CO/3361/2006

**Neutral Citation Number: [2008] EWHC 1553 (Admin)**
**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**THE ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand
London WC2A 2LL

Date: Friday, 20th June 2008

**B e f o r e:**

**MR JUSTICE OUSELEY**

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**Between:**
**THE QUEEN ON THE APPLICATION OF GERSON LEITAO**
**Claimant**

v

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**
**Defendant**

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**Jackie Bond** (instructed by Figueiredo & Bailey) appeared on behalf of the **Claimant**
**Kate Olley** (instructed by the Treasury Solicitor) appeared on behalf of the **Defendant**

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J U D G M E N T

1. MR JUSTICE OUSELEY: This application for judicial review is unusual in a number of ways. The claimant is an Angolan national born in December 1986. He arrived in the United Kingdom in November 2001 alone, when he was nearly 15. He claimed asylum and was granted ELR until 13th December 2004, although the asylum claim was refused. His application for further leave to remain on 19th November 2004 was refused and his appeal to an Immigration Judge was dismissed on 1st July 2005.

2. The judge accepted the claimant's evidence about the particularly hard time he had had in Angola, but rejected the claim that return would breach his Article 3 ECHR rights, or the Refugee Convention. The judge accepted that the claimant had built a private life in the United Kingdom and had no family or support network in Angola to which he could return. He concluded, however, in the light of the decision of the Court of Appeal in **Huang v Secretary of State for the Home Department** [2005] EWCA Civ 105, that return to Angola would not breach his Article 8 rights. An application for reconsideration was rejected by the Senior Immigration Judge in July 2005. No further application to the High Court was made.

3. On 8th November 2005 the claimant wrote a letter to the Secretary of State for the Home Department, the reply to which, dated 30th March 2006, is the subject of this judicial review. The solicitors' letter of 8th November 2005 described how well the claimant was doing at university, the assistance which he gave to others in language and sport, the family life, which it is said he had developed with a family in the United Kingdom who had accepted him into their number, and it developed the argument about the private and family life which he now enjoyed.

4. Towards the conclusion of the letter it said:

> "We therefore ask that, in the light of the above, our client's case is reconsidered particularly given that matters have moved on from the position which was previously before yourselves and the Tribunal: our client having now started his degree course."

After commenting on two points in the refusal letter which had led to the appeal, the solicitor said:

> "In light of the above, we submit that our client's case is one which is truly exceptional on its facts, as envisaged by *Razgar* and *Huang*, and as such ask that you exercise your discretion to grant our client Discretionary Leave to Remain in the United Kingdom."

5. The Secretary of State's reply of 30th March 2006 said that that letter had been treated as making a fresh claim. It rejected the fresh claim because there was limited new material compared to what had been before the Immigration Judge, and that it created no realistic prospects that an Immigration Judge could reach a different decision. That letter was written before the decision in **Huang** in the House of Lords. The Secretary of State was not prepared to reverse a recent decision of his, endorsed as he saw it, by the Immigration Judge and the Senior Immigration Judge.

6. The letter also said:

> "11. We can find no basis for granting your client discretionary leave or humanitarian protection in the manner contemplated by the Asylum Policy Instructions (API) pertaining to those schemes.
>
> 12. As we have decided not to reverse the decision on the earlier claim and have determined that your submissions do not amount to a fresh claim, your client has no further right of appeal.
>
> 13. The asylum and human rights claims have been reconsidered on all the evidence available, including the further representations, but we are not prepared to reverse our decision of 29 April 2005, upheld by the independent adjudicator on 30 June 2005 and itself tacitly endorsed by the AIT on 22 July 2005."

Removal was threatened.

7. The claimant was detained with a view to removal, and these judicial review proceedings were begun with some urgency on 19th April 2006 challenging that letter. The grounds of challenge were that the decision was perverse. It was said that the Secretary of State had misunderstood the scope of the Court of Appeal's decision in **Huang**. The Secretary of State's approach to Article 8 was incompatible with ECHR jurisprudence. Among the submissions made in the grounds was this: that **Huang** in the Court of Appeal had not intended to elevate "exceptionality" to a separate test, and to use it as such was not compatible with Convention jurisprudence. What the Court of Appeal had said at paragraph 59 in **Huang**, commenting on what Lord Bingham had said in **R (Razgar) v Home Secretary** [2004] UKHL 27, was:

> "The true position in our judgment is that the HRA and s.65(1) [of the Immigration and Asylum Act 1999] require the adjudicator to allow an appeal against removal or deportation brought on Article 8 grounds if, but only if, he concludes that the case is so exceptional on its particular facts that the imperative of proportionality demands an outcome in the appellant's favour notwithstanding that he cannot succeed under the Rules."

8. It is convenient at this stage to note what the Immigration Judge and Senior Immigration Judge said, because this was repeated by the Secretary of State in his decision letter of 30th March 2006. The Immigration Judge, after considering whether a private life had been established and concluding that it had been, said this:

> "The important question is whether it would be proportionate for him to be removed and I consider that in all of the circumstance[s] it would be proportionate. I am very much guided in the recent case of 'Huang' [in

> the Court of Appeal] wherein the clear principle was set out that an appeal should only be allowed under Article 8 if the case is 'so exceptional on its facts that the imperative of proportionality demands an outcome in the Appellant's favour notwithstanding that he cannot succeed under the Rules.' To be successful an appeal would have to show a case as being 'truly exceptional'. The Appellant has done exceptionally well within the last 3½ years but his case just cannot be considered as being in the category of 'truly exceptional'."

The senior Immigration Judge said this:

> "The grounds of application are not arguable. There is nothing remotely sufficient to satisfy the 'exceptionality' test set out by the Judge and derived from Huang [2005] EWCA Civ 105.
>
> The Judge considered the material about his private life in the United Kingdom... He found as a fact that this was not exceptional. He applied the correct test. There is no material error of law."

9. Permission was refused on paper by Sir Michael Harrison, who said that although the decision could be viewed as harsh, it was not arguable that the representations satisfied the requirement of paragraph 353 of the Immigration Rules for a fresh claim. It is plain he thought that that is what he was dealing with. Permission was granted on oral renewal on 8th September 2006 by Hodge J. It has taken nearly 2 years for the case to be brought on. It was thought to have finished, by the Secretary of State, and where the fault for that very long delay lies is unclear.

10. It is perfectly clear from the defendant's skeleton argument and submissions that Miss Olley for the Secretary of State thought, as did the Secretary of State and Sir Michael Harrison, that the case was simply a fresh claim case, albeit one of slender prospects. There are some differences of recollection or view about what was said to Hodge J, but he did not grant permission because he thought that the then pending appeal in **Huang** to the House of Lords was a proper basis for doing so. Miss Olley thought that he granted permission because he thought that an arguably irrational decision had been taken by the Secretary of State on the fresh claim. Nevertheless, the fact that he had granted permission did not lead the Secretary of State to conclude that there was an arguable case that she had erred over the arguability of a fresh claim and consequently to grant a right of appeal, as so often and helpfully she does.

11. Miss Bond, for the claimant, in her skeleton argument, and strenuously in her oral submissions, said that this was not a fresh claim case and never had been. She accepted, even insisted, that there was no basis for a fresh claim. She saw very little prospect that the decision in **Huang & Kashmiri v Secretary of State for the Home Department** [2007] UKHL 11 could ground such a fresh claim, because the Court of Appeal in **AG (Eritrea) v Secretary of State for the Home Department** [2007] EWCA Civ 801 had said that what it had said in **Huang** was just the same as had been said in **Razgar** and in **Huang** in the House of Lords, and that they were all saying the same thing in slightly different ways: there was no exceptionality test.

12. The House of Lords in **Huang** had said that if the decision amounted to a breach of Article 8, the refusal of leave to remain would be unlawful:

> "It is not necessary that the appellate immigration authority, directing itself along the lines indicated in this opinion, need ask in addition whether the case meets a test of exceptionality. The suggestion that it should is based on an observation of Lord Bingham in Razgar above, para 20. He was there expressing an expectation, shared with the Immigration Appeal Tribunal, that the number of claimants not covered by the Rules and supplementary directions but entitled to succeed under article 8 would be a very small minority. That is still his expectation. But he was not purporting to lay down a legal test."

13. In any event, Miss Bond did not put her case on the basis that there was a difference between what the House of Lords had said and what the Court of Appeal had said in those cases. Miss Olley, putting it differently, agreed that she had no case upon which she could assert a fresh claim, and said there was no error in the Secretary of State's decision as to a fresh claim either. It was a fresh claim or nothing.

14. Very shortly before the hearing of the application for judicial review, a new letter dated 19th June 2008 was produced by the Secretary of State in order to show that the earlier decision of March 2006 was maintained, despite the lapse of 2 years, and taking into account the decision of the House of Lords in **Huang**. That letter treated **Huang** in the House of Lords in the way the Court of Appeal had treated it in **AG (Eritrea)**, it did not change the law and referred to the expectation that any difference in the expression of the tests would be unlikely to lead to different decisions in practice. It was not said that that letter itself contained any further error of law in relation to a fresh claim or otherwise.

15. Miss Bond also said that it was not her case that the refusal of discretionary leave outside the Immigration Rules was based on any misinterpretation of any applicable policy or instructions.

16. Miss Bond, putting her cards on the table, to use her words, explained that the letter of November 2005, and the consequent judicial review had been started in order to avoid any argument in Strasbourg, where it was intended that the litigation should go, that the claimant had failed to exhaust domestic remedies in the United Kingdom. The real point of law which she wanted to raise, and which she thought she had done, was that the decision of the Court of Appeal in **Huang**, at least to the extent that it contained, or was being applied as if it contained, an "exceptionality" test, was incompatible with European Court of Human Rights jurisprudence as expounded, for example, in **Jakupovic v Austria** [2003] EHRR 67. She had not expected permission to be granted. She accepted that the arguable error of law in United Kingdom jurisprudence, as might have been thought to exist in **Huang** in the Court of Appeal, had been corrected by the decision of the House of Lords in **Huang** after permission was granted.

17. Miss Bond submits that it was legitimate to seek a further decision from the Secretary of State and to challenge it by way of judicial review without reliance on any fresh

claim in order to show that domestic remedies had been exhausted, and to enable her to pursue a claim in Strasbourg on the grounds that United Kingdom courts could not provide a remedy, and the Secretary of State, in applying their decisions, erred in Convention law.

18. That may be so, but once permission had unexpectedly been granted, that ceased to be the position. Once **Huang** had been decided in the House of Lords, even less could that be the position. It is regrettable that the November 2005 letter to the Secretary of State and the grounds for judicial review, or subsequent correspondence, in view of the haste with which the grounds were drafted, do not make that aim as clear as Miss Bond did in oral submissions. An application for permission to apply for judicial review in such circumstances was at least unusual, let alone a successful application. It is regrettable that that Convention point was in reality only one aspect of the grounds, and none too clearly put either.

19. The case, as now argued, proceeds on a very different basis from that upon which it began. Once permission was granted, the claimant was actively seeking a domestic remedy as a consequence of that grant, whereas before permission was granted, she was implicitly asserting that there was no domestic remedy. Nonetheless, Miss Bond submits that, although permission was initially sought as part of these proceedings in the expectation that it would be refused, now that she is actively seeking a domestic remedy, the March 2006 decision should be quashed on the basis that it was disproportionate under Article 8, and that it is for this court to decide for itself, as in effect a further primary decision-maker, whether that was so. She submitted that it was for this court to apply the tests as set out by the House of Lords in **Huang** to the facts, at least as they existed as of March 2006. That decision was reviewable because it was not an appealable immigration decision.

20. The fact that her submissions involved the assertion that the Secretary of State erred in law in applying a decision of the AIT which had passed through the appeal process to its final conclusion, and that the facts and law on which it was based had not changed, did not preclude success. She said that the law had not changed because of the way in which the Court of Appeal in **AG (Eritrea)** dealt with the relationship between the decisions of the Court of Appeal and House of Lords in **Huang**. The Secretary of State had erred in law in his approach to Article 8, even though he was applying the decision of the AIT, because, though unchallengeable directly, it was flawed and could be challenged through the indirect process which she had incepted.

21. In my judgment, there may be circumstances in which judicial review proceedings may properly be commenced in order to ensure that domestic remedies are exhausted before venturing to Strasbourg, or to see if, without accepting the merits of the points raised, the Secretary of State might grant some form of leave to remain to avoid such proceedings. I would expect any such process to make it entirely clear that that is what the purpose of the proceedings was. Once permission had been granted here, however, contrary to expectation, the whole basis of her case changed. The game plan had been destroyed. The case had become a victim of its own success.

22. It was necessary now to argue that the domestic remedy, which it had been fondly expected could not exist, should be granted. Once the aim of the litigation had been changed by the uncovenanted blessing of a grant of permission, the claimant should have reconsidered his position in my view. This curious state of affairs suggests that the position was not explained as fully to Hodge J as circumstances required.

23. Once the claim seeks a remedy from the domestic courts, rather than confirmation that no such remedy exists, it becomes necessary on judicial review to show unlawfulness of a nature such that the domestic courts can grant a remedy. In my judgment it is quite impossible to argue that the Secretary of State acts unlawfully in applying the law as it stands. It was not contended that he had failed to do so. The contention was intended to be that he should not have done so, but it was only the European Court of Human Rights which could put right what he had done wrong.

24. Judicial review cannot be expected to be granted on the basis that the Court of Appeal's binding decisions, properly applied, are wrong. That is the point where a trip to Strasbourg is called for. I do not exclude the possibility that some procedure involving judicial review might explicitly be adopted to seek to challenge a decision of the Court of Appeal in the House of Lords, but that is not this case, and it would require transparency at least were it to be sought.

25. It is impossible, in my judgment, to argue as an alternative that the Secretary of State erred in relying on and applying to admittedly unchanged facts the decision of the AIT in respect of which appeal rights had been exhausted. There had been no application for further reconsideration to the High Court, which does have the ability to refer a case of importance to the Court of Appeal for decision. Neither contention is arguable in the absence, in my judgment, of a fresh claim, or some further and independent error in the Secretary of State's decision.

26. Were the High Court to hold the Secretary of State's decision here unlawful, it would be necessary for this court to reach a view on the lawfulness of decisions on issues disposed of through the completion of the appeal process. In effect, such an approach would provide a judicial review alternative or addition to the statutory review or reconsideration process. That could only happen in the most exceptional case, and even more so where the option of a High Court reconsideration has not been pursued, with the opportunity of a matter being sent onwards to the Court of Appeal. In reality, once permission was granted, paradoxically, this case became impossible and untenable. It became a domestic court challenge to a decision which had been arrived at through the conclusion of the statutory appeal structure, or a domestic court challenge to binding authority, and it should have been ended. Acceding to this claim would, in my judgment, set the statutory appeal system almost at naught, or it would turn High Court Judges into appellate judges on courts ranked above it.

27. No basis for judicial review exists, even on the more intense scrutiny as envisaged for proportionality decisions in judicial review, as discussed in paragraph 13 of **Huang**. Had I acceded to the claimant's submissions, as it is plain I do not intend to, I would have had to hold that the Secretary of State's decision was unlawful, either because he had applied a decision of the AIT not challenged further and not said to be wrong by

reference to superior court authority or by reference to any changed facts, or alternatively because that now unchallengeable decision itself was unlawful, again without any change in law or fact. Either approach would run counter to the statutory appeal process and its limits, and would turn this court into a review body for the AIT outside that appellate structure on no better basis than that it might disagree with the assessment of proportionality. It would also mean that the time for any such time to challenge to be made could run again, and indeed again and again, simply by writing to the Secretary of State asking for discretionary leave. A lawful decision had been reached and, on Miss Bond's arguments, nothing had changed. If it is sought to take the matter further, absent any fresh claim, the remedy is in Strasbourg, as was always envisaged.

28. In written arguments received shortly before judgment was to be read out, Miss Bond repeated and elaborated some points that she had made orally in argument. She said that the point she was making in relation to discretionary leave was this: the Asylum Policy Instructions and Immigration Directorate Instructions dealing with the grant of discretionary leave outside the Immigration Rules, said that leave to remain was to be granted if, after full consideration of Article 8, removal was inappropriate, and thus an application for discretionary leave outside the Rules on the basis of Article 8 required the Secretary of State to reach his own decision, which would be subject to judicial review if it was disproportionate. That, in my judgment, is misguided. The Instructions are first dealing with the first or original claim. If they go beyond that, they do so to deal with what are fresh claims. They do not deal, or purport to deal, with the position where there has been a claim, a refusal, an appeal, the decision upheld, and the Secretary of State's next decision on Article 8 gives effect to that earlier unsuccessfully appealed decision without any basis for a fresh claim. Discretionary leave applications do not enable the statutory appeal and fresh claim structure to be undermined.

29. In any event, if a human rights case has been considered through the appellate system and rejected, there is no possible reason to conclude, absent a fresh claim, that there would be any breach of Article 8 in a subsequent Secretary of State's decision relying on that earlier appellate decision. I add also that I reject Miss Bond's written submission that paragraph 13 of **Huang** in the House of Lords should be read as requiring a court, on judicial review, simply to substitute its own decision on proportionality for that of the Secretary of State. This is a court reviewing a decision for unlawfulness and not hearing an appeal. Her attempt to distinguish **Ex parte Smith**, and the reliance placed on it by the House of Lords in paragraph 13 for that distinction, is misguided. The fact that **Smith** dealt with a review of policy and this deals with a review of an individual decision is irrelevant. What matters is that both are review decisions. The fact that a human rights issue is raised does not turn this court into a primary decision-maker; it affects the intensity of review.

30. Accordingly, for those reasons I dismiss this application. But I wish to say a few further words, having declined to reach a decision on the substantive merits of proportionality for the reasons which I have given.

31. I note that Miss Bond does not seek now to say that a fresh claim could exist on the basis that the decision of the House of Lords in **Huang** changed the law, in the light of what the Court of Appeal said in **AG (Eritrea)**. Put that way, she is right, but she does not seek to say either that the law, as understood and applied by the Immigration Judge and Senior Immigration Judge here, in common with others, had changed as a result of **Huang** in the House of Lords.

32. Miss Olley accepted in principle that a change in the way that the law was understood or applied could found a fresh claim. In my judgment, it is plain that the Immigration Judge and Senior Immigration Judge, from the extracts which I have quoted, applied a test of exceptionality in reaching their conclusions on proportionality. It is plain that that involved a misunderstanding of what the Court of Appeal said in **Huang** and what the House of Lords said in **Razgar**, as they were explained by the House of Lords in **Huang**. It is also plain that many, many Immigration Judges reached decisions on that basis, and not only Immigration Judges and Senior Immigration Judges. They thought that they were applying loyally exactly what the words of Lord Bingham and in **Razgar** and the Court of Appeal in **Huang** and other decisions meant and were intended to convey. Paragraph 14 of **AG (Eritrea)** refers to the fact that there were many such cases.

33. Although the application of an "exceptionality" test may very well not mean that a decision would or could be different with the application of the appropriate test, that is not necessarily so for all cases. It depends upon the facts and circumstances. I consider that the basis for a fresh claim could exist here because of the change in understanding of what the Court of Appeal in **Huang** meant in the light of what the House of lords in **Huang** said.

34. It is clear that the "exceptionality" test was applied here. It is the only matter that the Immigration Judge and Senior Immigration Judge referred to. The facts, as found by the Immigration Judge in 2006, may not be so clear-cut as to mean that, with a different test applied to the same facts, the result would inevitably be the same. Sir Michael Harrison thought it could be a "harsh" decision, which suggests it could have been borderline. Miss Bond's riposte that **Devaseelan v Secretary of State for the Home Department** [2002] UKIAT 00702 ([2003] Imm AR 1) would generally mean that the claimant could not go behind the Immigration Judge's findings of fact is true but irrelevant. The facts found were all favourable to the claimant, although quite shortly found, both in respect of his life in Angola and his later life in the United Kingdom.

35. A fresh claim would also inevitably take into account the passage of time since 2006. Two years are more significant for a young man here since nearly 15 and now 21, than for certain other ages. A fresh claim would also take account that over those 2 years there had been a development and strengthening of private life here, depending on the evidence and what had been done by the claimant in that period. No one knows what the outcome of any fresh claim would be, but there is in my judgment a basis in what the Immigration Judge and Senior Immigration Judge said, and in the light of the changed understanding which the decision of the House of Lords in **Huang** brought, together with the passage of time, which means that that is a course that the claimant will have to consider pursuing.

36. I take time to emphasise that because, given that the basis of these proceedings in the first place was to confront and challenge the "exceptionality" test as incompatible with Convention jurisprudence, and given that that understanding has now changed, the effect of that change on the assessment of proportionality here, should be tested, if it is to be tested at all, through a fresh claim. Indeed, in my judgment it should have been tested through a fresh claim rather than pursuing this case. That is, after all, the very issue which actually underlies the inception of these proceedings, namely a desire to challenge the "exceptionality" test as it was thought to be in **Huang** in the Court of Appeal and its application here. If it cannot now succeed as a fresh claim, it could not have succeeded in Strasbourg. That test has now gone but these proceedings nonetheless have remained on foot without the issue being tested in the way it could have been.

37. The Secretary of State's letter of 19th June 2008 attempts to scotch the possible fresh claim argument before it is raised, but it is, in my judgment, unsuccessful in that respect. It points out that, according to the Court of Appeal in **AG (Eritrea)**, the decision of the House of Lords in **Huang** did not alter the law, as properly understood in **Huang** in the Court of Appeal. But the crucial question is not whether the law did or did not change in the Court of Appeal's view; the crucial question is whether the law, as understood and applied, or as misunderstood and misapplied, by the Immigration Judge and Senior Immigration Judge, changed. Did the effect of the decision mean that what they thought was the law they were applying became no longer the law? Plainly for many Immigration Judges, that misunderstanding was a key factor in many decisions. In my judgment, it was in this case as well.

38. The letter of 19th June 2006 does not address that issue. Miss Bond, again in written submissions, urges that a fresh claim would inevitably fail because of **Devaseelan**. I do not see that it would for the reasons which I have given, but if so, so be it. It is difficult to see, in that case, that there would have been any basis for a trip to Strasbourg. The case is either lawfully decided as it is, if Miss Bond is right, or she will have to take whatever chances she thinks she has in Strasbourg. For those reasons, this application is dismissed.

39. MISS OLLEY: My Lord, I have an application for the defendant's costs. I would actually like to take the slightly usual course of asking for time to take instructions about who should pay them, in view of the way that the case unfolded, and the way that it changed. I do not, in any event, have a completely precise figure of the costs, but I would respectfully suggest that maybe that can be done in writing.

40. MR JUSTICE OUSELEY: I am not going to deal with this --

41. MISS OLLEY: No, my Lord.

42. MR JUSTICE OUSELEY: -- satellite litigation in that way. It is a matter that, if you wished to pursue, I would deal with. I would deal with an ordinary application for costs. If you wish to make any more elaborate application relating to that, you will have to consider doing so afterwards, for which you will probably need a corrected transcript.

43. MISS OLLEY: I will indeed, my Lord. I am grateful.

44. MR JUSTICE OUSELEY: I think the ordinary question of whether costs should be paid should be dealt with, but the question of whether anybody else should pay can be dealt with later.

45. MISS OLLEY: I am very grateful, my Lord.

46. MR JUSTICE OUSELEY: You do not have a schedule?

47. MISS OLLEY: I do not have a schedule.

48. MR JUSTICE OUSELEY: Should you not have a schedule?

49. MISS OLLEY: I should, so I have to don my sackcloth and ashes to that extent. I apologise that there is not schedule.

50. MR JUSTICE OUSELEY: Putting on sackcloth and ashes is not a very good starting point for looking for a more punitive order, is it?

51. MISS OLLEY: Well, my Lord, I did not know quite whether your Lordship would agree, without the course that proceedings have taken, nonetheless I do have an application generally for the costs, certainly up to the stage of permission being granted. I am aware that the claimant is legally aided at this point. I am not quite sure when that started. Nonetheless, I make an application, in any event. Whether we are able to enforce it is another matter. So may I ask that the claimant pay our reasonable costs, to be assessed if not agreed?

52. MR JUSTICE OUSELEY: Miss Bond?

53. MISS BOND: The claimant is legally aided, as my learned friend says, and has been sort of since the inception of the proceedings, certainly since the permission hearing.

54. MR JUSTICE OUSELEY: Since the permission hearing? What about before the permission hearing?

55. MISS BOND: Oh, they have backdated it, apparently, to 14th April 2006. Eventually they backdated it.

56. MR JUSTICE OUSELEY: So you have been legally aided throughout?

57. MISS BOND: Yes.

58. MR JUSTICE OUSELEY: Well, I will make the usual order, unless you want to make submissions on that. I will make the usual order that there be an order for the payment of the Secretary of State's costs of the proceedings by the claimant, subject to detailed assessment, and not to be enforced without leave of the court, without prejudice to any further applications which the defendant may wish to make in respect of the period

after the grant of permission and the decision in **Huang**. So it would be effectively the costs of the hearing.

59. MISS BOND: On what basis is that application to be dealt with? Is it to be restored before your Lordship?

60. MR JUSTICE OUSELEY: I will hear oral argument on it.

61. MISS BOND: On a later date?

62. MR JUSTICE OUSELEY: Well, not today. Unless the parties agree that they want to do it in writing, so be it, but that will not be possible if the application is made on the basis of wasted costs.

63. MISS OLLEY: My Lord, I am grateful.

64. MR JUSTICE OUSELEY: Thank you.

65. MISS BOND: My Lord, in any event, we would ask for an expedited transcript, if one could be obtained.

66. MR JUSTICE OUSELEY: Yes, I agree there should be. Thank you very much.

67. MISS BOND: I do not want to trespass too much longer on the court's time, but given that we obviously need to consider the expedited transcript and what our next steps, if any, should be, I am going to formally request that you grant leave to appeal to the Court of Appeal against your judgment.

68. MR JUSTICE OUSELEY: Yes. I refuse leave.

69. MISS BOND: I am grateful.

70. MR JUSTICE OUSELEY: There will be an order for an expedited transcript. Thank you very much.