OUTER HOUSE, COURT OF SESSION

[2006] CSOH 19

P771/05

OPINION OF LORD BRODIE

in the cause

Ms ANASTASIA NDAYA
(Assisted Person)

for

Judicial Review of a decision of the Secretary of State for the Home Department (made by the Glasgow Enforcement Unit)

Petitioners: Frain-Bell; Anderson Strathern, Solicitors
Respondent: Lindsay; Office of the Solicitor to the Advocate General

2 February 2006

Introduction

[1] The petitioner is Anastasia Ndaya. Her date of birth is 2 August 1968. She is the mother of four dependent children. She is a national of Angola but at present is ordinarily resident in Glasgow. The respondent is the Secretary of State for the Home Department.

[2] The petitioner arrived in the United Kingdom on 16 November 2003. She made an application for asylum on 18 November 2003. I shall refer to this as the "first claim". The application was refused. The Reasons for Refusal letter is dated 15 February 2004. The petitioner appealed the decision that she was not entitled to

asylum in terms of section 82 (1) of the Nationality Immigration and Asylum Act 2002. The appeal was heard before an adjudicator at Glasgow on 1 April 2004 (the date is given as 24 March 2004 in the petition) and refused in terms of Determination and Reasons promulgated on 30 April 2004 (6/16 of process) (the "Determination").

[3] The Glasgow Enforcement Unit informed the petitioner that she was to be deported to Angola on 19 April 2005 by letter enclosing removal directions dated 5 April 2005 (6/1 and 6/2 of process). By that time the petitioner had made further submissions to the respondent by letter from those acting for her dated 22 March 2005, enclosing material which included a "Skeleton Argument" (6/21 of process) setting out the basis of a claim for asylum. Given the previous refusal, the covering letter of 22 March 2005 requested that the submissions be considered as a fresh claim. I shall refer to the submissions made on behalf of the petitioner by way of that letter and the Skeleton Argument, as they came to be developed on her behalf in argument before me, as the "second claim".

[4] In response to the second claim an official acting on behalf of the respondent made a decision, the terms of which were contained in a letter of 14 April 2005 (6/26 of process) sent to those acting for the petitioner. Reference is made in that letter to Immigration Rule 353. It appears from that letter that the respondent had considered the second claim, which he rejected and determined that the second claim did not amount to a fresh claim. It is that decision that the petitioner seeks to reduce by way of this application for judicial review.

[5] The removal directions set for 19 April 2005 were cancelled in order to allow the petitioner time to consider. Fresh removal directions were set for 25 April 2005 but this petition was presented on 20 April 2005 and, presumably by reason of that fact, the fresh removal directions were also cancelled. As at the date of the

presentation of the petition, the petitioner was detained in Yarlswood Detention Centre but as at 22 December 2005 when the petition came before me for a first hearing the petitioner was at liberty.

[6] The matter was not entirely clear from a consideration of the averments in the petition and the remedies sought there, but in the course of what were succinct and helpful submissions counsel for the respective parties identified that what was under challenge was the decision that the second claim was not a fresh claim. A consequence of that decision is that with the rejection of the submissions contained in the second claim the petitioner has no further rights of appeal. Counsel were, however, agreed that the decision under challenge was one that was susceptible to judicial review.

[7] While in her petition the petitioner seeks a number of remedies, the only one that came to be insisted upon is that which appears in paragraph 3 (ii): reduction of a decision made on behalf of the respondent and intimated to those acting on behalf of the petitioner by letter dated 14 April 2005.

[8] At the hearing before me the petitioner was represented by Mr Frain-Bell, Advocate. The respondent was represented by Mr Lindsay, Advocate. The respondent had lodged answers to the petition. At the beginning of the hearing Mr Frain-Bell moved an amendment to the petition, one purpose of which was to introduce reliance upon a country guidance case, *FP (Return-Cabinda-Non-Luandan) Angola CG* [2003] UKIAT 00204. Mr Lindsay offered no opposition to that motion and I allowed the amendment.

Immigration Rule 353

[9] The Immigration Rules are made by the respondent in accordance with sections 1 (4) and 3 (2) of the Immigration Act 1971 for the guidance of those

entrusted with the administration of immigration control. One such person is the official who made the decision of 14 April 2005. Rule 353 is in the following terms:

> "When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:
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> > (i) has not already been considered; and
> >
> > (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection."

The appeal to the adjudicator from refusal of the first claim

[10] The statutory framework for the petitioner's appeal against refusal of the first claim was provided by the Nationality, Immigration and Asylum Act 2002. She founded on both branches of the ground that is found in section 84 (1)(g): removal of the petitioner being a breach of the United Kingdom's obligation under the Refugee Convention and illegal under section 6 of the Human Rights Act 1998. Thus, as is very familiar, what the petitioner was contending was that she was a refugee: that is a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, was outside the country of her nationality and was unable or, owing to such fear, was unwilling to avail herself of the protection of that country. Accordingly, she argued that to remove her from the United Kingdom would be contrary to the duties imposed on the United Kingdom by the Convention Relating to the Status of Refugees of 1951

and the 1967 Protocol to that Convention, in that among these duties is that set out in Article 33.1 which is in these terms:

> "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

She was further contending that to remove her to Angola would be in breach of her human rights as guaranteed by Article 3 of the European Convention on Human Rights of 1950 and would therefore be unlawful in terms of section 6 of the Human Rights Act 1998. Article 3 of the 1950 Convention provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

[11] In support of her contentions that she was a refugee and at risk of ill treatment if returned to Angola, the petitioner relied on a history of being a political activist who had been detained and ill-treated while in detention. She further relied on her status as a single woman returning to Angola, having been refused asylum in the United Kingdom. Putting the matter shortly, by reason of a number of difficulties with the petitioner's evidence, which he discusses in the Determination, the adjudicator disbelieved the petitioner's account of the events that she said had led her to leave Angola and her reasons for doing so. As far as the petitioner's status as a single woman was concerned the adjudicator did not accept that there was a real risk of the petitioner suffering ill treatment amounting to persecution or a breach of article 3 had been made out.

[12] As appears from the adjudicator's findings, the petitioner was born in the province of Lunda Norte in Angola. She went to Luanda in 1990 and thereafter lived there. Another province of Angola is Cabinda. The petitioner has never lived in

Cabinda. There is no reason why it should be thought that she comes from that province. There is an independence movement in Cabinda. The movement is engaged in rebellious military activity against the Angolan government. The petitioner claimed to have joined a political party, the FIDUA, in 2000. The FIDUA is not a specifically Cabindan party but is favourable to the granting of independence to Cabinda.

Submissions

Submissions for the petitioner

[13] Mr Frain-Bell submitted that the petitioner faced a substantial risk (of such a nature as to be relevant in terms of the Refugee Convention and Article 3 of the Convention), were she to be obliged to return to Angola, which was simply not addressed in the decision letter and that, accordingly, the decision was unreasonable and should be reduced. He explained that his focus was on the petitioner's status as a single woman returning to Angola. His starting point was paragraph 25 of the Determination where the adjudicator, although he later went on to find the petitioner's account exaggerated, did accept that the petitioner could have been detained and ill-treated because she was carrying papers linking her political party to Cabindan nationalists. Mr Frain-Bell turned to the respondent's letter of 14 April 2005. At page 2 of the letter there is reference to the controls at Luanda airport being thorough but not specifically aimed at failed asylum seekers or any particular ethnic or tribal group. Failing to secure asylum abroad, the letter continues, would not automatically result in an individual being of interest to the authorities. Mr Frain-Bell suggested that this finding was wrong and might not have been arrived at had the official acting for the respondent had regard to the country guidance to be found in *FP (Return-Cabinda-Non-Luandan) Angola CG supra*. The petitioner was a single mother of four dependant children (and vulnerable for that reason alone) who possibly had some

opposition political party involvement. She was, said Mr Frain-Bell, very much at risk, particularly but not exclusively at the point when she passed through the airport at Luanda where she would likely to be subject to hostile interrogation. Mr Frain-Bell referred me to what appeared at paragraphs 24 and 27 of the judgment in *FP*. The adjudicator had not considered what would happen to the petitioner on her return. He had proceeded upon the basis that she would not attract particular attention at the airport. As the information reproduced in *FP* indicated, that was wrong. She would face questioning as a failed asylum seeker and an opponent of the government who had had an association with a rebel group. As a single woman she was particularly vulnerable. That combination of factors, taken with the guidance in *FP*, had not been considered by the adjudicator. Accordingly, the petitioner's application of 22 March 2005 should have been accepted as a fresh claim for asylum.

Submissions for the respondent

[14] Mr Lindsay moved me to uphold the second plea-in-law for the respondent and to dismiss the petition, on the basis that the decision of 14 April 2005 was lawful and reasonable. In the event that the court was against him Mr Lindsay submitted (as came to be accepted by Mr Frain-Bell in a brief second speech) that the correct and only necessary remedy for the petitioner was reduction of the decision of 14 April 2005. If that decision were to be reduced then the respondent would require to consider anew whether a fresh application for asylum had been made. If it were decided that there had been a fresh application for asylum then the respondent would have to decide whether to call the petitioner for interview. In the event of refusal of the claim then it would only be once the petitioner's statutory rights had been exhausted that any question of removal from the United Kingdom would arise. It was not for the court to decide in respect of matters in which it had no jurisdiction.

[15] Mr Lindsay identified the issue before the court as being whether any reasonable decision-maker could have concluded that the petitioner had not made a fresh claim for asylum in terms of Immigration Rule 353. He indicated that he intended to approach that question first by looking at Rule 353, then by considering what was the significance of the country guidance case, *FP (Return-Cabinda-Non-Luandan) Angola CG*, for the decision that was under review, and finally to respond directly to what had been submitted by Mr Frain-Bell.

[16] Mr Lindsay referred me to Immigration Rule 353. The text, he advised me, was relatively recent. It replaced the former Rule 346. It had been formulated to take account of the decision in *R* v *Secretary of State for the Home Department , ex parte Onibiyo* [1996] QB 768. There was, however, no material difference in effect as between the new Rule 353 and the old Rule 346, and accordingly what was said in *Onibiyo*: that repeating a claim that had already been made even with some elaboration or addition was not a fresh claim for asylum; still applied: *R (on the application of Mohamed Golfa))* v *Secretary of State for the Home Department* [2005] EWCA 2282, *R (on the application of Saunders)* v *Secretary of State for the Home Department* [2005] EWCA 1957. Mr Lindsay pointed out that in *Onibiyo supra* at 785A the Master of the Rolls, while expressing a doubt, accepted that the decision as to whether an application was or was not a fresh claim for asylum was for the Secretary of State and, accordingly, only reviewable by the court on *Wednesbury* grounds: *Associated Picture Houses Ltd* v *Wednesbury Corporation* [1948] 1 KB 223. In the present case he understood Mr Frain-Bell to have conceded that this was the proper approach, rather than treating the matter as one of precedent fact. It was Mr Lindsay's submission, under reference to what had been said by the Master of the Rolls in *Onibiyo*, that the second claim was no more than an elaboration of the first

claim. It was not a fresh claim. What it founded on was fear of what might happen at the airport to a returning single woman. The adjudicator had found what the petitioner had had to say about her political affiliation to be incredible. It was therefore not necessary to consider what might happen to a returning political activist. It was necessary to consider what would happen to a returning single woman but that had been something considered by the adjudicator.

[17] Mr Lindsay turned to the status of a "country guidance case". This, he indicated, was explained in paragraphs 21 to 23 of *R (Iran)* v *Secretary of State for the Home Department* [2005] EWCA 982 as follows:

> "21. Three matters require more detailed treatment. The first relates to the practice of the IAT of giving 'country guidance' ('CG') decisions. This practice has proved to be so useful that it is now firmly embedded in the recently published Practice Directions of the AIT in these terms:
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> > '18.2 A reported determination of the Tribunal or of the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal or the IAT that determined the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:
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> > a) relates to the country guidance issue in question; and
> >
> > b) depends upon the same or similar evidence.
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> 18.3 A list of current "CG" cases will be maintained on the Tribunal website. Both the respondent and any representative of the appellant in an

appeal concerning a particular country will be expected to be conversant with the current "CG" determinations relating to that country.

18.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for review or appeal on a point of law.'

22. The principle that like cases should be treated in a like manner is another way of describing what Lord Hoffmann described in *Arthur J S Hall & Co* v *Simons* [2002] 1 AC 615, 688H as 'the fundamental principle of justice which requires that people should be treated equally and like cases treated alike.' See also Sedley LJ in *Shirazi* v *SSHD* [2003] EWCA Civ 1562 at [29] and [31]; [2004] INLR 92 when he described as 'inimical to justice' the inconsistency that was evident when different decisions were taken by different panels of the same appeal tribunal on very similar facts.

23. Although AIT Practice Direction 18 was not of course published during the period with which we are concerned in these appeals, and the arrangements for publishing 'CG' determinations have recently become more sophisticated, it sets out usefully what has been the purpose of issuing these determinations ever since such they were first introduced about four years ago. They represent an institutional response by the IAT to the need identified by Lord Woolf MR and Brooke LJ in their judgments in *Manzeke* [1997] Imm AR 524. Lord Woolf said:

> 'It will be beneficial to the general administration of asylum appeals for Special Adjudicators to have the benefit of the views of a Tribunal in other cases on the general situation in a particular part of the world, as

> long as that situation has not changed in the meantime. Consistency in the treatment of asylum-seekers is important in so far as objective considerations, not directly affected by the circumstances of the individual asylum-seeker, are involved.'

Brooke LJ added:

> 'It often occurs in asylum appeals that Special Adjudicators are asked to consider reports about conditions in the different countries to which asylum-seekers may return. Sometimes different Special Adjudicators reach different conclusions on the same, or much the same, evidence. This is an unfortunate fact which has led appeals and applications in such cases to be pursued right up to this court in recent months.
>
> In those circumstances the Tribunal may perform a valuable function if it decides in any given case to review all the reports available to it relating to a particular country over a particular period of time, so as to give helpful guidance to Special Adjudicators as to how they should approach that evidence in a future case.'"

[18] As appears from paragraph 22 in *R (Iran) supra*, Mr Lindsay continued, the mischief which the issuing of decisions bearing the initials "CG" is intended to cure is inconsistency as between different panels of the same appeal tribunal on very similar facts. Within the Asylum and Immigration Tribunal a failure to apply an apparently applicable country guidance case or to show why it does not apply to the case in question may be treated as an error of law. However, this is only true within the Tribunal. The respondent, Mr Lindsay contended, had to proceed on the basis of the most up to date information available as well as all other considerations. It may of course be that a country guidance case will contain the most recent relevant

information but that is not necessarily so. In any event, what appeared in *FP* as to the risk facing returnees did not apply to all of Angola. It related only to Cabinda and the problems faced by those returning to Luanda who could be identified as having originally come from Cabinda, whereas the petitioner had never been a resident of that province. As appeared in paragraph 28 of the judgement in *FP* the Immigration Appeal Tribunal was not suggesting that to require non-Luandans to return to Luanda would necessarily breach their article 3 rights. Moreover, *FP* was not as recent as the U.S. Department of State Country Report on Angola, number 6/11 of process, which had been put forward in support of the representations made on behalf of the petitioner. *FP* was not referred to by the adjudicator because it was simply not relevant and for the same reason nothing turned on it not being mentioned in the respondent's decision letter.

[19] Mr Lindsay then turned to respond briefly to what had been said by Mr Frain-Bell in developing his argument that the representations had amounted to a fresh claim for asylum. There was, Mr Lindsay submitted, no substantial difference between the second claim and the first claim, as that first claim had been developed before the adjudicator on appeal. The ingredients were the same: the petitioner's fear of ill treatment, her vulnerable position as a woman and her history of political activity. Mr Frain-Bell had accepted that the petitioner's fear of ill treatment had previously been considered but had contended that her fears specific to the circumstances of her return (through the airport at Luanda) and her political beliefs had not been considered. Mr Lindsay conceded that it was correct to say that the adjudicator in his Determination on the appeal against refusal of the first appeal had made no mention of the petitioner's political beliefs but that was because there was no reason to do so in relation to assessment of risk. As appeared from the Determination

and, in particular, paragraphs 18, 20(g) and (h), 21, and 25 to 32, while accepting that it could be true that she had on one occasion been detained and ill-treated, the adjudicator did not believe the account that the petitioner had given of her political activities. As appeared from paragraphs 33 to 35, the adjudicator had considered the risks to the petitioner as a woman (as opposed to a woman who was a political activist) and, for the reasons that he gave, had not accepted that there was a real risk to the petitioner on her return. It was accordingly not unreasonable for the respondent not to accept that the second claim, which relied on the same elements as the first claim, was a fresh claim for asylum.

Discussion and decision

[20] The decision that the petitioner seeks to bring under review is what is referred to in the judgement of the Master of the Rolls in *Onibiyo* as a decision taken pursuant to a refusal of asylum. The relevant refusal was that of the petitioner's first claim on 15 February 2004. That refusal, having been appealed and the appeal refused by the adjudicator on 30 April 2004 is no longer in issue. Rather what is in issue is how that second claim should have been treated by the respondent. In order to succeed in her application the petitioner requires to demonstrate that the respondent, through his official, acted unlawfully in refusing to consider the second claim as a fresh claim for asylum. Putting the matter that way reflects the agreement between the parties to the petition, following what was said by the Master of the Rolls in *Onibiyo supra* at 784C to 785D, that the judgement whether a fresh claim for asylum has been made was primarily one for the respondent to make and is only susceptible to challenge on what in *Onibiyo* was referred to as a *Wednesbury* ground (cf *Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 S.L.T. 348).

[21] Before going further it is convenient to say something about the Immigration Rules and about the decision of the Court of Appeal in *Onibiyo supra* with a view to setting out explicitly what I took to be implicit in the submission by Mr Lindsay and the response to that submission by Mr Frain-Bell. The status of the Immigration Rules is discussed in Macdonald's *Immigration Law & Practice* (sixth edition) at paragraphs 1.48 to 1.52. Mention has also recently been made of their status in the judgement of the Court of Appeal given by Laws LJ in *Huang* v *Home Secretary* [2005] 3WLR 488 at 516B *et seq*. The Rules are made by the Secretary of State for the Home Department subject to parliamentary approval: Immigration Act 1971 sections 1 (4) and 3 (2). They are amended from time to time. They set out the details of immigration policy: *Huang supra* at 516B, in the form of rules of practice for the guidance of immigration officials. At least in the context of judicial review they are not rules of law: Macdonald *supra* at paragraph 1.52. What amounts to a fresh claim for asylum is now defined by Rule 353. Prior to 18 October 2004 when, by HC 1112, it was replaced by Rule 353, what amounted to a fresh claim was defined by Rule 346. However, no such guidance had been issued by the Secretary of State when *Onibiyo* was before the Court of Appeal. As appears from the judgement of the Master of the Rolls in *Onibiyo*, there was then a Rule 346 but it was materially different in its terms from the amended Rule 346 which came to be replaced by Rule 353 on 18 October 2004. Indeed, one of the issues before the Court of Appeal in *Onibiyo* was whether, as a matter of law, a person may during a single uninterrupted stay in the United Kingdom make more than one claim for asylum: *Onibiyo supra* at 780H. It was argued on behalf of the Secretary of State in that case that once a person made a claim for asylum and it had been refused and he had unsuccessfully exercised his rights of appeal, that exhausted his legal rights. The Master of the Rolls, in a

judgement with which the other members of the Court agreed, rejected that argument: *supra* at 781F to 782G. He then proceeded to consider what amounted to a fresh claim and at 783H to 784A said this:

> "The acid test must always be whether, comparing the new claim with that earlier rejected, and excluding material on which the claimant could reasonably have been expected to rely in the earlier claim, the new claim is sufficiently different from the earlier claim to admit of a realistic prospect that a favourable view could be taken of the new claim despite the unfavourable conclusion reached on the earlier claim."

The correctness of that test was accepted by the Secretary of State who restated it for the purpose of giving guidance to officials in the amended Rule 346. It was that rule that was current at the relevant date in the case of *R (on the application of Mohamed Golfa)* v *Secretary of State for the Home Department supra* whereas by the relevant date in *R (on the application of Saunders)* v *Secretary of State for the Home Department supra* the amended Rule 346 had been replaced by the essentially similar Rule 353 which applied at the relevant date in the present case. As I understood it, why Mr Lindsay took me to this series of cases was to demonstrate that whereas the test for a fresh claim which was to be applied by the official who made the decision intimated by letter dated 14 April 2005 was to be found in Rule 353, for my purposes what amounted to a fresh claim was to be determined by reference to *Onibiyo*. This was the approach that had been adopted by Moses J in *Mohamed Golfa* and by Ouseley J in *Saunders*. While the purpose of drafting 353 in the terms it was drafted can be taken to have been that it fully reflected what had been said by the Master of the Rolls in the leading case, it was the *Onibiyo* test that was to be applied by this

court when considering an application for judicial review. I did not take this to be in any way contentious. Accordingly it is the *Onibiyo* test that I shall apply.

[22] I turn now to country guidance cases and to the relevance of *FP (Return-Cabinda-Non-Luandan) Angola CG supra*. The petitioner contends that the respondent erred by failing to assess her second claim in the light of the guidance to be derived from that case. It is not entirely easy to see how this branch of Mr Frain-Bell's argument fits into a challenge to the legality of the determination that the second claim did not amount to a fresh claim. The case was not referred to in the Skeleton Argument which was provided in support of the second claim. Equally, it does not appear to have been cited to the adjudicator or referred to by him in the Determination although it had been decided before the date of the petitioner's first claim (the decision in *FP* bears to have been notified, presumably to the parties involved, on 16 July 2003 but I was not advised when it was placed on the Tribunal website). However, these were not points taken by Mr Lindsay and given my opinion on the points that he did take, it is sufficient to dispose of this aspect of the case by stating what that opinion is.

[23] The purpose and importance of country guidance cases in what is now the Asylum and Immigration Tribunal is very fully explained in *R (Iran) supra*, in the passage that I have quoted and in subsequent paragraphs. I agree with Mr Lindsay's submission under reference to that decision. The respondent may have regard to the synthesis of information which is contained in a country guidance case if, in his judgement, it is appropriate to do so but it cannot be said that he has necessarily erred or acted irrationally if he chooses not to. Indeed, as Mr Lindsay argued, there may be cases where because more up to date information had come to hand that it would be irrational not to have regard to that information in preference to anything that

appeared in a country guidance case. Granted, a country guidance case has a special status within the Tribunal. Otherwise it does not have special status. In any event, for the reasons given by Mr Lindsay in the course of his submissions, the guidance contained in *FP* does not relate to the circumstances of the petitioner. She does not come from Cabinda. There is no reason to believe that she would be mistaken for someone coming from Cabinda. She would not be required to go to Cabinda. *FP* simply is of no relevance to any determination in relation to the petitioner's claims.

[24] Finally, on what is the issue in the case, on comparing the petitioner's second claim with the previously rejected first claim, I cannot find that the second claim is sufficiently different from the first claim to admit of a realistic prospect that a favourable view could be taken of the second claim despite the unfavourable conclusion previously reached. I accept the submission by Mr Lindsay that the essential ingredients of the two claims are the same. Of course the view that I would come to on comparing the two claims, which I have just expressed, is not strictly to the point. The issue is whether I consider that the respondent acted unreasonably in not finding the second claim to be sufficiently different from the first claim to admit of a realistic prospect that a favourable view could be taken of the second claim despite the unfavourable conclusion previously reached. Looking to the two claims, I cannot find the respondent to have made a decision that was unreasonable in the sense that that word is used in *Associated Picture Houses Ltd* v *Wednesbury Corporation supra* and *Wordie Property Co Ltd* v *Secretary of State for Scotland supra*.

[25] I shall dismiss the petition. I shall reserve all questions of expenses.