Case No: C5 / 2010 / 1103 + A

Neutral Citation Number: [2011] EWCA Civ 168
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
[APPEAL No: AA/06176/2009]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 31st January 2011

LORD JUSTICE SEDLEY
LORD JUSTICE SULLIVAN
and
LORD JUSTICE PITCHFORD

- -

Between:

FM (ZIMBABWE)

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

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Richard Drabble QC and **Ranjiv Khubber** (instructed by Messrs Turpin and Miller) appeared on behalf of the **Appellant**

Julie Anderson (instructed by the Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

Lord Justice Sullivan:

Introduction.

1. This is an appeal against the determination, dated 22 December 2009, of Immigration Judge Hall (the second immigration judge) in which she concluded that Immigration Judge Clarke (the immigration judge) had made a material error of law in a determination issued on 10 August 2009 in which he had allowed the appellant's appeal against the Secretary of State's refusal of her application for asylum. Having concluded that the immigration judge had made a material of law the second immigration judge substituted a fresh decision dismissing the appellant's appeal.

Factual Background.

2. The factual background is set out in some detail in both of the determinations. For present purposes the following summary will suffice. The appellant is a Zimbabwean national. She was diagnosed as suffering from AIDS and found to be HIV positive in 1999. In December 2006 she entered the United Kingdom on a six-month visitor's visa. When her visa expired she overstayed. In February 2009 she claimed asylum. Her claim was rejected by the Secretary of State she appealed and her appeal was heard by the immigration judge on 30 July 2009.

The hearing before the immigration judge

3. At the hearing the appellant was represented by a solicitor. It was submitted on her behalf that the availability of medication for AIDS sufferers in Zimbabwe was:

> "…overlaid with political considerations, with access to such treatment being limited to figures in the Zanu-PF hierarchy. Consequently, there was discrimination in the distribution of medication (an administrative function) on grounds of imputed political opinion." (7.2)

4. In paragraph 9 of the determination the immigration judge set out a lengthy summary of the relevant law that he had taken into account. No criticism has been made of this summary by the immigration judge of the relevant law.

5. In paragraph 9.19 the immigration judge said this:

> "Insofar as the appellant's Article 3 arguments relate to her HIV diagnosis and the alleged loss of her medical treatment upon return to Zimbabwe, the case law authorities are very clear. In the leading case of N v SSHD [2005] UKHL 31, the House of Lords concluded that the removal of an appellant to Uganda, where difficulty in obtaining suitable

> medical treatment was considered likely to result in a drastically reduced life expectancy, was not exceptional enough to reach the very high threshold required to establish a breach of Article 3."

6. Having reviewed the decision of the Grand Chamber of the European Court of Human Rights in the case of N, the immigration judge said in paragraph 9.23:

> "It seems, therefore, that Article 3 can in principle be engaged where the suffering from an illness associated with HIV status can be exacerbated by actions of the state in intentionally restricting access to medical treatment that might otherwise be available."

The immigration judge said that some support for that view could be found in three authorities to which he was referred by the appellant's solicitor.

7. The second of those three authorities was RS v SSHD [2008] EWCA Civ Division 839. In paragraph 9.25 the immigration judge noted that:

> "Arden LJ also observed at paragraph 40 that 'great care would have to be taken to determine whether the lack of medical facilities ... is due to the infliction of deliberate harm on the appellant (or whether there is an appropriate level of risk of that) or whether the lack of medical facilities is due to a lack of national resources for this purpose '. It seems that, whereas the latter scenario (in line with N) would not engage Article 3, the former scenario might well do so, but only where a proper factual analysis justified such a conclusion."

8. In paragraph 9.26 the immigration judge referred to the decision in EC v SSHD [2008] EWCA Civ Division 1289, saying this:

> "This appears to be the first time (at least in the decisions I have seen) that the higher courts have been asked to deal with complaints that anti-retroviral medication in Zimbabwe is only available to Zanu-PF activists and not to others. In other words, adopting the distinction of Arden LJ in RS, the issue is not simply the general lack of national medical resources but their specific restriction on a politically discriminatory basis. In granting permission to appeal, Carnwath LJ described it as 'a point of potential significance'."

9. In paragraph 10 the immigration judge, having noted that there was no presenting officer at the hearing on behalf of the respondent, added this:

> "It is a great pity that the respondent did not provide the presenting officer for this case, which happens not infrequently, as it involves some novel arguments and I am sure that I have greatly benefitted from hearing submissions offering an alternative view point."

10. The appellant gave oral evidence. For present purposes only one aspect of her evidence is relevant. In paragraph 18 of the determination she is recorded as having told the immigration judge that:

> "On one occasion in 2003, she attempted to get HIV medication from a local public clinic and she was told that, as she was not a card-holding supporter of Zanu-PF, it was not available to her."

11. The immigration judge concluded that the appellant was a credible witness. She had not tried to embellish her account by, for example, claiming to be a member of a supporter of the MDC:

> "Instead, she has maintained consistently that she is wholly uninterested in politics and that she has been involved in no political activity of any nature in either Zimbabwe or the UK. I therefore accept as truthful that, on an occasion in 2003, when attempting to get HIV medication in Zimbabwe, she was told that, as she was not a card-holding supporter of Zanu-PF, it was not available to her. However, I disregard her opinion (doubtless held in good faith) that she would die very quickly upon return to Zimbabwe; while Dr Edwards agrees that her life expectancy would be reduced, she was unable in her medical report to state that it was likely to be reduced to less than a year."

12. The immigration judge then considered the objective and expert evidence about HIV treatment in Zimbabwe. In paragraph 28 he said:

> "The appellant has supplied two reports from Professor Tony Barnett, who is said to be an expert on HIV/AIDS in Africa. He has provided a declaration setting out his understanding of his duties to the Tribunal as an expert witness. He is a professorial research fellow in public health at the London School of Economics, director of 'LSEAIDS' and an honorary professor of the London School of Hygiene and Tropical Medicine.

> He was previously professor of development studies at the University of East Anglia in Norwich, has held a visiting overseas professorship in Tokyo and has taught at the Harlem School of Public Health. He is not a medical professional, but is a socio-economist trained in social anthropology, sociology, political science and economics. He has worked in a senior advisory capacity to a number of specialist agencies of the United Nations and to the Department of International Development in the UK. His main research interest in recent years has been the implications of the HIV/AIDS epidemic in Africa and Asia on social and economic life. He has published extensively on the subject, including co-authoring a leading work entitled 'AIDS in the 21st Century: Disease and Globalisation' ... I am persuaded that he is a person of considerable expertise and that, notwithstanding that he did not attend the Tribunal personally in order to be asked questions, his opinions (insofar as they derive from that expertise and can be properly sourced) should carry considerable weight."

13. In paragraph 29 the immigration judge summarised the contents of Professor Barnett's report, saying that the second report was principally a confirmation of the first report. Subparagraphs 29.1 and 29.2 deal with the availability, or rather the lack of availability, of anti retroviral drugs generally in Zimbabwe.

14. Having said that he was prepared to give certain evidence weight, as it was "broadly consistent with the observation found in the COI report that most anti-retroviral drugs are now only available from private clinics at a high cost" (29.1), the immigration judge said in 29.3:

> "On the more novel point in this appeal, Professor Barnett quoted a source (who he was unwilling to name in his report but would have been prepared to disclose in private to the Tribunal if asked) who has provided him with an informal briefing that Mr Mugabe has expressed the view that it is 'perfectly reasonable to restrict supplies of anti-retroviral medicines to key members of the state apparatus so as to ensure that it continues to function'. As Professor Barnett observes, this is consistent with the appellant's own experience of attempting to obtain medication in 2003, which was refused because she did not have a Zanu-PF membership card."

15. In paragraph 30 the immigration judge said that he had been referred to a number of recent news reports. Having considered those carefully, he said:

> "They support the general view put forward by Professor Barnett that anti-retroviral medication is less and less available in Zimbabwe, although generally the reports do not deal with her contention that their accessibility and distribution has become a matter of discrimination on grounds of political opinion."

16. In paragraphs 31 and 32 the immigration judge said:

> "31. The only exception is a report posted to the African Press International website on 2 July 2009 [reference given]. It refers to unhappiness on the part of 'Government officials in Zimbabwe' about the decision by the 'Global Fund to Fight AIDS, Tuberculosis and Malaria' to channel funds for the support of HIV AIDS interventions in Zimbabwe away from the regimes own 'National AIDS Council' and instead through the United Nations Development Programme. This follows the reported revelation, at the start of 2009, that the Reserve Bank of Zimbabwe had diverted over US$7m from a Global Fund grant that had been earmarked for scaling up a national anti-retroviral programme. The news report observes that the medication supplies failed to materialise and, although the Reserve Bank eventually returned the money, it was seen as 'a breach of trust'. I accept Professor Barnett's view, as expressed in his second report dated 22 July 2009, that this shows a readiness on the part of the Zimbabwean regime to divert funds marked for anti-retroviral medication for other political purposes.
>
> 32. Based on the above objective and expert evidence, I conclude that it is reasonably likely that, as a 'new' patient, the appellant would not have access in Zimbabwe to either her anti-retroviral medication or to the wider clinical care she needs. It is clear that <u>all</u> underlying medications have become less and less available in the recent past in Zimbabwe. Even if the anti-retroviral medication sought by the appellant were currently available and within Zimbabwe, it seems very unlikely that she would be able to obtain them through a public clinic. Such medication is likely to be available at a high cost (or, at least, a cost prohibitively high for the appellant) through private clinics only. Furthermore,

> I am persuaded that, in reality, it is reasonably likely that available supplies of anti-retroviral medication are presently being challenged through private clinics either to active supporters of the current Zimbabwean regime or, worse, just to key members of the state apparatus."

17. In view of the criticisms made of the determination, it is helpful also to note what the immigration judge said in the following paragraph:

> "33. I am more hesitant about Professor Barnett's stark conclusion that 'if returned to Zimbabwe, [the appellant] will die', as I prefer the more measured conclusion of her treating physician that her life expectancy would be reduced without medication but that it is not possible to say reduced to less than one year."

18. In paragraph 37 the immigration judge said that he was not persuaded that the appellant (who he found to be politically neutral) would be unable to show broad support for Zanu-PF or the power sharing administration and "thereby escape the attention of the militias".

19. In paragraph 38 the immigration judge concluded that the appellant's medical condition did not pass the very high threshold set out in the case of N. Against this background the immigration judge set out his conclusion on the novel point:

> "39. If the appellant's removal would not breach Article 3 of ordinary principles, the question that next arises is whether it can be treated as essential on the basis that the lack of anti-retroviral medications in Zimbabwe is caused not just by the general lack of medical resources but also from their specific restriction on a discriminatory basis (which, it will be recalled, Carnwath LJ described as 'a point of potential significance' in the EC permission hearing on 23 October 2008). I am persuaded that it is reasonably likely that this is the case, because cogent and reliable evidence -- in the form of (i) the undisclosed source mentioned by Professor Barnett, (ii) the news report referred to above and (iii) the appellant's own experience -- supports the view that available supplies of anti-retroviral medication are being channelled through private clinics either to active supporters of the current regime or just to key members of the state apparatus. To adopt the reasoning of the ECtHR in the N case, the appellant suffering an accelerated death, flowing from her unfortunate illness ,would be exacerbated not just by

> the general unavailability of medication in Zimbabwe but by deliberate and discriminatory treatment 'for which the authorities can be held responsible '. Applying the lower standard of proof, this, in my view, is sufficient to make it reasonably likely that the appellant's removal to Zimbabwe would involve a breach of her rights under Article 3 of the ECHR."

The reconsideration

20. Reconsideration was ordered. The second immigration judge explained in paragraph 28 of her determination why she had concluded that the immigration judge had made an error of law:

> "In this case the Immigration Judge held that an undisclosed source mentioned to Professor Barnett, whom he had been unwilling to name, had provided him with an informal briefing but that such source constituted 'cogent and reliable evidence'. Taken together with a single news report published in the African Press International website, in circumstances in which a number of other reports are relied on by the appellant did not go so far as to suggest that accessibility and distribution of anti-retroviral medication had become a matter of discrimination on grounds of political opinion, and the appellant's own evidence that she had been refused anti-retroviral medication in 2003 because she was not able to produce a ZANU-PF membership card, demonstrates that the Immigration Judge was prepared to find exceptionality in the case of the appellant, thus attributing her with an imputed political opinion and entitlement to argue breach of her Article 3 rights, so as to bring the appellant within the exception to the ordinary Rule as laid down by the House of Lords in N, in circumstances that were not open to him. The so-called objective material relied on Professor Barnett is nothing more than an unsubstantiated comment which has not been disclosed such that it could be a subject to the kind of scrutiny that the European Court of Human Rights identified in NA quoted above. On the basis how this apparently crucial piece of evidence was reported, there is no way in which it could be said to be accurate, independent, reliable, objective, demonstrating an adequacy of methodology, or capable of being corroborated. I agree with the respondent that this evidence lacked weight and was

clearly not sufficient to make this crucial finding for which there was no other support."

Submissions

21. On behalf of the appellant Mr Drabble QC submitted that the second immigration judge had erred in concluding that there had been a material error of law in the immigration judge's determination. In the subsequent country guidance decision of RS & Ors [Zimbabwe - AIDS] Zimbabwe Country Guidance [2010] UK Upper Tribunal 363 [AIT] the tribunal had examined a very much wider range of material and reached a different conclusion, but that does not mean that there had been a material error of law in the immigration judge's determination on the material before him at the hearing in July 2009. He submitted that the reasoning of the immigration judge was perfectly intelligible and the weight to be attributed to the three pieces of evidence on which the immigration judge relied, in particular the conclusions of Professor Barnett in his two reports, were for the immigration judge to determine. There was some evidence on which the immigration judge could rationally have reached the conclusion that he did. The fact that another immigration judge might have given less weight to Professor Barnett's reports and reached a different conclusion (essentially what the second immigration judge had done) did not demonstrate that there had been a material error of law in the first determination.

22. For the respondent Ms Anderson submitted that the immigration judge's reasoning was inadequate. While he had recognised the need for a "proper factual analysis" (see paragraph 9.25) he had failed to carry out such an analysis. At the heart of her submissions was the proposition that, while the material relied upon by the immigration judge might have been sufficient to justify a finding that it was an aspiration of President Mugabe that anti-retroviral drugs should be denied to those who were not supporters of his regime, in the absence of any evidence as to how the state might be able to give effect to that aspiration the material before the immigration judge was insufficient to justify a finding that there was a real risk that such discriminatory treatment might happen.

23. This was of particular importance because Professor Barnett's evidence was that the medication required by the appellant would not be available at public clinics, and insofar as they would be available at all would be available for a price at private clinics. She submitted that the immigration judge should have considered whether the government had any effective means of choking off or rationing supplies to private, as opposed to public, clinics, or of ensuring that they supplied medicines on a discriminatory basis. She pointed to the fact that at paragraph 37 of the determination the immigration judge had said that he was not satisfied that this appellant would be unable to escape the attention of the Zanu-PF militias even though she was politically neutral.

Discussion

24. When considering the adequacy of the immigration judge's reasoning it is necessary to look at the decision letter as a whole. In this context it is important to note that the immigration judge a) correctly identified the issue; b) expressly recognised that it was an important and novel issue; and c) correctly directed himself on the authorities that he would have to take great care to determine whether the lack of medical facilities was due to discrimination rather than simply to a lack of medical resources in Zimbabwe, and that he would have to undertake a proper factual analysis.

25. No doubt a more elaborate factual analysis could have been undertaken if more evidence had been available for the immigration judge, as was the case when the tribunal considered the matter in the country guidance case of RS in March 2010. However, it is well established that the immigration judge had to decide the appeal on the evidence before him at the hearing in July 2009. The fact that with the benefit of hindsight either party, appellant or respondent to the appeal, might recognise that more evidence might or should have been produced does not alter the fact that the immigration judge had to do the best that he could on the material that was placed before him.

26. I have set out extensive passages from the determination because there is no suggestion that the immigration judge in this case did not accurately summarise all of the relevant evidence before him. It should also be observed that the immigration judge did not accept all of that evidence in an uncritical fashion; thus he expressly considered whether the appellant was a credible witness and therefore whether he believed her account of what she said had happened in 2003 (see paragraph 26). He expressly considered what weight he should give to Professor Barnett's reports given that Professor Barnett was not available at the hearing (see paragraph 28).

27. In each case the immigration judge accepted some of the evidence but not all of the evidence of the appellant and Professor Barnett (see, for example, paragraphs 26 and 33 referred to above). In the case of the newspaper reports, having carefully considered them, the immigration judge concluded that generally they did not deal with the novel point, but that there was one exception (see paragraph 31).

28. The overall picture is that of an immigration judge very carefully evaluating all of the evidence before him. Having carried out that exercise, the weight to be attributed to that evidence was a matter for the immigration judge. In my judgment it could not sensibly be contended that the reasoning of the immigration judge is inadequate in the sense that it is unintelligible. The reasoning in paragraph 39 of the determination, made with the benefit of hindsight in the light of the country guidance in RS, can now be seen to have been wrong, but it is perfectly intelligible. The immigration judge was persuaded by the three pieces of evidence, which he was careful to identify, that there was a reasonable likelihood that available supplies were being channelled through private clinics either to active supporters of the current regime or just to key members of the state apparatus.

29. I do not accept the submission made on behalf of the respondent that the immigration judge was under an obligation to consider precisely how that channelling of the supplies would be carried into effect. It has to be borne in mind that this is not a case in which the immigration judge had to balance evidence which pointed in different directions; there was simply no evidence put before the immigration judge which contradicted Professor Barnett's evidence. There was a good deal of evidence, as the immigration judge noted, that did not deal with the point, but that is not the same thing as evidence which positively contradicted Professor Barnett's conclusion. Nor do I accept the submission that the only rational view of Professor Barnett's evidence was that it merely showed an aspiration on the part of Mr Mugabe and did not show that there was a real likelihood that that aspiration was being carried into effect. A reasonable reading of Professor Barnett's evidence leads one to the conclusion not that he was saying that this was simply an aspiration; he was going further and saying that there was a real risk that if President Mugabe thought that it was reasonable to restrict supplies of medicines then they were being restricted, and that this was supported by the report that, by some means or other, very large sums of international aid had indeed been diverted. Thus, there was not merely an aspiration but a readiness, and an apparent ability, to carry that aspiration into effect.

30. Nor could it be said that this conclusion of the immigration judge was irrational on the evidence before him. It is important to bear in mind that the tribunal in the country guidance case in RS had a much greater range of material placed before it. That material included Professor Barnett's evidence together with much other material. Looking at all of that material the tribunal said this in paragraph 214 of the country guidance:

> "The evidence overall therefore presents something of a mixed picture on this important point. We bear in mind that the legal test is that of showing a reasonable degree of likelihood. On the evidence considered as a whole, we are not satisfied that it has been shown that there is as reasonable degree of likelihood that any of these appellants would be confronted with the need to display political affiliation or political loyalty in order to obtain ARVs. It is clearly something that happens, but not generally, and we consider that ultimately the comment that the evidence is anecdotal is one that is borne out by an overall assessment of the evidence as a whole. There is a risk that, perhaps particularly in rural areas, difficulty might be confronted, but we do not consider that that amounts to a real risk and accordingly our assessment of the evidence is that it has not been shown that access to ARVs is dictated by political affiliation or that the appellants would experience any real problems in that regard. Specifically, it has not been shown that any of them

> would face discriminatory in their home areas, to which they would turn."

31. The immigration judge in July 2009 did not have the advantage of having a "mixed picture" placed before him. As I have mentioned, when considering whether the immigration judge was entitled to place any weight on Professor Barnett's reports he was entitled also to have regard to the fact that there was no contrary evidence. Only one newspaper report supported the "novel point" but the others did not gainsay it. As the immigration judge noted, they simply did not deal with that aspect of the matter. Although the appellant's experience in 2003 related to a public clinic, and the evidence before the immigration judge was that the medicines required by the appellant would not be available to her at a public clinic, her evidence was not irrelevant. Professor Barnett considered that it was consistent with his view of the current position.

32. Once one concludes that the immigration judge was not required as a matter of law to give no weight whatsoever to the three matters on which he relied, then there was some material on which he could rationally base his conclusion. For the sake of completeness I should mention that in my view there is no necessary conflict between the immigration judge's conclusion at paragraph 32, which deals with whether the appellant would be able to satisfy Zanu-PF militias of her "broad support" for Zanu-PF, or for the regime (a conclusion which is challenged by Mr Drabble) and the proposition that the medicines required by the appellant were being channelled to active supporters or to key members of the state apparatus.

Conclusion

33. In the light of the subsequent country guidance decision in RS there is no doubt that this appellant was fortunate. With the benefit of hindsight one can see that the immigration judge's conclusion was wrong on the merits, but that does not mean that his determination disclosed any material error of law.

34. For those reasons I, for my part, would allow this appeal.

Lord Justice Pitchford:

35. The ultimate issue for Immigration Judge Clarke was whether there was a real risk that upon return to Zimbabwe the appellant would suffer Article 3 ill treatment emanating from the intentional acts or remissions of public authorities rather than the consequences of a natural illness and lack of sufficient resources in that country (see N v UK [2008] 47 EHRR 39 at paragraph 43); further, whether the appellant had a well-founded fear of being persecuted by deprivation of life-preserving ARVs by reason of her imputed political opinion. Immigration Judge Clarke so concluded.

36. In her determination on reconsideration at paragraph 28, Immigration Judge Hall's criticisms of her colleague went to the weight which Immigration Judge Clarke attached to the evidence of Professor Barnett, there being

nothing in the other country background evidence which provided explicit support for the appellant's case. However, as Sullivan LJ has pointed out, Immigration Judge Clarke, at paragraph 30, expressly recognised the fact that neither the country information nor recent news reports from Zimbabwe dealt with the politicalisation of the supply of ARVs to HIV sufferers. Overwhelmingly, the national and international concern expressed related to the collapse of the whole healthcare system in Zimbabwe. But the immigration judge accepted the evidence of the appellant that in 2003 she had in fact been deprived of access to necessary drugs because she was not a member of Zanu-PF. Secondly, Professor Barnett's evidence was that it had been known for some years that when medicine was in short supply sufferers would be required to produce a Zanu-PF membership card. Thirdly, Professor Barnett's information, from a source he was prepared to name only to the judge if requested, was that President Mugabe sought to justify the restriction of medical supplies to Zanu-PF functionaries only.

37. It is important, in my judgment, to the resolution of this appeal that none of this evidence was challenged by the Secretary of State, a matter which was the cause of some anxiety to Immigration Judge Clarke. The issue is whether the judge could properly have reached the decisions he did upon the state of the unchallenged evidence presented to him and not whether he reached the right decision in the opinion of this court.

38. Ms Anderson repeatedly asserted that the judge was required to do more than simply to accept the evidence of Professor Barnett. The subtext of the submission was that the immigration judge's acceptance of the evidence was naive. On the contrary, I agree with Sullivan LJ that the immigration judge's conclusions were reasoned and discriminating. It is not demonstrated to me that he made any error of law. I too would allow the appeal and restore the order of Immigration Judge Clarke.

Lord Justice Sedley:

39. I agree with both judgments. I want to add one note of concern. Although the Home Office's application for reconsideration of Immigration Judge Clarke's determination was granted by a Senior Immigration Judge on the ground that the application was arguable, the entire substantive reconsideration was conducted by a second immigration judge. There has been no suggestion before us that this was not a permitted course, but it has the undesirable effect of requiring one immigration judge to decide whether another judge of coordinate jurisdiction and equal status has made a material error of law. Only if this was held to be the case was the second immigration judge required to retake the decision on what she found to be its merits.

40. The procedure thus required the second immigration judge to sit at the first stage of the directive reconsideration as an appellate tribunal from the first immigration judge. Such a role, however invidious, needs of course to be discharged with independence of mind, but also in comity and with courtesy. It is regrettable this being so, that the immigration judge thought it right, in prose which seems not to have had the benefit of careful editing or

proofreading, to deal in dismissive and occasional belittling terms with her colleague's fact-findings. They are not terms that one would expect to find, for example, in the judgment of a High Court judge differing from that of another High Court judge. There is a difference between the independence of mind and judgment which is required of any judge in the situation that arose here and a departure from the formal respect to which the first judge is entitled, however sharp the forensic and jurisprudential differences between the two.

41. If a critique of the legal tenability of the fact-findings of an immigration judge is to be conducted by way of consideration, involving, as it may well do, arguments about the first immigration judge's credulity or competence, it seems to me that it is much more appropriately conducted before an immigration judge of higher status. This said, I do not accept Ms Anderson's submission that the warning of the House of Lords in AH (Sudan) [2007] UKHL 49 (paragraph 30) against invading or ignoring the expertise of fact-finding tribunals applies any less to an immigration judge or a Senior Immigration Judge conducting a first-stage reconsideration than it does to this court. Errors of law or of approach or of critical fact-finding can always of course occur, but axiomatically it takes more than a disagreement to establish the last of these.

42. In my respectful judgment, there was no more than such a disagreement here, and a strong expression of it did not turn it into an error of law.

43. The judgment of Immigration Judge Clarke will be restored.

Order: Appeal allowed