that is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Whether that fact would come to the attention of the authorities will need to be determined on the facts of the particular case, bearing in mind that the person is highly likely to be interrogated on return.*
- (5) *It has not been shown that a person who does not fall within (1) or (2) above faces a real risk of persecution or Article 3 ill-treatment on return to Burma by reason of having claimed asylum in the United Kingdom, even if the Burmese authorities have reason to believe that he has made such a claim, unless the authorities have reason to regard him as a political opponent.*

DETERMINATION AND REASONS

1. The appellant is a citizen of Burma. She appealed to an Immigration Judge against the Secretary of State's decision of 29 January 2005 refusing leave to enter the United Kingdom. The Immigration Judge dismissed her appeal. Reconsideration was ordered by a Senior Immigration Judge on 8 June 2005.
2. On 13 September 2005 the Tribunal concluded that there was an error of law in the Immigration Judge's determination on the following basis. It was held that there was a material error of law in the failure by the Immigration Judge to take into account the argument in paragraph 19 of the skeleton argument before her concerning problems experienced by the appellant previously in Burma and the failure to make findings on what she said happened to her in Burma between October 2004 and January 2005. A full reconsideration was ordered.
3. The hearing took place before us on 29 November 2005. Mr S Cox for the IAS appeared on behalf of the appellant, and Mr S Ouseley appeared on behalf of the Secretary of State.
4. The appellant arrived in the United Kingdom on 29 January 2005 and asked for asylum. At a screening interview she said that she had arrived in the United Kingdom from Thailand. She had been there for two nights after leaving Burma. She said that she did not have her own passport, having given it to an agent after they left the plane. Her passport was a genuine one. She had not destroyed it, the agent had taken it. She was able to give the passport number and said that she had a copy of the passport on her. She said that that was because in Burma people

always copied important documents. She was asked what the point of handing the passport to the agent was and she said she did not know what to do after she left Burma so the agent looked after her. While she was pushing the trolley along the corridor she said someone asked her for her passport and she handed it over as she had been instructed to do so. She said that she gave the passport to the agent as she walked along a corridor and did so because she was instructed to do so.

5. She had previously obtained by official means a marriage visa to go to the United Kingdom. The purpose of this was to get married to a Burmese man living here. She had also been successful in obtaining a visa to go to Thailand and on each occasion she had used her own name.
6. It transpired that, shortly before obtaining the visa to go to Thailand, she had been refused a visa and she said that this was because she had bought a single ticket to Bangkok and was told that she should hold a return ticket. Therefore a return ticket was then purchased. With regard to the previous visit to the United Kingdom, she said that she had gone to get married but she had had a row with her fiancé and she had to go home. She had come back because she had had problems in Burma since she had returned previously. She said that she was followed by the authorities constantly and she needed help.
7. In her asylum interview she said that she feared the government in Burma because she had been involved with someone who was a politician and this was her former fiancé. The engagement was now off. Her former fiancé had no party but had demanded democracy by himself. She herself had never belonged to a political party and nor had she ever been arrested in her country.
8. She had met her former fiancé when he was a teacher in Burma and that was when she was about fourteen years old and they had kept in touch thereafter. They had got engaged unofficially in March 2004. Her fiancé had demanded democracy when in the United Kingdom when the civil uprising in Burma started in 1988. He had gone to the United Kingdom in 1978. In the meantime she had seen him whenever he visited Burma and he had done so frequently including coming several times in 1996.
9. They had not married when she came to the United Kingdom previously because they had irreconcilable differences. She was asked why her fiancé had never been arrested when he returned to Burma to visit her and she said he was visited constantly and was interrogated and before he visited Burma he signed a form promising that he would not do any politics in Burma and that was why he was allowed in. She did not marry him then as she did not love him enough then. She thought that it was in 2001 or perhaps 2002 that he was not allowed in at the airport and had to return and that was why he had sent for her in 2004 instead of visiting Burma.
10. She was asked in more detail about why the marriage did not take place and she said that they did not see eye to eye. She said that when they were walking in the street for example when she walked slowly he shouted at her and said she was walking slowly. She did not know how to cook and he had told her that she was useless and told her it was like looking after a five year old.

11. She was asked what happened when she returned to her country from the United Kingdom. She said that the government had suspicion and wondered why she had come back so quickly and suspected that she was to contact someone and that she had some documents and suspected that she was a spy. When she arrived at the airport they did not let her go and they interrogated her. It was the day when the Prime Minister and the Military Intelligence had been purged and this led the authorities to be more suspicious. She had been held for two days, not all the time at the airport but she was taken somewhere else and detained there. They had asked her what she was doing there and who was she going to meet and who had asked her to contact whom and they wanted to look at her papers.
12. She was asked how she was treated while detained and she said that they interrogated her all the time. She was asked whether she was harmed physically and said no, but they threatened her verbally and hit the table and frightened her and said that they would arrest her.
13. She was asked what happened when she was released from detention and she said she had bribed them. This was why she was released. She said that the members of the Intelligence Corps treated her worst, but she met members from other groups who detained her and she was detained by other groups who were not very strict. As to what happened after her release she said that they always asked her and telephoned her and asked her where she was going and to tell them the places she was going to and when she went out they followed her. She was under surveillance. She said that they were from the military government. She received frequent phone calls and they sent for her for interrogation about five times. She did not remember the dates of those interrogations. She gave the address of where she had had to go for interrogation. She was interrogated at a different place each time. They had not kept her overnight but let her go on the same day and again she was asked why she had come back and who had told her to do what. She said she was followed almost every day.
14. She was asked when she decided that she had to leave Burma again. She said that she felt that nothing would happen to her if she did not do anything but she got news that her ex-fiancé was coming back to Burma. She said that if he did come then she could not prevent anything and would be suspected of espionage and arrested, but the government would not be able to arrest him because he was a foreigner (he had become a British citizen).
15. She was asked why the relationship would put her in danger if the relationship was over and she said the fact that it was over was a private matter but the government was still suspicious. She said that he planned to visit her when he came back to Burma although she did not know why.
16. The appellant made a statement dated 21 March 2005. At paragraph 7 she referred to the fact that she had taken part in demonstrations but had not come to the attention of the authorities. With regard to her treatment when she returned to Burma from the United Kingdom in October 2004, she said that at the airport she was taken by the Special Branch to a place and interrogated for two days and they questioned her about her reasons for returning to Burma, her friends and associates in Burma and her politics and they accused her of being her ex-fiancé's agent. She

said that she was released after paying them a bribe. She also referred to problems that Muslims such as she face in Burma.

17. Subsequent to the hearing before the Immigration Judge and subsequent to the first stage of the reconsideration hearing, the appellant made a further statement, on 17 November 2005. In this she provided greater detail concerning what happened to her during the two days of interrogation when she returned to Burma. She said that she was asked questions by different people at different times and sometimes they were polite and sometimes they shouted and swore at her and hit her on the hands with their hands (without causing harm). They shouted at her that they would never let her out and would put her in prison and she said she was very frightened. They brought her bread and coffee but she was scared that it might have been drugged so she just drank water. They did not give her a bed or let her lie down and did not leave her alone although she was able to rest her head on the table when there was a break in interrogations. She was not able to sleep. She said that she became exhausted and very disorientated. She suffered from angina and believed that she would have a heart attack and die.
18. At the hearing on 29 November 2005 Mr Ouseley put in a copy of the appellant's passport without objection from Mr Cox. He also sought to put in a further statement by the appellant and accepted that it could have been served in time. It was one which she had had with her on arrival in the United Kingdom. Mr Cox argued that it was too late to put it in as it had been on the file all along and many opportunities had existed for it to be put in.
19. After brief consideration we concluded that we would not exercise our discretion to allow this statement to be admitted. There had been a clear failure to comply with standard directions with no acceptable explanation provided for the failure to comply. Nor were we satisfied that there were other special circumstances justifying the late submission and hence admission of the statement.
20. The appellant gave evidence. She confirmed her name and address and also that the statement she had most recently put in was to the best of her knowledge true.
21. When cross-examined by Mr Ouseley the appellant said that she recalled making her earlier statement and being interviewed by the Home Office and that to the best of her knowledge she had told the truth then. She agreed that what she said in answer to Questions 35, 38 and 39 at the Home Office interview was correct. She agreed that that was the whole truth of what had happened to her in detention and that nothing else had happened to her. In this regard she was also referred to paragraph 15 of the first witness statement.
22. She was asked why she had not said the things that she had now given detail of concerning what had happened to her in the course of the interrogation in the most recent statement, for example being denied sleep, fearing her food had been drugged and fearing that she would suffer a heart attack. She said that at the time she had only mentioned the gist of what had happened and there were many things that she had wanted to explain so she could only give the abstract of it. The further matters were the detail. At the time when the questions were phrased she could only answer the most important parts. She was asked whether she was saying it was not

important that she was denied sleep and she said it was. At the time there were so many details that she had to present. She said that that was the most important aspect and when asked why she had not said so earlier but waited until later she said that mainly at that time the issue was whether her fiancé was active in politics or not. She said that at that time they were more interested in the matter of detention. How she ate or lived there was not a risk and she could only talk to them about what had happened between them and her. The matters on which she had now provided greater detail were important but as to which specific matter was the most important she had not known at the time. She was asked whether she had believed that she might have a heart attack and said that she thought that she was going to die and again was asked why she did not mention that earlier if it were true. She said that in the earlier statement she had explained why she could not be returned to Burma and had had to come back as there was danger for her and she had explained those more important matters. It was put to her that she had not mentioned these matters earlier because it was not true that she had been ill-treated in detention. She said that when she answered them she had only answered the most important fact of what had happened.

23. She was asked how she had managed to bribe the authorities if she was in detention. She said that the father of her friend had found out she was in detention there and he had acted as a guarantor that she would not engage in political activities.
24. She had left Burma on her own passport a copy of which had been provided today. A bribe had been paid for her to leave Burma on the second occasion. She had left Thailand on her own valid passport and had had an exit stamp when she left Burma and this was an official exit stamp which had been obtained by bribery. Normally bribery would not be necessary but in her case she had had to pay. So there were proper government stamps in her passport and they were not forged.
25. The main reason for breaking up with her fiancé was that he had wanted her to follow the Muslim religion strictly. She had not been aware in advance that he was a strict Muslim. She agreed that she had known him a long time. She thought at the time that he was not that strong a Muslim person. Previously he had not asked her to wear a burka, only afterwards, and had insisted that after marriage she should do so. She had thought in the past that he was just an average Muslim because praying five times a day was what every normal Muslim person did, but afterwards he had insisted on very strict adherence to the teachings. This included matters like not wearing jeans or talking to strangers and when guests came she should remain inside and not come out and talk to them and not go to weddings and not visit his relatives in the United Kingdom as they would teach her bad things.
26. She confirmed that she had been involved in politics in Burma when she was at university and a lot of her classmates were arrested and some went missing and she had demanded that they be released. She had not been arrested. She had not been a prominent leader.
27. When she was questioned on return to Burma they had asked her what political organisation she had contacted when in the United Kingdom. They had said that it was linked to her fiancé's politics owing to the fact that he was involved in anti-

government politics and they had considered her to be a spy and were interested in whom she was going to meet. She had had a visa for six months but had stayed for only twenty six days and had a multi-visa which would have enabled her to return again and they had considered that because she had the entitlement to go back and forth she would come back to contact somebody. They had asked her why she did not stay until the end of the visa. She had not admitted that she had been acting politically in the United Kingdom. She had only said that because she had relationship problems with her fiancé she had come back. She had no relatives or family in the United Kingdom and nowhere to live after she fell out with him and she had to return.

28. On re-examination the appellant said that if she had been told by her fiancé before she came that in England as his wife he would expect her to conform to his requirements she would not have married him or even come to the United Kingdom. Her parents were Muslim. They had not expected her to do any of the things she had objected to her fiancé asking her to do.
29. She recalled being interviewed by the representative of the Immigration Advisory Service for the March 2005 statement. She had not been asked whether she was able to sleep during detention but had only been asked how she was freed. She had not been asked about the arrangements for food during her detention. As to whether she had been asked about how the treatment during detention had made her feel, she said this was only in a very brief way in that she had been asked to where she was sent and whether it was a big prison or a detention centre.
30. Her fiancé had told her about his past political activities, but after he proposed he did not talk about those things. When he came to Burma he came to teach English as well. The government considered that he was gathering people to be organised, and later on he was followed and photographed, so he decided to stop teaching.
31. We asked the appellant why she had given the agent the passport. She said that, because her ex-fiancé had stopped her from coming back to the United Kingdom and because she could not go back to Burma as well, it was risky for her to go back to Burma. The agent had told her that he would guarantee. She did not know how he had arranged things for her. She thought when she handed over the passport that the agent would deal with the authorities on her behalf.
32. The photocopy of the passport was taken in Burma. After she gave the agent the passport he suddenly disappeared. He had asked her to follow him, and he went ahead towards the immigration desk. He walked very fast and disappeared.
33. The next witness was Mr Martin Morland CMG. Mr Morland was the British Ambassador to Burma between 1986 and 1990, having previously been Third and then Second secretary in Burma between 1957 and 1961. After his retirement from the Diplomatic Service in 1993 he has maintained an interest in Burmese affairs, keeping up contact with successive British Ambassadors to Burma and following events using the Internet, specialist periodicals, the general press, radio and television. He has contributed regularly to the BBC Burmese Service and World Service and has kept in contact with BBC staff and other journalists specialising in Burmese affairs. He has needed to keep up with events in Burma as Chairman of

Prospect Burma since 1994. This is an educational charity founded after the uprising in Burma in 1988 to help Burmese students forced to flee the country to continue their higher education abroad.

34. In his evidence Mr Morland referred to two reports of Ms Chris Lewa. It will be helpful if we set out the essence of those reports before we describe his evidence.
35. Ms Chris Lewa's reports are dated 7 September 2005 and 14 November 2005. Ms Lewa is clearly well qualified, as can be seen from the detail of her background and credentials set out at the start of her first report. This report concerns the case of Stanley Van Tha who was deported from Switzerland to Burma in April 2004. Ms Lewa has been able to obtain from a credible source a copy of the unofficial translation of the judgment of the court against Mr Van Tha and attached this document to her statement.
36. Mr Van Tha is a Chin from Burma whose asylum claim was rejected by the Swiss authorities and who was deported under Swiss police escort to Yangon Airport on 15 April 2004. He was arrested upon arrival and detained in prison and on 17 August 2004 he was sentenced to nineteen years in prison. This appears to comprise firstly a seven year sentence under the Burma Emergency Act 1950, Article 5(j) in respect of which the court ruled that he acted to undermine the security of the Union and the restoration of law and order, an offence under the above provision. He had travelled illegally from Burma to Bangkok and then from Bangkok to Zurich where he had claimed asylum and used a letter of recommendation he had requested from a political activist recognised as a refugee in the United Kingdom. The reasoning for the conviction was based solely on those events and there was no finding that Mr Van Tha had engaged in political activities inside or outside Burma. Secondly, there was a further seven year sentence under Article 468 of the Penal Code on the basis of being found guilty of forging documents, since his passport included stamps which were not original, including a Burmese exit stamp and forged visa. According to the judgment the Burmese authorities keep lists of those who leave Burma on a properly issued exit stamp. Thirdly, Mr Van Tha was given a five year sentence under the Burma Immigration Act of 1947, Section 13(1) for illegal entry into the Union of Myanmar. This was despite the fact that he was in possession of a passport issued in his own name.
37. Ms Lewa concludes from this that the appellant in the appeal before us would be at serious risk of arrest, persecution and possibly torture if removed to Burma. In her additional statement of 14 November 2005 she refers to the regular deportation by the Thai immigration authorities of Burmese migrant workers. She says that little is known of their fate once they have crossed the border and been handed over to the Burmese authorities, though there is a reference to examples of people being detained or being required to do forced labour. She also refers to recent developments in Burma which indicate that the country is deteriorating, and the current leadership no longer heeds international pressures and this leads to a restriction of the movement of humanitarian agencies and a tougher stance being taken with regard to political activism. She is convinced that the appellant, if removed, as a rejected asylum seeker would be at danger of arrest and torture especially since she does not possess a valid passport and any valid exit stamp.

38. In a report he had prepared for the purposes of the hearing, Mr Morland provides helpful comments on a number of matters germane to this appeal. Some of those matters relate to the general background situation in Burma and others are more specific to the appellant. He comments on such matters as the general attitude of the Burmese security agencies towards political dissent, the attitude towards failed asylum seekers returned to Burma, whether the Burmese authorities would be prepared to grant an entry visa to a person such as the appellant's former fiancé, whether the appellant's description of how she was treated by the authorities on return to Burma and thereafter is plausible, whether she would have been issued with a passport and exit visa given the level of interest in her and whether a bribe would be accepted by the authorities to enable such a person to leave the country.
39. Mr Morland refers in his report to a description that has been given of Burma as an army with a country rather than a country with an army and the corresponding absence of tolerance of any form of dissent. Trials take place in secret. There is an underlying intolerance of any manifestation of political dissent. The authorities' behaviour is unpredictable. The Burmese Embassy in London has members of its military intelligence among the diplomatic staff who photograph and identify dissidents who demonstrate outside the embassy, and also informants among the Burmese community. There will be suspicion of any Burmese who lives in the West and returns for a visit that they will be bringing back subversive ideas. As regards the obtaining of a passport, association with a prominent political exile might well cause problems but links with anyone less prominent whose anti-government activities had not attracted recent attention in the UK would not lead to a problem in getting hold of a passport, given a suitable bribe.
40. Mr Morland also refers to the case of Stanley Van Tha which is dealt with in some detail in Ms Lewa's report. She considers that on the basis of this precedent the appellant could expect to be arrested and interrogated very likely under torture and sentenced to at least five years imprisonment for illegal entry and would very likely face an additional seven years sentence if the authorities learn that she had claimed asylum abroad.
41. He considers that it is perhaps surprising that a person such as the appellant's ex-fiancé would be granted a visa to return to Burma, given his history. He concludes however that they may well have done so with the intention of finding out more about him, in particular seeing if he has really discontinued his political activities, and checking up on anyone he met besides family members.
42. He considers the appellant's treatment by the authorities to be quite plausible given her unexpected return to Burma and her links with a former political activist. He considers the more detailed account given in her second statement as being in line with other accounts of the behaviour of the security service towards people from whom they judge that they can extract information by harassing and humiliating them and depriving them of sleep without needing to have recourse to outright torture.
43. As regards the appellant's second exit from Burma, he concludes that someone about whom the authorities are uneasy but is not a major opposition figure, can perfectly well bribe their way out with the help of rich friends able to pay immigration officials what to them are huge sums.

44. Mr Morland gave oral evidence before us and confirmed that his statement was true to the best of his knowledge and belief.
45. He confirmed what he said in the statement comparing the situation in Burma to the Soviet Union under Stalin. He agreed that it was surprising that the appellant's ex fiancé would be allowed back in, but referred to what he had said at paragraph 15 of his report on that. It was not for him to decide whether what the appellant said about this was true or not but he did not find her implausible.
46. It was put to him that the Van Tha case could be rather different from the usual case and he said it was not just the fact that he had had the asylum letter on him but there were a number of different sentences. It was put to him that the letter could be the initial trigger and he said that other shots had been fired also. It was suggested to him that a person who was not carrying such a letter would not be at risk and he said it would be extremely risky.
47. He was asked what effect it would have on return where a person had genuine entry and exit stamps. He said it was different in the Van Tha case. There was no doubt that the Burmese disliked people who sought asylum abroad, and there would be problems for the appellant if she returned under escort. If she did not return under escort then they would be questioning which she would be unlikely to be able to resist and it would be likely to be terrifying as he knew from friends who had experienced it. There would definitely be problems for her if she returned on an invalid passport. If a person returned with no past problems with the Burmese authorities then the situation was hypothetical but the story did not sound made up to him.
48. He was asked how often the offences referred to such as slandering the state would be employed. He said that there had been a dozen or so asylum cases in the last couple of years and it was a feature sometimes but it was unclear whether it would apply to the appellant. It was suggested to him that since the appellant had had a Burmese passport in the past, if she were unsuccessful in her appeal she could go and get a new passport and he said she could not, that the Burmese were very reluctant to give out passports in the West although it would sometimes be done for example in Singapore.
49. He was aware of the cases of people who had been deported from Thailand being treated differently. Association with the West was what the Burmese authorities disliked.
50. He was asked what illegal entry into Burma meant as a charge, for example whether a person entering with an expired passport would be guilty of illegal entry. He said that it appeared so. The response was selective and it could be a bad response and it was random.
51. We referred Mr Morland to the point made in the letter from the South East Asia Department of the Foreign and Commonwealth Office dated 3 February 2004 where it was said that Burmese citizens could renew their passports at the Burmese Embassy in London. He said that if there were unusual features they would have to

refer the matter back to Rangoon. The appellant would show up as a person under previous suspicion. He was surprised by the statement. It was clarified however that this appeared to refer to the case of a person whose passport expired while they were in the United Kingdom being able to renew it at the Burmese Embassy. He said that one reason for the long sentence in the Van Tha case was that he had returned as a failed asylum seeker. You could renew a passport abroad. He did not know whether the Burmese authorities would know that the appellant had gone to Thailand, although it was possible that they would. That she had no visa for the United Kingdom would raise questions. The system was not one hundred per cent secure but it could cause trouble.

52. We asked Mr Morland whether he was aware of the way in which the United Kingdom Government, faced with a Burmese asylum seeker who is unsuccessful and did not have a passport would seek to obtain documentation from Burma facilitating return. Mr Morland was not aware that it had ever been done in Burma. The authorities were suspicious and they would scrutinise such a person closely on arrival. He would have thought that it was unlikely.
53. In his submissions Mr Cox dealt first with the credibility issues. Page 66 of the bundle confirmed the situation of the appellant's ex -fiancé. This corroborated what the appellant said about his past activities. She had had the opportunity to claim asylum here had she wanted to previously but she had not taken it and had returned to Burma and the fact that she had only then later returned to the United Kingdom bolstered her credibility. Her evidence was that her ex-fiancé's activities had essentially ceased and therefore it was not surprising that she had got a passport on the basis of bribery or that he would have been allowed to return to Burma to see relatives. There was a range of people who were suspected but were allowed to go about their lives.
54. Mr Cox argued that the appellant's credibility was not damaged by the greater detail provided in the most recent statement. He referred us to the appellant's answers at interview. She could have been asked for far greater detail and had not done so. It could be that the representatives when the earlier statement was taken had not thought it important for her to give a detailed account; after all she had not claimed to have been harmed. It had not been contended that there were contradictions, she had simply provided a lot more information. It was reasonably likely that when she said that she had not thought that the most important aspect of her case, it was true. Her point about the fear of a heart attack was not something the authorities had done to her or something she had told them about. Inevitably she would be very frightened, as her answer to question 39 of the interview confirmed.
55. Risk on return should be assessed in relation to what had happened to her previously when she went back. She had had an answer previously as to why she had gone to the United Kingdom but had no answer now. She would not return with a passport with a visa on it. She would have no passport but there would be an official record that she had been issued with a passport and it might be that there would be a record of what she had said when she had left.
56. The Home Office letter at page 73 of the bundle referred to only one case of a return and that could have been done on any one of a number of bases. It was likely that

the appellant would have come to the attention of the authorities and also likely that they would be aware of the previous interrogation and suspicions. She would be seen as a political opponent of the regime, and therefore there was a Refugee Convention reason.

57. Even if what she had said of what had happened to her on her last return was not true, there was a real risk of it happening should she be returned today, and in any event she would receive a prolonged period of imprisonment.
58. The Tribunal was referred to page 5 of the objective bundle where there is an analysis of the relevant material and in particular references to the provisions of the Burma Immigration (Emergency Provisions) Act 1947. The Van Tha case should be borne in mind, albeit that there were significant factual differences. The report of Ms Lewa on that case was of assistance. The authorities were willing to use the Penal Code. If the appellant got an exit stamp by deception it was likely to be treated as being the same as forgery.
59. Mr Cox also argued that the cases in the bundle *AH,S and TW* could all be distinguished.
60. We asked him to address the implications for the appellant's credibility of the application of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. He contended that on the one hand the appellant had a reasonable explanation for failing to produce a passport on request to an Immigration Officer on the basis of what she said had happened. In any event she had produced a photocopy to the Immigration Officer and had therefore not sought to conceal her identity. Any damage to her credibility was therefore minimal.
61. In his submissions Mr Ouseley contended that by not producing her passport it could be said that the appellant had sought to thwart return given what was said about problems that would be experienced by a person who no longer had a passport and therefore arguably failure to produce the passport would frustrate removal. Her account as to how it was that the agent at Heathrow had "disappeared" was not credible. It was a matter for the Tribunal.
62. He also argued that she was not credible on the entire account of what had happened on return to Burma. Saying that the matters now referred to in the third statement were not important lacked credibility. Clearly her representatives would have appreciated the importance of these matters if they were true, especially with regard to a country such as Burma. She had had two opportunities to tell the truth and had not done so. She had been asked specifically about ill-treatment, and if she had such fears she would have said so. If what she said had happened to her were true it would be torture and a person to whom that had happened would want to say what had happened and not leave it until later. It was her whole case that she feared the same or worse and it could not be said to be unimportant. What she said was not true about her ex-fiancé as she would have been aware of his wishes and also there was the point that it was surprising that he would be allowed back to Burma.

63. It had been said by the expert that if she were not credible there would not be problems on return. Clearly there were problems for returnees to Burma. The Van Tha case had to be borne in mind and a lot of reliance had been placed on that but it was an extreme case. The particular circumstances of that case were significant.
64. We drew Mr Ouseley's attention to what was said in the South East Asia Department of the Foreign and Commonwealth Office letter of 3 February 2004 that the Burmese Government regards those who leave or return to Burma without a valid passport as doing so illegally and subject to a seven year jail sentence which the United Nations High Commission on Refugees advises is enforced. Mr Ouseley said he had to accept that. However, the appellant's passport had been in currency until July 2005. She could have kept it and taken it to the Burmese Embassy as they would not carry out checks with Rangoon.
65. The case of the returnees from Thailand was different and they would not be treated as slandering the government abroad and so it was a question of looking at the detail of the cases. There would not be a problem if her passport had expired and there was no other explanation. Various elements needed to be considered, for example whether there could be said to have been forgery. There would be no record of forgery. It was unclear what was on the original passport which had a valid exit stamp. The Van Tha case should be contrasted with that.
66. By way of reply Mr Cox did not accept that there were no checks in Rangoon when there was a need to renew a passport. He referred us to page 65 of the bundle concerning the kind of checks that were likely to be made. It was not said that checks would be invariable but there would be likely to be suspicions. The Van Tha case was relied on as it was a well documented case about the situation for a returnee and contrasted with the absence of any evidence from the Home Office about people who had been returned to Burma.
67. With regard to the credibility issue, the Immigration Officer could have been expected to ask about the detail of what had happened to the appellant when she was interrogated on her return to Burma. It should be questioned why she would invent such a story if it were not true and if it were invented why she had not stayed on in the United Kingdom in the first place. What the appellant said about the agent was credible.

Conclusions

68. We consider first the issue of credibility in this case. Mr Ouseley has challenged the appellant's credibility, in part on the basis of the further detail provided in the second statement in contrast to what she had said at interview and in her earlier statement happened to her when she returned to Burma in October 2004, but also with regard to her claimed reasons as to why it was that she came back from the United Kingdom at that time and also with regard to what happened to the passport and the Section 8 issues arising from that. We have set out above the differing accounts given by the appellant in this regard. It is right to note, as Mr Cox pointed out, that no contradictions have been identified but rather it is contended that the significantly greater detail in the second statement contrasts with what was said at interview and in the first statement to the extent that the appellant's account cannot be believed.

69. We remind ourselves of the essence of what the appellant said with regard to the interrogation when she was interviewed. She said that the authorities suspected that she was a spy and they interrogated her "all the time" during the two days when she was held. They had not harmed her physically but they threatened her verbally and hit the table and they frightened her and said that they would arrest her. She said very little at paragraph 15 of the first statement other than that she was interrogated for two days and described in broad terms the matters concerning which she was questioned. As regards the second statement, it remains the case that she said that she was not caused harm and she referred again to being very frightened and to the kind of questions that were put to her. Significant contrast can be seen in the fact that she was not allowed to sleep and became exhausted and very disorientated and feared she would have a heart attack and die on account of the fact that she suffers from angina.
70. Mr Ouseley contended, and we think with some force, that the appellant's explanation for not setting out this detail earlier, that in effect she did not regard it as being as important as the fact that she was being detained and the reasons why she was being questioned, lacks substance. He argued that in effect this went to the whole basis of her claim and that we should not accept the further details that have been provided as being credible. We shall return to this point shortly, but we think it is worth mentioning at this stage the fact that to quite an extent albeit in less specific terms the essence of what the appellant said happened in her second statement can be seen from the interview where she referred to such matters as being frightened and being threatened and set out the kind of questions that she was asked.
71. Mr Ouseley also invited us not to accept what the appellant said about the reasons for the engagement breaking down. He contended that the appellant would have been aware of her ex-fiancé's wishes and also referred to the fact that it was surprising that he would be allowed back into Burma given his history. In this regard however it is of relevance to bear in mind what was said by Mr Morland at paragraph 15 of his statement that it may be that the ex-fiancé was allowed to return with the intention of finding out more about him and checking up on anyone he met beside family members. Though this is no more than surmise we find it persuasive in the context of the country evidence regarding the behaviour of the Burmese Government.
72. In this regard we must also take account of section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. This, where relevant, states as follows:
- "(1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
- (2) This section applies to any behaviour by the claimant that the deciding authority thinks –
- (a) is designed or likely to conceal information,

- (b) is designed or likely to mislead, or
- (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.

(3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead -

- (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State

...

73. We have set out above the appellant's own evidence with regard to what she says happened to her passport. At interview the appellant said that she gave it to the agent because he told her to give it to her. When we asked her why she gave him the passport she said that as her ex-fiancé had stopped her from coming back to the United Kingdom and because she could not go back to Burma as well and it was risky for her to go back to Burma and the agent had told her that he would guarantee. She did not know how he had arranged things for her. She had thought when she handed over the passport the agent would deal with the authorities on her behalf. To our mind this is indicative of behaviour which is designed to conceal information. She has given differing explanations as to why it was that the passport was not produced. We can accept that it was given to the agent, but the reasons for giving it to the agent seem to vary between her differing accounts. To our mind that is indicative of a person who is aware that returning her might be made more awkward by the fact that she no longer had the passport. Accordingly we have concluded that there is not a reasonable explanation for her failure to produce a passport and that this is relevant to the assessment of credibility as being a matter which is damaging to the appellant's credibility.
74. That having been said, we have to consider the extent to which her credibility is damaged. We see force in Mr Cox's submission that if the account of the first visit to the United Kingdom and return were not true then it is perhaps surprising that the appellant did not remain in the United Kingdom and claim asylum then. What she says happened is consistent with the claim that she came and found her fiancé to make demands of her that she considered unreasonable and returned to Burma as a consequence. No alternative explanation has been provided for the fact that she clearly had a fiancé visa to come to the United Kingdom and yet returned after a few weeks. We find credible her claim that she found that her fiancé's expectations were not ones that she had been aware of before and were not expectations which she felt able to fulfil. Accordingly we accept that she came to the United Kingdom on the first occasion for the reasons given and returned for the reasons given.
75. As regards what happened to her at the interrogation on return to Burma in October 2004, we consider that she has sought to augment in the second statement what previously she said happened to her. We consider that what was said at interview is most likely to be a true account of what happened to her at that time, and clearly what she experienced was unpleasant. She was questioned over a period of two

days "all the time" and was frightened and was threatened with arrest. In this context it is also not without relevance to bear in mind her unchallenged evidence that after release she was telephoned and followed and placed under surveillance and called in for questioning on a number of occasions and released on the same day. That we find consistent with what she said happened to her during the two days interrogation period on her immediate return to Rangoon.

76. We share Mr Morland's surprise at the fact that the appellant's ex-fiancé would be allowed to return to Burma, but we find persuasive the surmise of Mr Morland at paragraph 15 of his statement as to the reasons why the Burmese authorities might let the appellant's ex-fiancé back into Burma, bearing in mind also the point that he made at paragraph 8 of that statement concerning the unpredictability of the authorities' behaviour. It is clear from the document at pages 65 to 66 in the second part of the appellant's bundle from the Times subscription service that the appellant's ex-fiancé does exist and the title he has in relation to the movement he was involved with at that time supports what the appellant says about his history.
77. We also find credible the appellant's claimed fear of what might happen to her when she learned that her ex- fiancé was planning to come back to Burma. In the light of what, as we have found above, happened to her previously, we find credible that she would have been alarmed and concerned about what the authorities might do to her as a consequence of his return, given the interest they had in her in the past on account at least in part of her relationship or perceived relationship with him.
78. We turn to the country information. We start with the Home Office Operation Guidance Notes of June 2005 on Burma. It is said at paragraph 2.2 that since 1962 Burma has been ruled by a succession of highly authoritarian military regimes dominated by the majority Burman ethnic group. At paragraph 2.7 it is said that Burma's human rights record remains a cause for grave concern. There is reference to arbitrary detentions, extrajudicial killings, rape, torture, the large number of political prisoners, abuse of women's and children's rights and the complete absence of democracy. It is said at paragraph 2.8 that the government's extremely poor human rights record worsened in 2004 and the government continued to commit numerous serious abuses. Security forces continued to carry out extrajudicial killings and the government did not permit domestic human rights organisations to function independently, and remained hostile to outside scrutiny of its human rights record.
79. Various categories of claims are considered in this document. Claims based on involvement with opposition political parties in Burma are assessed and the conclusion is that claimants with close links to the opposition movement are likely to face difficulties if returned to Burma and therefore opposition political activists are likely to qualify for a grant of asylum. There is said to be widespread prejudice against Burmese of South Asian origin, most of whom are Muslims, and there was anti-Muslim violence during 2004 and monitoring of Muslims' activities and restrictions on Muslim travel and worship country wide.
80. There is a specific section on those who have left Burma illegally. It is said at paragraph 3.10.3 that if an individual has left Burma without a passport and in breach of bail conditions (for a political or criminal case) it is unlikely that the Burmese Embassy would issue him a new passport. If he were to return to Burma through an

official entry point he would almost certainly be arrested and probably jailed. It is said at paragraph 3.10.5 that Burmese citizens who have worked illegally in other Asian countries without passports have been able to return to Burma without difficulty, and in cases where the passport has expired the holder is usually able to renew it at the Burmese Embassy following payment of any outstanding taxes. The penalty imposed for exiting from or returning to Burma without a valid passport is normally less than the maximum sentence of seven years imprisonment, but offenders who are known political activists can face harsher sentences and additional charges; if charged under different laws, sentences have to be served consecutively. It is said that if a claimant has no valid passport it will be necessary to ascertain whether they left legally or illegally and if the passport has expired whether it will be possible for it to be renewed at the Burmese Embassy.

81. At paragraph 3.11.16 we find the conclusion that prison conditions in Burma are severe and likely to reach the Article 3 threshold and that therefore a grant of humanitarian protection will be appropriate where individual claimants are able to demonstrate a real risk of imprisonment on return to Burma and a grant of asylum will be appropriate where the real risk of imprisonment relates to one of the Refugee Convention grounds.
82. We referred above at paragraph 51 to a letter from the South East Asia Department of the Foreign and Commonwealth Office dated 3 February 2004. In the first paragraph it is said in summary that if a person is not a genuine political activist, having a failed claim for asylum is not a reason for persecution on return provided they return with a valid Burmese passport but otherwise the claimant will face a seven year jail sentence. The British Embassy in Rangoon believes that if a problem arises it will not be because a person is a failed asylum seeker but because they have been deported without a valid Burmese passport. The Burmese Government regards those who leave or return to Burma without a valid passport as doing so illegally and subject to a seven year jail sentence which the UNHCR advise is enforced. The reference to the ability to renew a passport at the Burmese Embassy in London appears to relate to a person who has a passport which has expired.
83. The general views expressed in the Operational Guidance Notes can be seen to be reflected in other objective evidence. For example the US State Department Report on Burma for 2004 refers to the government's extremely poor human rights record having worsened. There is reference to the fact that in the past the government has accepted the return of several thousand illegal migrants from Thailand though the government has not established legal arrangements to accept Burmese citizens deported from other countries. Citizens' movements are monitored and they are required to notify the local officials of their whereabouts. A rigorous control of passport and exit visa issuance perpetuated rampant corruption. Acts of discrimination and harassment against Muslims continued. In section 2(d) of that report it can be seen that an ordinary citizen needs three documents to travel outside the country – a passport from the Ministry of Home Affairs, revenue clearance from the Ministry of Finance and Revenue, and a departure form from the Ministry of Immigration and Population.
84. In the US Immigration and Naturalisation Service Burma Information on Exit and Return Report of 12 July 2001, it is said that those who return to Burma with an

expired passport and those who have "caused embarrassment" to the government, e.g. applied for asylum abroad, could be immediately jailed upon return to the country (if the Burmese Government becomes aware of the embarrassment to the regime).

85. We have set out above at paragraphs 35-37 the substance of Ms Chris Lewa's reports, in particular in respect of the case of Mr Van Tha. In addition, there is a helpful summary at pages 3 to 12 of the objective bundle comprising a research analysis by the IAS of the situation for failed asylum seekers who have illegally exited Burma. Attached to it are the provisions of the Burma Immigration (Emergency Provisions) Act 1947. Section 13 of that Act states as follows,

(1) Whoever enters or attempts to enter the Union of Burma or whoever after legal entry remains or attempts to remain in the Union of Burma in contravention of the provisions of this Act or the rules made thereunder or any of the conditions set out in any permit or visa shall be punished with imprisonment for a term not exceeding two years, or with fine, or with both.

86. It seems that this paragraph was amended in 1990, when the expression "not exceeding two years, or with fine, or with both" was replaced by the expression "which may extend from a minimum of six months to a maximum of five years or with fine of a minimum of K.1500 or with both".

87. Mr Cox has been unable to find a copy of any rules made under the provisions of the Act.

88. Section 3(2) of the Act states as follows:

...

(2) No citizen of the Union of Burma shall enter the Union without a valid Union of Burma passport, or a certificate in lieu thereof, issued by a competent authority."

89. We have also set out in general terms the contents of Mr Morland's report and his comments on the matters raised with him arising from that report which he dealt with in his oral evidence before us. We have found his evidence to be extremely helpful. Clearly he has considerable experience of Burmese society over a number of years and also has maintained his contacts so that he can properly be described as a well informed authority on Burmese affairs.

90. It is clear to our mind that the appellant would return to Burma without a passport if she were sent back. This would clearly fall foul of the provision in section 3(2) of the Burma Immigration (Emergency Provisions) Act 1947 to which we have referred above. It would appear from the current wording of section 13 that she is at risk of facing imprisonment for up to a period of five years or a fine or both. In the light of Ms Lewa's report, which has not been challenged by the respondent, there must be a real risk that she would receive a substantial sentence of imprisonment. Mr Ouseley suggested that the authorities' view of Mr Van Tha might have been coloured by the fact that he was found to have with him a letter of recommendation he had requested

from a political activist recognised as a refugee in the United States. Mr Morland, however, did not consider that that could properly be said, given the other charges that had been brought against Mr Van Tha. He was of the view that it would be extremely risky to return a person whose situation might be similar to that of Mr Van Tha but lacking the incriminating letter of recommendation. We do not know the extent of the knowledge of the Burmese authorities of the appellant. It would seem likely from what Ms Lewa says that lists are kept of those who leave Burma on a properly issued exit stamp. We take that from the last sentence of page 4 of her first report. Accordingly the authorities can be taken to be aware that the appellant left Burma on a Burmese passport with a visa enabling her to go on a relatively brief visit to Thailand. It is obviously the case that she never had a visa to come to the United Kingdom at that time. She would therefore return as a person without a passport perhaps returned on EU documentation, and it may well be that the fact that she is returning from the United Kingdom would be a matter of which the authorities would be aware. If they were not immediately aware then it is reasonably likely that the authorities would extract that information from the appellant when questioned on return. Unlike the situation when she returned from the United Kingdom previously, she does not have a coherent story to give of a kind that could ultimately be expected to satisfy the Burmese authorities. They released her last time after giving her a relatively unpleasant time during questioning and threatening her and following this up with further questioning, surveillance and bringing her in for questioning during the day from time to time. That was in the context of the history she had at that time of a person who had been to the United Kingdom and had come back relatively soon and was a known former associate of a person in whom the Burmese authorities had had an interest in the past. As we say, no such explanation could be provided this time on return, and the likelihood is that the Burmese authorities would discover that she was a failed asylum seeker who had failed to comply with the conditions on which she was allowed to leave Burma, and who would be returning without a valid passport. If that was the case then there would be a real risk that she would face a prison sentence of up to seven years under the Burma Emergency Act 1950, Article 5(j) as did Mr Van Tha or, if not the maximum that he received, a lesser but still substantial term. We also consider that there is a real risk that she would face a sentence of imprisonment of up to a maximum of five years (rather than the seven years thought to be the case by the Foreign and Commonwealth Office) under section 13(1) of the Burma Immigration Act 1947. It was not suggested by Mr Ouseley that she might face no more than a fine and in the circumstances we consider there is a real risk that a significant period of imprisonment potentially up to the maximum would be imposed.

91. As regards the three IAT authorities in the bundle; in AH [2004] UKIAT 00085, the appellant was a Rohingya Muslim much of whose evidence was disbelieved by the Adjudicator; in S [2003] UKIAT 00135 there was no adverse interest in the appellant on the part of the Burmese authorities; and TW [2004] UKIAT 00285 was concerned with the need for Adjudicators to make specific findings on whether Burmese nationals left Burma with or without authorisation. None is therefore of direct relevance to this appeal.
92. We bear in mind the point made by Mr Ouseley that in effect the appellant could be said to have made it more difficult if not impossible for her to be removed by giving the passport to the agent. However, we are of the view that in fact there would be

little material difference if the appellant had kept her passport. If she returned with her own passport (which was of course the situation for Mr Van Tha also) we consider that there is a real risk that she would nevertheless be prosecuted for illegal entry since she had not conformed to the terms of the visa given to her. We consider that is not an unreasonable inference to draw in the light of what happened to Mr Van Tha. As regards the situation for this particular appellant, we have concluded that she is credible to the extent that we have set out above, and we have concluded that there is a real risk that she would be prosecuted under section 13 of the Burma Immigration (Emergency Provisions) Act 1947. We accept that there is a Refugee Convention reason of imputed political opinion in this case in the light of her history and perceived associations, and it must follow and indeed it was common ground before us, that a person who is at real risk of being imprisoned in Burma is a person who if there is a Convention reason faces a real risk of persecution and who is in any event at real risk of Article 3 ill-treatment.

93 On the basis of our assessment of the above evidence, we have come to the following generic conclusions:

- (1) A Burmese citizen who has left Burma illegally is in general at real risk on return to Burma of imprisonment in conditions which are reasonably likely to violate his rights under Article 3 of the ECHR. Exit will be illegal where it is done without authorisation from the Burmese authorities, however obtained, and will include travel to a country to which the person concerned was not permitted to go by the terms of an authorised exit. We consider it is proper to infer this conclusion from the effect in the Van Tha case of the employment of Article 5(j) of the Burma Emergency Act 1950, either on the basis of the application of that Article in that case or also as a consequence of a breach of the exit requirements we have set out in paragraph 83 above.
- (2) A Burmese citizen is in general at real risk of such imprisonment if he is returned to Burma from the United Kingdom without being in possession of a valid Burmese passport.
- (3) It is not reasonably likely that a Burmese citizen in the United Kingdom will be issued with a passport by the Burmese authorities in London, unless he is able to present to the Embassy an expired passport in his name.
- (4) If it comes to the attention of the Burmese authorities that a person falling within (1) or (2) is a failed asylum seeker, that is reasonably likely to have a significant effect upon the length of the prison sentence imposed for his illegal exit and/or entry. To return such a person from the United Kingdom would accordingly be a breach of Article 33 of the Refugee Convention. Whether that fact would come to the attention of the authorities will need to be determined on the facts of the particular case, bearing in mind that the person is highly likely to be interrogated on return.
- (5) It has not been shown that a person who does not fall within (1) or (2) above faces a real risk of persecution or Article 3 ill-treatment on return to Burma by reason of having claimed asylum in the United Kingdom, even if the Burmese

authorities have reason to believe that he has made such a claim, unless the authorities have reason to regard him as a political opponent.

94. We conclude therefore that the appellant has made out her claim. We substitute for the decision of the Immigration Judge therefore a decision that this appeal is allowed on both asylum and human rights grounds.

Signed

Date

D K Allen
Senior Immigration Judge

Index of Country Material Considered

- (1) Burma Home Office Operation Guidance Notes, June 2005.
- (2) FCO South East Asia Department: letter of 3 February 2004.
- (3) US State Department Report on Burma, 2004.
- (4) US Immigration and Naturalisation Service, Burma: Information on Exit and Return, 12 July 2001.
- 5) Reports of Ms Chris Lewa of 17 September 2005 and 14 November 2005.
- (6) Report of Mr Martin Morland CMG of 23 November 2003.
- (7) Burma Immigration (Emergency Provisions) Act 1947 (as amended).