Case No: C4/2004/2066

Neutral Citation Number: [2005] EWCA Civ 711
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM IMMIGRATION APPEAL TRIBUNAL
(Mr M.W. RAPINET (ACTING VICE PRESIDENT))

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday,15 June 2005

Before :

LORD JUSTICE AULD
LORD JUSTICE JUDGE
and
LORD JUSTICE NEUBERGER

- -

Between :

HYSI	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

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Andrew Nicol QC and Eric Fripp (instructed by **Wesley Gryk Solicitors**) for the **Appellant**
Daniel Beard (instructed by **Treasury Solicitors**) for the **Respondent**

Hearing dates: 3rd March 2005 and adjourned for further hearing and dealt with by written submissions in May 2005

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Judgment

Lord Justice Judge:

This is the judgment of the Court.

1. The appellant is Juli Hysi. He was born on 6th April 1987. He is therefore just 18 years old. He is a citizen of Kosovo, of mixed ethnicity, the only child born to an Albanian father and a Roma-gypsy mother. The family lived in Southern Mitrovice. During the ethnic conflicts in Kosovo between 1999 and 2001, as the result of a perception that persons of Roma or mixed race were Serbian spies and collaborators, his parents were both attacked. In early 2002 the appellant's father left the family home. That was the last the appellant saw of him. With the active support of his mother, who was unable to raise the funds for them both to flee from Kosovo, he left his home and eventually entered the United Kingdom on 2nd September 2002. He sought asylum two days later. He was then 15 ½ years old. Since then he has not seen or heard of or from his mother.

2. On 14th October 2002 the application for asylum was refused. The Secretary of State was not satisfied that the appellant had established a well-founded fear of persecution. He was granted limited leave to remain until 5th April 2005, that is, until his eighteenth birthday.

3. The appeal against this decision was dismissed by a determination promulgated on 22nd July 2003 by the Adjudicator, Ms Linda Freestone. She found that the appellant was a credible witness. She summarised his evidence in paragraphs 10-21 of the determination. It was a sad story of unpleasant events. No doubt worse excesses are sometimes perpetrated. However, crucially for present purposes, the Adjudicator accepted that the appellant was a genuine refugee, who, because of his "mixed ethnicity" had suffered persecution. Those who shared his ethnicity faced similar problems. In summary, they were at risk in Kosovo, probably because of the belief among ethnic Albanians that Roma people had collaborated with the Serbs.

4. The appeal failed on the basis that although in the Adjudicator's view the appellant could not return to his own area of origin, he could "relocate" in a different part of Kosovo. This issue, sometimes described as "internal flight", sometimes as "relocation," or "internal relocation," is at the heart of the present appeal. Permission to appeal was granted on the narrow point, whether it would be right to order the return of the appellant to Kosovo on the basis of relocation or internal flight if his continuing safety from persecution would at least in part be dependent on him concealing and, if necessary, denying his mixed ethnicity.

5. In his response to the original decision to refuse his application for asylum, the appellant said:

> "I cannot return to Kosovo and pretend that I am anything other of mixed ethnic origin. As I have already said, as soon as I register with the authorities, as I will be required to do, and in a country as small as Kosovo, it would be impossible for me to hide or lie about my origin and not be found out."

6. At the hearing before the Adjudicator, when cross-examined, the appellant was asked how anyone would know he was of mixed ethnicity if he were to return, and

responded that he would be recognised. If he went to another part of the country, he would have to register, and his background would be discovered.

7. The material before the Adjudicator included a report from Mr Alex Standish, which itself referred to the UNHCR background report of March 2000. She also considered the UNHCR Position on the Continued Protection Needs of Individuals from Kosovo dated April 2002, in effect confirmed in January 2003 and the papers included the CIPU report from April 2003, to which the Adjudicator referred in some detail.

8. There was a major dispute, reventilated before us, about the accuracy of the assertion on behalf of the Secretary of State in the refusal letter that "ethnicity passes down the male line". We shall assume that this assertion was wrong, at any rate if it means that of itself the appellant's paternity would be bound to lead to the conclusion that he was not of mixed ethnicity. In fact however, the Adjudicator expressly found that the appellant was a person of "mixed ethnicity". As such he was a member of a minority group who should "continue to benefit from international protection in countries of asylum".

9. The Adjudicator further noted that security for thirty-six thousand Roma remaining in Kosovo had improved during 2002, and progress had been made with the return of some members of their community. There was a continuing reduction in ethnically motivated crime. The appellant's ability to speak fluent Albanian was a significant factor which would contribute to his security, because many children of mixed ethnicity either did not speak Albanian fluently, or spoke it with a Roma accent. Yet others came from mixed marriages in which the father rather than the mother was of Roma extraction, and therefore the surname would itself give away the individual's Roma origins. This did not apply to the appellant, who on relocation, would not be associated with a family of mixed ethnicity. There was no objective evidence to suggest that his origins would be revealed on registration or similar documents.

10. The Adjudicator was referred by the respondent to the decision of the IAT in B (Serbia-Montenegro v SSHD [2003] UKIAT 00013, and concluded that the issue for her determination was whether the appellant would be identified as somebody of mixed ethnicity if he returned to Kosovo. Complaint was made to the IAT that this narrow test failed to apply the decisions of this Court in Robinson v SSHD [1998] QB 929 and Karanakaran v SSHD [2000] 2 AER 499, in effect ignoring the test of reasonableness or undue hardship. This issue will require further examination not least because it is suggested that the IAT itself effectively made the same error.

11. The determination of the Adjudicator reads:

> "I do find the appellant could relocate in Kosovo."

Accordingly the appellant had not established the claim under the 1951 Refugee Convention. His appeal on asylum grounds was dismissed. The arguments on human rights grounds were treated as abandoned.

12. The appellant appealed to the Immigration Appeal Tribunal (IAT). It is common ground that under s 101(1) of the Nationality, Immigration and Asylum Act 2002, his right of appeal was limited to a point of law. The appeal to the IAT was determined on 30th April 2004. The Secretary of State lodged a respondent's notice in the

present appeal to this Court, arguing that no error of law on the part of the Adjudicator was identified by the appellant before the IAT. The only matters raised were matters of fact, and therefore the IAT had no jurisdiction to consider the appeal from the Adjudicator.

13. The appellant contended that errors of law by the Adjudicator were properly identified before the IAT. As already recorded, in particular the Adjudicator had failed to address the appropriate test to be applied to the "relocation" decision. Furthermore, she wrongly assumed that relocation was appropriate on the basis that the appellant should conceal his mixed ethnicity. Stripped to the essential issues, notwithstanding a number of other additional concerns ventilated in the skeleton argument, the appellant in effect resubmitted that just as the decision of the IAT itself was wrong as a matter of law, the decision of the Adjudicator was similarly flawed. Relocation did not represent either a proper, or realistic, or acceptable option, and would produce an "unduly harsh" result amounting to persecution. In particular, it was wrong in principle to disregard either the probability that the appellant would wish to identify himself as part-Roma, or that if challenged, he would be required to lie about his ethnicity, so that it would not be concealed at any rate until such time as it would become safer for it to be revealed. That time has not yet come to pass. Reliance was also placed on a report from Mr Alex Standish, said to be insufficiently addressed by the Adjudicator, which indicated that there was a real prospect that the appellant would be identified as a half-gypsy, and accordingly would end up in a refugee camp.

14. Nothing in the IAT's determination suggests that its jurisdiction to consider an appeal from the Adjudicator was challenged, and the IAT itself took no jurisdictional point. Indeed it seems reasonable to infer that it was not until this point was raised by the single Lord Justice who refused permission to appeal on the papers, that the jurisdiction point was taken up by the Secretary of State after permission had been granted at an oral hearing. It is common ground that the appeal to this Court cannot succeed unless an error of law is identified by the appellant. However as a matter of practical reality, any such error of law will encompass the same, or similar errors to those asserted against the Adjudicator. In the particular circumstances of this appeal, if an error of law on the part of the IAT can be identified, it will inevitably be linked with similar errors by the Adjudicator. Therefore the appeal to this Court should not be defeated on the basis that the IAT lacked jurisdiction to consider the appeal on the relocation issue.

15. In criticising the decision of the IAT, in essence, Mr Andrew Nicol QC submitted that the appellant would be at serious risk of persecution if, on relocation, he was forced to reveal his mixed ethnicity, and that the appellant, like any other individual, was entitled to express, or proclaim, or take a pride in his own, and indeed his mother's racial origins. To compel an individual to disown his origins interfered with a fundamental right. If the consequence of exercising the right to declare your race would lead others to subject you to severe ill-treatment, the consequence would be discrimination on the grounds of race, and persecution. Mr Nicol described freedom from racial discrimination as a core human right. We agree, and no court in this country would need persuasion that such discrimination is anathema. That said, neither the adjudicator nor the IAT suggested, or implied, or used language from which it could remotely be inferred that either believed that racial discrimination was or would be acceptable. The question they purported to address, and the solution they

found was relocation, which Mr Nicol submitted, was not properly addressed and which would in any event be unduly harsh. Accordingly he contended that we could not adopt the approach suggested by Mr Daniel Beard for the respondent that the decision of the IAT represented a series of factual findings with which this Court should not interfere.

16. The IAT examined the evidence in some detail, with particular reference to the report from Mr Standish. It analysed its implications for this appeal at paragraphs 10-14. The determination acknowledged the difficulties which would be faced by a young man of the appellant's racial origins. The IAT acknowledged the passage in Mr Standish's report:

> "In my experience in Albanian culture a mixed marriage is always considered to be exactly that and any children born from such a union are regarded as having mixed blood …"

and continued:

> "The evidence before the Adjudicator is that the appellant's father was rejected by his family because he married a Roma and that the appellant and his family mixed more with Roma in their street than with Albanians, all the more reason therefore why the Adjudicator was correct in finding that the appellant cannot return to Mitrovice."

Nevertheless the IAT was impressed with and adopted the submission on behalf of the Secretary of State that the Adjudicator was right to have followed B and itself concluded that if the appellant were returned to a different part of Kosovo he would not be exposed to danger. He would be perceived as someone who spoke Albanian and who would be able truthfully to maintain that his father was Albanian. There was no reason why his Roma origins should be suspected, or indeed why he should mix with members of the Roma community on his return.

17. The IAT concluded that there was:

> "nothing to indicate that this appellant was a Roma were he to return to … any other part of Kosovo other than Mitrovice. There is no-one who would be aware of the fact that he is the product of a mixed-marriage. The appellant was not precluded from being a citizen of Yugoslavia, nor a citizen of Yugoslavia of Albanian ethnicity, although the child of a mixed-marriage. On the evidence there would be little or no danger to him on relocation. He would be perceived as a person who speaks Albanian and would be able to maintain truthfully that his father was of Albanian ethnicity. There is no reason whatsoever why anyone would suspect him of being a Roma or why he would even seek the company of Roma … there is no reason whatsoever why the appellant should consort with members of the Roma community were he to return … Not to announce his ethnicity, or rather to emphasise his Albanian ethnicity, does not in any way hinder him in pursuing a normal

> existence … We do not consider it would be unduly harsh for the appellant to return to Kosovo."

18. This broad conclusion is criticised as irrational. Mr Nicol's starting point is Mr Standish's description that ethnicity flows down the "male line" referred to in the original refusal letter was "absolutely baseless": or as the Tribunal recorded it "bizarre". In addition, Mr Nicol pointed out that the CIPU report produced to the Adjudicator and IAT contradicted this approach by pointing out that: "Mixed families may be excluded from all communities and may be unable to resort to the relative security of mono-ethnic enclaves."

19. In our judgment, the renewed forensic attack on this aspect of the refusal letter, and the subsequent analysis of the different concepts of ethnicity and nationality in the IAT determination, has no direct bearing on the issue of relocation. Both the Adjudicator and the IAT proceeded on the basis that the appellant was indeed a young man of mixed ethnicity, who for that reason, had been driven from his place of origin. Indeed the findings are supportive of and favourable to the appellant's basic case that he would be at risk of persecution on the basis of his ethnicity if he were to be returned to the area of his origins in Kosovo. Accordingly the "male line" issue lacks the significance attached to it by Mr Nicol and neither the Adjudicator nor the IAT reached their conclusions on relocation on any exaggerated misunderstanding of its importance. More important, however, was whether the true consequences of relocation were properly analysed and addressed.

20. The IAT identified facts bearing on the question whether relocation was possible or would be unduly harsh. Mr Nicol suggested that this exercise was flawed: Mr Beard suggested that there had been a sufficient analysis, and a factual decision properly reached. The IAT accepted that it "may be necessary for the appellant to refrain from stating publicly that he is the child of a mixed marriage", but concluded that that would not preclude him from earning a living or entering into ordinary political activities or "carrying on as any normal citizen of Yugoslavia. Not to announce his ethnicity, or rather to emphasise his Albanian ethnicity, does not in any way hinder him from pursuing a normal existence. The objective evidence indicates quite clearly that in Kosovo in particular it is not uncommon for individuals to change their ethnic self-identification depending on the pressures of local circumstances". In summary:

> "(a) The appellant's father is of Albanian ethnicity. The appellant's principal, possibly sole language is Albanian.
>
> (b) The appellant is now 17 years of age and will be 18 if he is returned at the end of his limited leave to remain next year and, according to the evidence before us, has been studying English.
>
> (c) Nothing in either his appearance or his language or his accent would indicate his mixed ethnicity."

21. In these circumstances the Tribunal decided that although violence had broken out between Albanians and Serbs, and that Albanians were apparently taking the initiative in settling old scores with them, the appellant was a young man, in good health, who, despite difficulties, could make a life for himself in Kosovo: so he should relocate.

22. The concept of relocation is straightforward. An individual who for whatever reason is at risk of persecution in one part of his own country of origin may not be at risk in another part of the same country. If so, it is reasonable to expect him to move to it. If he has come to the United Kingdom and sought asylum, his application may be refused if he could live in a different part of his own country of origin where he would not be at risk. However he is not to be required to do so if this would be "unduly harsh" or "unreasonable" (Horvath v SSHD [2001] 1 AC 489: Robinson v SSHD [1998] QB 929; Karanakaran v SSHD [2000] 2 AER 499: AE & FE v SSHD [2003] EWCA Civ. 1032, [2003] INLR 475).

23. The "unduly harsh" test must be considered in context. When relocation is deemed appropriate, it usually follows that the risk of persecution in part of the country of origin has already been demonstrated: otherwise relocation as such would not arise, nor, effectively by definition, if the same risk of persecution would obtain in the intended place of relocation as in the place of origin. After a detailed analysis of the principles developed in the authorities, in AE & FE emphasis was given to the need to distinguish between:

> "(1) the right to refugee status under the Refugee Convention;
>
> (2) the right to remain by reason of rights under the Human Rights Convention; and
>
> (3) consideration to the grant of leave to remain for humanitarian reasons."

24. In relation to refugee status, and relocation, conditions in the applicant's place of origin were to be compared with those which would obtain in the proposed place of relocation. The court considered that:

> "Consideration of the reasonableness of internal relocation should focus on the consequences to the asylum seeker of settling in the place of relocation instead of his previous home (in context that means his home in his country of origin, rather than the place at which he has been living while his application was considered and decided). If it would be "unduly harsh" for the individual applicant to be relocated in a different part of his own country of origin, it would then normally follow that refugee status should be granted."

25. Mr Nicol suggested that if the appellant was required to conceal or deny his ethnicity in order to avoid ill-treatment amounting to persecution, as matter of principle it would be unduly harsh for him to be relocated, and in any event if the only way for him to avoid persecution required concealment or denial of his ethnicity, he was in truth at risk of persecution. In effect, Mr Nicol submitted that the conditions which led the appellant to seek refuge from the place where he and his mother were living in Kosovo would, unless the facts of his ethnicity remained concealed, be identical to those which would prevail if he were relocated. He submitted that this issue, and its true implications, were not addressed, or were inadequately addressed by the IAT.

26. This is the critical aspect of the appeal. It is implicit in the IAT's determination that it approached the relocation issue on the basis that the appellant's safety from ill-treatment of the kind which forced his departure from his place of origin in Kosovo required that his mixed ethnicity should not be discovered wherever in Kosovo he might relocate. The first question, therefore, is whether his ethnicity would not inevitably emerge. The IAT proceeded on the basis that unless the appellant elected to disclose it, it would not. We have serious reservations about whether it is realistic to conclude that the arrival in one part of Kosovo of a young man, albeit with an Albanian surname, aged 18 years, who has spent the past three years or so in England, would not, by a sequence of perfectly understandable questions, eventually lead to the discovery of the appellant's mixed ethnicity, his flight to England from a different part of Kosovo, and if so, too, the reasons for it. We should not have drawn the same confident inference as the IAT on this issue. Nevertheless, this was an inference of fact, not law, and our reservations on this aspect of the case would not justify interfering with the IAT's decision. Therefore we shall proceed on the basis that provided the appellant would be prepared to lie and dissemble about his ethnic origins, and successfully to maintain the lie, and provided further, as the IAT recognised, that he would prepared to avoid consorting with members of the Roma community, including presumably his own mother, discovery would not be inevitable. However we do not share the approach adopted by the IAT that that is the end of the point. The pre-conditions which we have just identified bear heavily on the reasonableness or otherwise of relocation.

27. Mr Nicol drew attention to R v IAT ex parte Jonah [1985] Imm AR 7, where Nolan J held that a Ghanaian political activist was at risk of persecution even though, by living in a remote village, he had managed to avoid ill-treatment. This however was not a relocation case, and in any event, even if it were, like all earlier authorities on this topic, it would require re-analysis in the light of Robinson and the subsequent authorities.

28. Mr Nicol then invited us to consider a number of authorities which were based on fears arising from the way in which an individual's sexual orientation would lead to ill-treatment in his country of origin. Thus in Applicant S 395 v Minister for Immigration and Multicultural Affairs [2004] INLR 233, the High Court of Australia held that a homosexual man from Bangladesh was entitled to be treated as a refugee because, although he might have avoided ill-treatment by behaving discreetly, it was not possible in Bangladesh to live in an openly homosexual relationship. In short, in Bangladesh, he suffered what we would identify as discrimination. Mr Nicol focussed on the judgment of McHugh and Kirby JJ, perhaps best summarised in the passage:

> "It would undermine the object of the Convention if a signatory country required them [refugees] to modify their beliefs or opinions or to hide their race, nationality or membership of particular social groups before those countries would give them protection … The notion that is reasonable for a person to take action that would avoid persecutory harm invariably leads a tribunal of fact into a failure to consider whether there is a real chance of persecution if the person is returned to the country of nationality … In such cases, the well-founded fear of

> persecution held by the applicant is the fear that, unless that person acts to avoid the harmful conduct, he or she will suffer harm. It is the *threat* of serious harm with its menacing implications that constitutes the persecutory conduct. To determine the issue of real chance without determining whether the modified conduct was influenced by the threat of harm is to fail to consider the issue properly."

29. Mr Nicol also referred to decision of the New Zealand Refugee Status Authority (74665/03), again in the context of a homosexual, this time from Iran, observing:

> "… The Refuge definition is to be approached not from the perspective of what the refugee claimant can do to avoid being persecuted, but from the perspective of the fundamental human right in jeopardy and the resulting harm. If the right proposed to be exercised by the refugee claimant in the country of origin is at the core of the relevant entitlement and serious harm is threatened, it would be contrary to … the Refugee Convention to require the refugee claimant to forfeit or forgo that right and to be denied refugee status on the basis that he or she could engage in self-denial or discretion on return to the country of origin or, to borrow the words of Sachs J in National Council for Gay and Lesbian Equality … to exist in state of self-oppression."

30. Both authorities were considered by the Court of Appeal in Z v Secretary of State for the Home Department [2004] EWCA Civ. 1578. The Court was considering an appeal by a Zimbabwean homosexual from the IAT's determination that his application for asylum should be rejected. Examining these cases, together with Ahmed v Secretary of State for the Home Department [2000] INLR 1, which was referred to by McHugh and Kirby JJ in Appellant S 395, Buxton LJ observed;

> "… A person cannot be refused asylum on the basis that he could avoid otherwise persecutory conduct by modifying the behaviour that he would engage in, at least if that modification was sufficiently significant in itself to place him in a situation of persecution. If the IAT in our case refused Mr Z asylum on the basis that he was required to avoid persecution they did not respect the jurisprudence of Ahmed. … Rather the IAT held … that on return to Zimbabwe Mr Z would continue in the chosen course of conduct that would not in the future, any more than it had in the past, be sufficiently likely to attract the adverse attention of the authorities."

Mr Z's appeal failed, and the argument that a core human right was denied also failed. We doubt whether cases of this kind are strengthened by an appeal to a "core" or "fundamental" human right at any rate if it is approached as if it were a kind of distinct and separate, and ultimately conclusive point. As it seems to us, if the consequence of relocation would be that an applicant would be deprived of a human right, that would impact directly on its reasonableness, or otherwise. However Buxton LJ's observations provide a measure of support for Mr Nicol's submission

that it would be expecting too much of the appellant for him to be obliged to lie and maintain the necessary lie about his origins.

31. During the oral argument Mr Daniel Beard, for the respondent, drew our attention to R (M) v Secretary of State for the Home Department [2005] EWHC 251 (Admin), a decision of Henriques J. We were subsequently supplied with the full text which was attached to Mr Nicol's written submissions in reply. This too was a case involving sexual orientation, in which the relocation alternative was considered, and applied by the adjudicator, and supported by the IAT. Henriques J could find no grounds for rejecting the reasoning (a) that the applicant would be safe anywhere outside a 50 km radius of his family home and (b) that no change of behaviour on his part would be called for in a different locality. This decision does not advance the present argument.

32. Having examined these authorities, we can now return to consider whether the Adjudicator, or the IAT, or both, sufficiently addressed the second question, which is whether it would be unduly harsh or unreasonable for the appellant to relocate, in a place where for safety's sake, he would be compelled to reject or deny his ethnicity. We have considerable reservations about the answers given by the Adjudicator (and the IAT) and whether either or both sufficiently addressed this second question.

33. We have already briefly touched on the fact that the appellant would have to explain himself and his arrival in the new location. Out of loyalty to the decision of the IAT, we have assumed that his ethnicity would not inevitably emerge. If however the truth is to remain concealed, this would probably involve the appellant leading a hermit-like existence, indeed without any social intercourse based on trust. As a stranger he is bound to be asked questions. He would presumably have to lie. Even if he could provide some colourable but some untruthful explanation for his arrival in the new location, implying that he had never left Kosovo at all, he would have to live with that lie. He might well be called on to explain his linguistic ability with English. Moreover, he would thereafter have to avoid letting slip any intimation of his true ethnicity, or his constant lies. He would simply have to continue to lie and conceal his origins, while simultaneously living with the risk that the truth would be suspected or discovered, and the fear of the consequent unpleasantness, fear based on the harsh realities of what he had seen his parents endure.

34. By way of illustration of the kind of problems which needed to be addressed, during the course of argument we canvassed the possible significance of any wish the appellant might have to find what had befallen his mother. As it seemed to us, many sons in his position, particularly once adults, if returned to their countries of origin, would feel a natural sense of love and loyalty, and a desire to contact her, and discover her fate. In passing, we note the appellant's position after relocation would be different from his position if he were allowed to remain in the United Kingdom because from here he would be able to explore his mother's fate without endangering himself. More significantly, however, this consideration serves to highlight that continuing deliberate concealment of his identity on relocation carries with it the unavoidable conclusion that this particular son should ignore his mother. Nothing in the evidence suggests that he would willingly do so. Issues like these were not addressed.

35. We well understand that, as the IAT put it:

> "Not to announce his ethnicity, or rather to emphasise his Albanian ethnicity, does not in any way hinder him in pursuing a normal existence. The objective evidence indicates quite clearly that in Kosovo in particular it is not uncommon for individuals to change their ethnic self-identification depending on the pressures of local circumstances."

"Pressure of local circumstances", in this context, Mr Nicol says, is a coy term for "fear of racial persecution": for our part, and sufficient for our purposes, it suggests fear of ill-treatment by reason of ethnicity. The fact that such precautions are forced on others in Kosovo does not extinguish the impact of these pressures on the appellant. Moreover if the language intended to convey that like others before him, the appellant was obliged to reject his own ethnicity, it would conflict with Buxton LJ's analysis in Z of the principle derived from Ahmed. With a young man of this age, given this history, we do not believe it right to make assumptions one way or another.

36. It is, perhaps, worth bearing in mind that when the appellant first responded to the original decision to refuse his application, he asserted that he could not return to Kosovo and pretend that he was anything other than of mixed ethnic origin. He also believed that it would be impossible to hide or lie about his origins and not be discovered. Neither of these assertions about his beliefs was rejected.

37. In our judgment, although the IAT accepted that things would be "very difficult" at present, neither the IAT nor the Adjudicator properly or sufficiently addressed the reasonableness or otherwise, or the extent of the harshness that would follow relocation in Kosovo of this particular young man in his particular circumstances. The true extent of the consequent problems, and his ability to respond to them, were not examined, whether they would arise from the fact that he would have to be a party to the long-term deliberate concealment of the truth about his ethnicity, but also from the understandable, continuing fear that the truth would be discovered. And, as we have endeavoured to demonstrate, the test adopted by the Adjudicator following B, "whether the appellant would be identified as somebody of mixed ethnicity returning to Kosovo" did not embrace all the relevant considerations. The IAT itself, notwithstanding the criticisms made of the Adjudicator's reliance on B, expressed no concerns about the limited nature of the test postulated to herself by the Adjudicator, and indeed appears to have endorsed it. In our judgment that is too narrow a basis for considering and providing the correct answer to the question whether it would be unduly harsh for the appellant to relocate.

38. For these reasons this appeal will be allowed, and in accordance with Part 52.10 of the Civil Procedure Rules, we shall exercise the power provided to the IAT itself under s 103B(4)(c) of the Nationality, Immigration and Asylum Act 2002 as amended by section 26 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, and remit the appeal to the Asylum and Immigration Tribunal (AIT) for substitution of a fresh decision to allow or dismiss the appellant's appeal.