OUTER HOUSE, COURT OF SESSION

[2006] CSOH 120

P449/05

OPINION OF LADY PATON

in the petition

NOREEN SAEED

for

Judicial Review of a decision of the Immigration Appeal Tribunal dated 29 November 2004

Petitioner: Collins, Advocate; Anderson Strathern
Respondent: A.J. Carmichael, Advocate; Advocate General's Office

3 August 2006

Application for asylum: lower caste marriage in Pakistan

[1] The petitioner was born on 28 July 1977. She is a national of Pakistan. The respondent is the Secretary of State for the Home Department, having responsibility for immigration and asylum matters.

[2] The petitioner and her family are Shia Muslims. Against her family's wishes, the petitioner eloped with and married a Sunni Muslim of a lower social caste. As a result, her family made a report to the police. A First Information Report was issued, accusing the petitioner's husband of kidnapping, rape, and abuse. On the basis of that report, the petitioner's father-in-law and brother-in-law were arrested. Neighbours

managed to secure their release. Further difficulties were experienced by the petitioner and her husband, as set out in paragraph [4] below.

[3] Eventually the petitioner and her husband left Pakistan. They arrived illegally in the United Kingdom in May 2002. On 13 June 2002, the petitioner applied for asylum. Her application was refused. The petitioner appealed, citing the Geneva Convention of 1951 and also human rights. The case was heard by an adjudicator, Ms. A.C. McGavin, on 13 November 2002.

[4] By determination promulgated on 4 December 2002, the adjudicator found in the petitioner's favour. The adjudicator's determination included the following passages:

> "22. I turn to consideration of the evidence. I found the Appellant and her husband to be credible and reliable witnesses. Much of the Appellant's claim was corroborated by her husband or by documentary evidence or both. I found no material inconsistencies in the various accounts which the Appellant had given of her asylum claim and I found no material inconsistencies in the accounts given by her husband. Their evidence was unaltered by cross-examination.
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> ...
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> 29. On 8th January 2002, the Appellant and her husband went to Lahore to live with a distant relative of the Appellant's husband. Although they knew that the Appellant's family had lived in Lahore, they had no other friend or relative living in a different part of Pakistan to whom they could go. They hoped that Lahore was a sufficiently large city for them to be safe there. In addition, they were to be living an hour and a half's drive from the Appellant's

family home which was still in Lahore and in which two of her brothers lived. She and her husband did not intend to leave Pakistan.

30. On 22nd January 2002, the Appellant's husband was fetching food from a market when he was seen by the Appellant's older brother, who attacked him with an ice-pick. The Appellant's husband was taken to hospital, but left with only the barest of treatment because the hospital wished to alert the police to the attack, and the Appellant's husband feared for the consequences of their coming to the attention of the police. The Appellant's relative fetched him from hospital and arranged for him to be treated privately by a male nurse, but the wound became infected and he was unwell for some months. There was no medical report relating to the Appellant's hospitalisation or injury, but Mr Saeed showed me a healed, considerably indented wound to his side. The Appellant's husband took legal advice. He was advised to go to a police station, give a statement that he was legally married to the Appellant and he would be then taken to court on the kidnapping FIR, when he could present his marriage certificate to the court. However, both he and the Appellant considered the course too risky. They thought it more likely that the Appellant would be taken by the police and returned to her parents in order to restore the *status quo*, pending resolution of the kidnapping allegation. It would then be too late, because both the Appellant and her husband believed that the Appellant would be killed by her family for bringing dishonour on the family. The Appellant's husband's father advised them to leave the country and as soon as the Appellant's husband was well enough to travel, they left Pakistan on false passports and with the assistance of an agent (1st May 2002).

31. In the present case, the Appellant fears death at the hands of male members of her family for having married outwith her family and her sect. She and her husband do not believe that they would have been afforded protection from the authorities. They feared the police would return the Appellant to her family if they found either the Appellant or her husband. They did not believe that the Appellant would receive protection against the Appellant's family if they returned to Pakistan. I consider those fears well founded as subjectively and objectively based on the evidence of the case.

32. The objective background evidence lodged by both parties present a compellingly supportive background to the Appellant's and her husband's claims. The CIPU assessment states (R.3.6.51 and R2.5 109):-

> 'The class and caste system is a pervasive aspect of Pakistani society. Inter-caste marriages can cause problems, with mixed marriages sometimes running a high risk of being killed. Although the legal system is designed to protect such individuals, police and the judiciary (particularly at the local level) may be unwilling or unable to offer effective protection from societal persecution.'

33. The Appellant's family are of a higher social status than that of the Appellant's husband. They are financially well off. Their family tradition was against marriage outside the family and outside the Shia sect. They did not recognise the Appellant's marriage. They considered that the Appellant had brought dishonour on the family by eloping with Khurram Saeed.

34. The CIPU assessment (paragraph 6) states that there are many cases in Pakistan where women have run away to marry men of their own choice and subsequently lived in fear of their male relatives' revenge for dishonouring the

family. It also records that women who marry against the parents' wishes may be charged with extramarital relations. Amnesty International reports that physical abuse and torture of females in detention is rife. The tradition of the family killing those suspected of illicit sexual relations in so called 'honour killings' in order to restore family honour is far more likely to be carried out in the case of women. Although the practice has been condemned by General Musharraf, no action has been taken. It is a repeated feature of paragraph 6 of the latest CIPU assessment that huge numbers of deaths of females, *inter alia* by burning, at the hands of their own families, have been reported, but few suspects even arrested. Further, domestic violence against women, whether it be by a husband or male relatives such as fathers or brothers is a 'widespread and serious problem' with a very high rate of occurrence. It is reported that 'police and judges tend to see domestic violence as a family problem and are reluctant to take action'. Ms Bree [on behalf of the Appellant] has set out, in her written submissions, further passages of text from the objective evidence lodged, and I find these support the Appellant's claim to fear persecution and her claim that there was not, and would not be, in Pakistan, a sufficiency of protection from such persecution were she to return. I consider that the Appellant's pregnancy would, if it were possible, make her position worse.

35. In addition, I accept Ms Bree's submission that the Appellant's well founded fear was of persecution which was for a Convention reason, following the House of Lords decision in *Shah and Islam; R.* v *IAT ex parte Shah* (1999) INLR 144.

36. It follows that I did not accept Mr Ferguson's submission [on behalf of the Home Office] that it would have been reasonable for the Appellant to go to

the police, whether or not armed with his marriage certificate and a lawyer. Further, the background evidence indicates that the lack of protection afforded by the authorities is country wide, and not restricted to particular parts of Pakistan.

37. Having considered the Appellant's evidence against the background country information lodged by both parties, I find that the Appellant has discharged the onus upon her by showing to the requisite standard that she is outside Pakistan owing to a well founded fear of persecution for a Convention reason and requires international protection.

38. In light of my findings, I do not require to consider internal flight.

39. Accordingly, I allow the asylum appeal."

[5] The respondent applied to the Immigration Appeal Tribunal (IAT) for leave to appeal. The grounds for applying for leave were as follows:

"1. The Adjudicator at paragraph 31 of the determination finds that the appellant's fear is of her family, yet at paragraph 38 the Adjudicator does not consider internal flight as an option. This is an error as the claimant did not exhaust all domestic remedies open to her, as she located to the nearest large city which was formerly her family's home and where they still had connections. Pakistan is a country of 145,000,000 people it is therefore submitted that if the appellant and her husband were to relocate to another city without familial connections on return to Pakistan it would not be reasonably likely that her family would know of their return let alone manage to track the couple down. It is further submitted that given the couples young age, and considering the fact that the couple have managed to relocate to the United Kingdom, relocation in Pakistan would not be unduly harsh.

2. The Adjudicator has also confused the question of internal flight with the question of sufficiency of protection. It is submitted that these are two separate questions. The issue of protection following Shah and Islam and Horvath arises when persecution is present (persecution = risk of serious harm + failure of state protection). The question of internal flight or relocation involves whether it would be unduly harsh to relocate to a part of the country where there is no risk of persecution or article 3 mistreatment."

[6] On 9 January 2003, the IAT granted leave to appeal, stating that "the question of internal flight should have been considered by the adjudicator".

[7] The appeal was heard by the IAT on 29 November 2004. By decision dated 30 November 2004, the IAT allowed the appeal, and directed that the case be considered afresh "by an adjudicator other than Ms. A.C. McGavin". In particular, the IAT stated:

"7. In the event that we were not with him, Mr Sayeed [counsel for Noreen Saeed] asked us to remit the appeal to the same Adjudicator, for further findings as the availability of an internal flight option. We expressed our misgivings about this course of action, given that 2 years have already elapsed since the Adjudicator heard the appeal. The Adjudicator would find it difficult to recall her impression of the oral evidence she had heard. We were not aware whether the Adjudicator was a full time member of the judiciary. Further delays can be caused by a remittal to a part-time member of the judiciary. The Adjudicator had already made certain findings of fact, which may cause her difficulty in considering internal flight. Mr Sayeed asked us to bear in mind the fact that the Claimant had had a positive assessment of credibility in her favour. There has been delay already since the appeal was heard before the Adjudicator. It was adjourned on two previous occasions by the Tribunal. The

Claimant and her family have lived with their situation unresolved for some time.

8. We reserved our determination.

9. After having very carefully considered the submissions and the Skeleton Argument we have concluded that we have no option but to remit this appeal for a fresh hearing by another Adjudicator. We have been slow to reach this conclusion and have done so very reluctantly. We now give our reasons for our decision, although we are forced to be circumspect in giving our reasons in order to avoid giving any indication of our views.

10. Initially, we were of the view (as we indicated at the commencement of the hearing) that the Secretary of State's challenge... was too limited. However, upon reflection and having considered the submissions before us, we noted that:

> (a) at paragraph 31, the Adjudicator found that, ***if*** (our emphasis) the Claimant and her husband were found by the Claimant's family, the Claimant would be returned to her family. There was no finding as to whether it would be reasonably likely that the Claimant would be found. This comes within the terms of paragraph 1 of the grounds of application, which also asserts that the Adjudicator should have considered whether the Claimant and her family would be able to safely relocate to another city where they have no family connections. We consider that the Adjudicator ought to have considered this, since the place of relocation previously attempted by the Claimant and her husband was in fact Lahore city with which the Claimant had connections. Paragraph 29 of the Determination indicates that the

Claimant's family lived in Lahore, that it was 11/2 hours' drive away from the family home in Lahore.

(b) we were satisfied that paragraph 2 of the grounds of application was also made out. The Adjudicator had confused the issue of the internal flight option with sufficiency of protection. It is clear that the Adjudicator was satisfied that the Claimant had a well-founded [fear of persecution] in her home area. She should then have gone on to consider whether the Claimant could relocate somewhere else in Pakistan where she would be safe. In answering this question, the Adjudicator would have had to consider the likelihood of the Claimant and her husband being found by the Claimant's family, what ill-treatment would follow and whether there would be sufficiency of protection. Instead of following this analytical approach, the Adjudicator considered sufficiency of protection in the event that the Claimant and her husband were found. Her finding that there would be insufficient protection throughout Pakistan was made on the footing that they would be found. It is precisely because she approached the issue from the wrong starting point that she allowed herself to be deflected from the issue which (in our view) is of crucial importance in this case - namely, whether there is a real risk of the Claimant's family finding the Claimant and her family if they were to relocate to another part of Pakistan. If there is no real risk, it is not relevant to consider sufficiency of protection.

(c) it is asserted in paragraph 14 of the Skeleton Argument that there are outstanding police proceedings against the Claimant's

husband and that this means that internal relocation is not an option as a matter of safety. With respect, there is no clear finding by the Adjudicator as to whether there are outstanding police proceedings against the Claimant's husband. We are aware that the objective evidence makes it clear (and Mr Sayeed did not take issue with this at the hearing before us) that F.I.R.s are not effective indefinitely. They can and do in many cases lie on the file, dormant. They can, however, by re-activated by a complainant. The fact that the Adjudicator had found that the F.I.R. lodged by the Claimant's father was active to the extent that the Claimant's father-in-law and brother-in-law were arrested by the police in January 2002 does not mean that the Adjudicator found that there were outstanding proceedings as at the date of the hearing. We appreciate that, whilst this was not specifically raised in the grounds of application, the Tribunal would have to consider the likelihood of the F.I.R. being effective now (over 21/2 years after its issue) when considering whether there is a real risk of the Claimant and her husband being found if they were to relocate to an alternative location. Accordingly, the effectiveness or otherwise of the F.I.R. was intrinsically connected to the likelihood of risk in an alternative place of relocation, which is covered by paragraph 1 of the grounds of application.

11. Since the hearing before the Adjudicator took place, the Claimant says that her family have placed 'A missing persons' advertisement in the Daily Jang newspaper. Clearly this will be relevant to the issue as to whether there is a real risk that the Claimant and her husband will be found by the Claimant's

family. There are, however, difficulties with this. Although the Adjudicator had found the Claimant and her husband credible, the newspaper advertisement was evidence adduced subsequent to the Adjudicator's hearing. The Adjudicator's positive credibility assessment with regard to the evidence of the Claimant and her husband could not, in our view, bind us to accept the newspaper advertisement, although clearly we would bear in mind the Adjudicator's positive assessment of credibility. As we have said above, the Tribunal's jurisdiction in this case is not limited to points of law only. Our jurisdiction is on law and fact. However, we could see a real possibility of finding ourselves in difficulty with the Adjudicator's positive assessment of credibility if we had heard oral evidence. This is another reason why we concluded that a remittal was the only option.

12. Mr Sayeed's submissions as to the reasons for a remittal to the same Adjudicator bore very heavily with us. However, we reluctantly concluded, for the reasons we have given in paragraph 7 above, that a remittal to another Adjudicator was the only fair course of action.

Decision

This appeal to the tribunal is allowed. We direct that the Appellant's appeal be considered afresh by an Adjudicator other than Ms A C McGavin."

[8] The petitioner then sought judicial review of the decision of the IAT. The first hearing took place in the Court of Session on 2 and 3 February 2006.

Submissions for the petitioner

[9] Counsel for the petitioner invited the court to reduce the decision of the IAT dated 30 November 2004. The petitioner's secondary motion was to reduce the IAT's

decision insofar as they had decided to remit the case to an adjudicator other than Ms. McGavin.

[10] Counsel made the following submissions. First, the IAT had acted unreasonably and unlawfully in allowing the respondent's appeal. Secondly, no reasonable tribunal would have done other than to remit to Ms. McGavin. Counsel developed those submissions under three headings:

(*i*) *The IAT's decision was based on a misunderstanding or a misrepresentation of part of the adjudicator's determination*

[11] Counsel submitted that in paragraph 10(a) of the IAT's determination, the IAT misunderstood or misrepresented the adjudicator's finding in paragraph 31 of the determination. The IAT referred to the petitioner and her husband being found by "the claimant's [i.e. the petitioner's] family". In fact, the adjudicator had referred to the petitioner and her husband being found by "the police". That was a fundamentally different concept. Whereas it might be possible for the petitioner to settle in another part of Pakistan and avoid discovery by her family alone, it was a very different matter if the police in Pakistan (a state agency acting countrywide) were interested in the petitioner with a view to returning her to her family. Whether the police were actively searching for her, or whether they might simply learn of her whereabouts through routine activities and contacts with authorities, being found by the police would result in a real risk of persecution in that the police would return the petitioner to her family and would take no steps to prevent any retribution which the family might inflict upon her for marrying a Sunni Muslim of a lower social caste. Such

retribution was acknowledged in the CIPU report of November 2002 to include beatings, burnings and killings (known as honour killings).

[12] Thus the IAT's reasoning was based upon the wrong concept. Their decision allowing the respondent's appeal was flawed, and should be reduced. The adjudicator's determination promulgated on 4 December 2002 should be restored.

[13] *Esto* it was suggested that the IAT had not misunderstood paragraph 31 of the adjudicator's determination, the IAT had failed to state clear reasons satisfying the test in *Wordie Property Co. Ltd*. v. *Secretary of State for Scotland*, 1984 S.L.T. 345. For that reason also the IAT's decision should be reduced.

(ii) *There was no missing link in adjudicator's determination*

[14] In response to an argument presented by counsel for the respondent (set out in paragraph [21] below) counsel for the petitioner contended that there had been no failure on the part of the adjudicator to make a finding that the return of the petitioner to any part of Pakistan would result in a "real risk that the family would come back into contact with the petitioner". It was an obvious inference from the adjudicator's findings-in-fact (and in particular, the finding that the police had an interest in the petitioner with a view to returning her to her family) that the return of the petitioner to any part of Pakistan would subject her to a real risk of being found by the police who would return her to her family and would fail to prevent her family from inflicting punishment on her. The adjudicator had not therefore, as was suggested, leapt to the stage of adequacy of protection without dealing with the question of real risk. The police had a dual role: they were both (i) a state agency hostile to the petitioner, in that they would return her to her family; and (ii) the state agency which should in

theory provide the petitioner with protection. Thus the adjudicator was correct to make findings about the role of the police, as she had done.

[15] In the course of his submissions, counsel referred to *R.* v *Secretary of State for the Home Department, ex parte Adan* [1999] 1 A.C. 293; the Country Information and Policy Unit (CIPU) assessment for Pakistan (2002); *R.* v *Immigration Appeal Tribunal, ex parte Shah* [1999] 2 A.C. 627; *Hanif* v *Secretary of State for the Home Department*, 1999 S.C. 337; *Lin* v *Secretary of State for the Home Department*, 2005 S.L.T. 301; *Minister for Immigration and Multicultural Affairs* v *Jang* [2000] F.C.A. 1075; and the Court of Appeal decision in *Hamid, Gaafar, and Mohammed* v *Secretary of State for the Home Department* [2005] E.W.C.A. Civ. 1219.

(*iii*) *Esto the case had to be remitted back, it should be remitted to the original adjudicator*

[16] Counsel for the petitioner submitted that, *esto* the IAT were entitled to interfere with the adjudicator's determination and to remit back, they erred in their remit to any adjudicator other than the original adjudicator. The proper course was to remit back to the original adjudicator, who had heard the evidence and found both the petitioner and her husband credible witnesses.

[17] Counsel submitted that the IAT's remit (to any adjudicator other than the original adjudicator) was unreasonable in the sense outlined in *Associated Provincial Picture Houses Ltd.* v *Wednesbury Corporation* [1948] 1 K.B. 223. In reaching their decision, they had taken irrelevant factors into account. Counsel accepted that the IAT had properly taken into account the importance to the petitioner of a positive finding in relation to her credibility, (a factor which favoured remitting to the original adjudicator: *Symes and Jorro, Asylum Law and Practice*, paragraph 15.46;

Macdonald, Immigration Law and Practice (5th ed.) paragraph 18.184). Moreover it was accepted that the IAT were exercising a discretion when remitting back. It was not necessarily an unreasonable exercise of that discretion to remit back to a different adjudicator: *R.* v. *Immigration Appeal Tribunal, ex parte Sarkisian* [2001] Imm.A.R. 676. But in the present case, the IAT had taken into account irrelevant factors as outweighing other factors. For example, they had taken into account the possible delay which might occur because the original adjudicator might be part-time. Counsel contended that there had been a delay of two years before the IAT heard the respondent's appeal. Accordingly it was hardly appropriate to take into account a speculative delay on the part of the original adjudicator. Secondly, the IAT took into account another factor about the original adjudicator, namely that she "had already made certain findings-of-fact, which may cause her difficulty in considering internal flight". That factor was unexplained, not easily understood, and *prima facie* irrelevant.

[18] For technical reasons connected with the recent reorganisation of the immigration and asylum service, both counsel were agreed that, if the petitioner's argument relating to the remit to the original adjudicator were successful, the IAT's decision should be reduced *in toto* (although the court was requested to make clear in the opinion that the petitioner had succeeded only on the question of the parameters of the remit).

Submissions for the respondent

[19] Counsel for the respondent invited the court to sustain the respondent's two pleas-in-law, and to refuse the petition.

(i) *The IAT's decision was not based on a misunderstanding, but contained a typographical error*

[20] Counsel for the respondent accepted that the reference in paragraph 10(a) of the IAT's decision should have been a reference to "the police", and not to "the claimant's family". However it was a mere typographical error, or an infelicity of expression. It was not symptomatic of any fundamental misunderstanding or misrepresentation of either (a) the petitioner's case, or (b) the adjudicator's reasons. Paragraph 10(a) was clearly a reference back to the adjudicator's findings in paragraph 31 of her determination, and therefore only made sense if the words "the police" were substituted for "the claimant's family". Thus the IAT well understood the concern, namely that the police were a mechanism whereby the petitioner could be returned to her family, with all the consequences which might ensue. Paragraph 10(b) of the IAT's decision was perhaps affected to some extent by the same infelicity of expression. But in that paragraph, it was not an error, and there was no need to read the words "the police" in place of "the claimant's family".

(ii) There was a missing link in adjudicator's determination

[21] Counsel submitted that the IAT were correct in identifying a missing link in the adjudicator' determination in relation to internal flight. The adjudicator should have asked herself whether there was a real risk that the petitioner and her husband would be detected by the police anywhere in Pakistan, i.e. whether there was a real risk that the petitioner would be returned to the hands of her family. But that step was missing. There was thus no finding that if the petitioner settled in any part of Pakistan, it was reasonably likely that her family would find her, or that the police would find

her (and return her to her family). That was the reason for the IAT's correct observation in paragraph 10 (a) that -

> "There was no finding as to whether it would be reasonably likely that the claimant would be found."

[22] There was therefore an error in the adjudicator's approach. Her approach begged the question whether the risk from which protection was required was going to be present wherever in Pakistan the petitioner was located. For that risk to be present throughout Pakistan, there had to be a real risk that the family would come back into contact with the petitioner, by whatever mechanism: cf. guidance relating to persecution in *R.* v *Immigration Appeal Tribunal, ex parte Shah* [1999] 2 A.C. 629; *Horvath* v *Secretary of State for the Home Department* [2001] A.C. 489.

[23] Counsel for the petitioner had suggested that it was a necessary implication of the adjudicator's findings that the police were actively looking for her: but there was no such implication. The adjudicator's findings about the risk of the police returning her to her family were made in the context of a particular incident in Lahore, which was the petitioner's home area.

[24] Counsel for the respondent submitted that if the court were of the view that there had been an error in expression, but had that error not occurred, the view taken by a reasonable IAT would not have been different, that would be a finding that the error in expression was not material. In such a situation, decree of reduction should not be granted. In any event, in the context of the test of adequate reasons set out in *Wordie* (as approved in *Daljit Singh* v. *Secretary of State for the Home Department*, 2000 S.C. 219), counsel submitted that the IAT's decision passed the *Wordie* test. The decision left the court and the informed reader in no real doubt as to the reasons for making that decision. Accordingly the IAT's misquotation did not represent a

misunderstanding. If there had been a misrepresentation of the adjudicator's reasoning, it was of no effect.

[25] The adjudicator may have been entitled on the evidence to reach the conclusion that there was insufficient protection countrywide, but she should not have reached that conclusion before considering whether there was a real risk that the petitioner and her husband would be found by her family anywhere in Pakistan (albeit the mechanism would be the police). There was no finding that the Pakistani police were actively searching for the petitioner and her husband. Thus the IAT were correct when they noted at the end of paragraph 10(b):

> " ... It is precisely because [the adjudicator] approached the issue from the wrong starting point that she allowed herself to be deflected from the issue which (in our view) is of crucial importance in this case - namely, whether there is a real risk of the claimant's family finding the claimant and her family if they were to relocate to another part of Pakistan. If there is no real risk, it is not relevant to consider sufficiency of protection."

The adjudicator had therefore misdirected herself in law as to internal flight. There was a gap in her reasoning. She had approached internal flight from the wrong end.

[26] Counsel accepted that the question of internal flight and sufficiency of protection were to some extent interlinked. But that did not detract from the force of the point about the missing link. The adjudicator should have considered what would be the risk of detection throughout Pakistan. Only if she concluded that there was a reasonable risk of detection throughout Pakistan should she have proceeded to consider internal flight.

(iii) The IAT had not erred in directing that the case be remitted back to an adjudicator other than the original adjudicator

[27] Counsel for the respondent contended that the IAT had not erred in the sense defined in *Associated Provincial Picture Houses Ltd.* v *Wednesbury Corporation* [1948] 1 K.B. 223 by remitting the case to any adjudicator except the original adjudicator. The IAT had not acted as no reasonable tribunal would have acted; nor had they taken into account irrelevant matters or left out of account relevant matters; nor had they failed to give clear reasons.

[28] The IAT noted in paragraph 7 that the adjudicator "would find it difficult to recall her impression of the oral evidence she had heard". Further, in paragraph 11, the IAT noted that the petitioner was seeking to adduce further evidence (a "missing person" advertisement relating to the petitioner). The IAT were correct to have reservations about that late material, bearing in mind that in practice, documentation might be introduced at a late stage in an attempt to bolster an applicant's claim. The IAT were also correct to suggest that an adjudicator who had made findings about credibility, and findings in fact based on credibility, might have difficulty treating internal flight evidence as a severable issue.

[29] The IAT were also correct to place weight on the fact that two years had passed since the adjudicator had heard the evidence. It was accepted that the adjudicator still had her manuscript notes, but the passage of two years was a factor to be considered. Anyone being asked to revisit a case two years later was at some disadvantage.

[30] In relation to the IAT's observations relating to part-time members, counsel invited the court to assume that the IAT, as the supreme tribunal in the asylum and immigration system, had acquired experience and knowledge over time which

allowed them to make those perfectly proper observations. People with other commitments might have difficulty with availability for their asylum and immigration work.

[31] As for the IAT's comment that "the adjudicator had already made certain findings in fact, which might cause her difficulty in considering internal flight", the IAT were correct to approach matters with a degree of circumspection. The adjudicator had in the past found the petitioner credible: but new evidence was now to be led. If the adjudicator was expected to treat the new evidence as severable from the previous evidence, then she would be in an impossible position. If on the other hand she was not expected to treat the new evidence as severable, then she would have difficulty altering findings which she had made two years previously.

[32] The IAT had therefore taken into account relevant considerations. Their reasons for their remit were clear.

Additional authority

[33] By letter dated 22 February 2006 (copied to the respondent), the petitioner's agents forwarded newly-issued opinions in the House of Lords in the cases of *Januzi, Hamid, Gaafar, and Mohammed* v *Secretary of State for the Home Department* (15 February 2006). These cases are now reported in [2006] 2 W.L.R. 397.

Discussion

(i) Whether there was a typographical error or infelicity of expression in the IAT's decision

[34] Applications for asylum involve difficult issues with consequences of great gravity and importance for the applicant. It is therefore of the utmost importance that

officials, adjudicators, and tribunals state clearly what they mean, avoiding ambiguity, misunderstandings or varying interpretations of their decisions.

[35] In the present case, there is a significant difference between a reference in paragraph 10(a) of the IAT's decision to "the claimant's family" and a reference to "the police". The use of the former phrase cannot in my view be regarded as a typographical error or an infelicity of expression which was intended to mean the latter phrase - *a fortiori* where the same phrase ("the claimant's family") appears in a neighbouring paragraph (paragraph 10(b)) yet counsel submitted that there should be no substituted meaning in that paragraph.

{36] That being so, it appears from paragraph 10(a) that the IAT addressed the wrong issue. The proper focus (as was clear from the adjudicator's determination) was the police. That is a significantly different concept from the claimant's family, for, as the adjudicator's determination demonstrates: (i) the police in Pakistan are state agents acting countrywide; (ii) in November 2002 there was hostile police interest in the petitioner (and her husband) because of their unauthorised elopement; (iii) if the police were to become aware of the petitioner's whereabouts in Pakistan, they would return her to her family and adopt a passive stance in the event that her family inflicted retribution upon her (defined in the CIPU report as including beatings, burnings, and killings); (iv) the countrywide police therefore have a dual role in relation to the petitioner and her husband, namely (a) that of hostile informant who, on learning of the petitioner's whereabouts would act as a channel of communication with the petitioner's family, resulting in her return to the family; and (b) that of the protector offered by the state, who would not in the circumstances give her any protection.

[37] Whether the IAT's error in paragraph 10(a) is characterised as an erroneous misrepresentation of the adjudicator's reasoning, or as the omission of factors which ought to have been taken into account such as to make their decision unreasonable (*cf. Associated Provincial Picture Houses Ltd.* v *Wednesbury Corporation* [1948] 1 K.B. 2123; *Wordie Property Co. Ltd.* v *Secretary of State for Scotland*, 1984 S.L.T. 345), their decision cannot in my view be sustained, and it falls to be reduced.

(ii) Whether there is a missing link in the adjudicator's determination

[38] In any event, I am not persuaded that there is a missing link in the adjudicator's determination. On the basis of her findings, the adjudicator was entitled to hold that there was no part of Pakistan in which there was not a reasonable likelihood of persecution: *cf. dicta* of Lord Hoffmann at page 653 of *R.* v *Immigration Appeal Tribunal, ex parte Shah* [1999] 2 A.C. 629. It was unnecessary for the adjudicator to make a finding that the police were currently actively searching for the petitioner and her husband. In my view it was sufficient that there had been hostile police interest in the petitioner and her husband, and that the police had, so far as the petitioner was concerned, the dual role outlined in paragraph [36] (iv) above, as there are many ways in which a citizen may come to the attention of the police. It cannot therefore be said that no reasonable adjudicator properly directed could have concluded, on the basis of the facts found, that internal flight did not present a realistic option. On the contrary, on the facts found, the adjudicator's conclusion fell well within the range of reasonable conclusions open to her.

(iii) The question of any remit back to an adjudicator

[39] Lest I am wrong in the conclusion reached above, and it is necessary to remit

back to an adjudicator for further findings about internal flight, I turn to consider the IAT's remit to an adjudicator other than the original adjudicator. As set out in paragraph 12 of their determination, the IAT made such a remit "for the reasons ... given in paragraph 7 above".

[40] In paragraph 7, the IAT took into account the fact that the adjudicator had found the petitioner credible. Both counsel agreed that to do so was entirely proper and reasonable. However I am unable to accept that the other factors taken into account by the IAT should have been taken into account. In particular:

(1) *The fact that the original adjudicator might be a part-time adjudicator:* There is no indication in the IAT's determination that there was available to them, in some form, information or statistics which could justify the proposition that "[f]urther delays can be caused by a remittal to a part-time member of the judiciary". Without a clear evidence-based foundation for such a proposition, it is, in my opinion, something which should not have been taken into account. One could go further and take the view that even if evidence-based, such a general proposition could not be applied to a particular adjudicator without obtaining information about the work-pattern of that particular adjudicator. But that further step is unnecessary in the present case.

(2) *The fact that the original adjudicator heard evidence two years previously and "would find it difficult to recall her impression of the oral evidence she had heard":* The adjudicator's determination of 4 December 2002 would be sufficient in my view to refresh the adjudicator's memory about the impression made by the oral evidence she had heard. However in this particular case, I understand that the adjudicator still has her manuscript notes made at the time of hearing the evidence, which might give her further

assistance. Accordingly I consider that the "difficulty in recalling" factor was a factor which should not properly have been taken into account.

(3) *The fact that the adjudicator had already made certain findings in fact, which might cause her difficulty in considering internal flight*: It is not uncommon for decision-makers to have to listen to fresh evidence or information, and to issue a second or supplementary decision or report or opinion. In the circumstances, the adjudicator would in my view have little difficulty indicating that the new evidence or information cast a different light on matters (if that were the case), and if necessary issuing revised conclusions, possibly including a revised assessment of credibility. Again, the IAT in my view took into account a factor which should not have been taken into account.

[41] In all the circumstances, I am satisfied that, when assessing the parameters of the remit, the IAT took into account factors which should not have been taken into account, and their decision was unreasonable in the sense defined in *Associated Provincial Picture Houses Ltd*. v *Wednesbury Corporation* [1948] 1 K.B. 223. Were I deciding the present case on the basis only of the remit back to an adjudicator other than the original adjudicator, I would (for technical reasons, and on joint motion of counsel) have reduced the IAT's decision in whole. However my primary decision is to grant reduction for the reasons set out in paragraphs [34] to [38] above.

Decision

[42] For the reasons given above, I shall repel the respondent's two pleas-in-law, sustain the petitioner's first plea-in-law, grant declarator that the IAT's decision dated 30 November 2004 was unreasonable and unlawful, and reduce that decision.