EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

Lord Carloway	**[2009] CSIH 77**
Lord Hardie	XA147/08
Lord Philip	XA156/08

OPINION OF THE COURT

delivered by LORD CARLOWAY

in the applications for leave to appeal

by

TR and NR (A.P.)

Applicants;

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent:

Act (TR): Caskie; Drummond Miller LLP (for Peter G Farrell, Glasgow)
Act (NR) Devlin; Drummond Miller LLP (for Hamilton Burns & Co., Glasgow)
Alt: Lindsay; Solicitor to the Advocate General

8 October 1009

Background

[1] The applicants are spouses. They are nationals of Afghanistan who claimed asylum on 16 January 2007. Leave to enter and remain in the United Kingdom was

refused by the respondent on 12 February. Appeals to the Asylum and Immigration Tribunal were refused by an Immigration Judge on 10 July 2007. Reconsideration was ordered by the AIT on 24 January 2008. But the appeals failed again on 26 June 2008 after a second stage reconsideration by a Designated Immigration Judge. Leave to appeal to the Court was refused by the AIT on 23 July 2008. A hearing on the subsequent applications to the Court took place on 8 October 2009.

[2] The applicants' account is set out in short compass in the determination of the DIJ, who reconsidered the case, as follows:

> "7. [TR] set up an English language and computer school in Kabul. He met [NR] when she attended his English grammar lessons. The [applicants] were engaged to be married on 4th June 2006. Six weeks later [NR]'s father was visited by a man named Haroon. He wanted to take [NR] as his wife. He had been following her. They did not know each other. He told [NR]'s father that he was of good family and was the paternal cousin of a police chief. [NR]'s father told him that she was engaged. Haroon threatened him and said he would abduct [NR]. [NR]'s father telephoned [TR] and told him to bring the wedding forward. The [applicants] were married on 27th August 2006. On 5th September 2006 the [applicants] were at [NR]'s family home. Masked gunmen came into the house and attacked [TR] and beat him. [NR]'s father was shot in the hand. He recognised Haroon. Neighbours came to the house because they had heard the shot and the gunmen ran away. [NR]'s father was in hospital for three months. The [applicants] decided that their lives were in danger so they went to live with an uncle in Jalalabad. The uncle of [TR] sold a house in Kabul and used the proceeds to pay an agent to smuggle the two [applicants] to safety. They went to Pakistan and then flew to France. They met an agent there and were put onto a lorry which took them to the United Kingdom and when they were in the United Kingdom they discovered that Haroon was actually Commander Zalmay Toofan who is a warlord associated with an influential politician known as Abdul Radd Al-Rasul Sayyaf. Because of this the [applicants] claim they would not be safe in any part of Afghanistan".

[3] The original IJ had disbelieved the applicants' account; notably that a man called Haroon had sought NR's hand in marriage and had threatened her father. She did not accept that an attack had occurred on 5 September or that there was any link between the applicants and the warlord Toofan. In rejecting the account of the attack, the IJ concluded that Toofan could not have launched an attack of this type in the particular area. She also held that the account of the attack lacked plausibility because, amongst

other things, there was no satisfactory explanation of: (i) why the attack had failed, given that the attackers were numerous, armed and masked; (ii) how Haroon came to be identified, if masked; and (iii) how the neighbours were able to repel the attack. Although she made extensive reference to the background material presented, the AIT, which heard the subsequent application for reconsideration, determined that the IJ had erred in law in failing to explain how her conclusions were consistent with parts of that material, including a report from an expert in Afghanistan affairs, which appeared to state that: (i) attacks on householders by militia were occasionally repelled by neighbours; and (ii) Toofan had command of 2,000 militia and was a man of considerable power and influence in and around Kabul.

The Reconsideration

[4] The reconsideration by the DIJ reached the same result as the original IJ; that the applicants' account had to be rejected as implausible. It had been the applicants' evidence that, after the attack, they had fled to Jalalabad, where they remained for some months before crossing the border into Pakistan. NR's father was said to have spent three months in hospital before going to Iran. TR's own family had left for Pakistan about a month after the incident. However, at his interview on 2 February 2007, TR had said that he had not known where his own family were and that his father-in-law was still in Kabul.

[5] The applicants produced a document, which purported to be a signed and sealed letter dated 27 January 2007 from the Commander of Region 8 under the auspices of Afghanistan's Ministry of the Interior. This was said to have been obtained by TR's uncle, who had lodged a report of the attack with the police on the day after it occurred. The letter is on notepaper bearing a printed seal at the top. It reads (in translation):

"This is to certify that on September 5, 2006, i.e. 9 days after the marriage of a young couple, the father of the bride...was shot and injured in a fight with a man who wanted to abduct the newly wed bride [N].

It is reported that [N], engaged to a man called [T], had been followed and harassed by a gang of armed men on red motorbikes when travelling to [P]. She explained the situation [to] her father and fiancé, but they did not take the matter seriously. After some time, a gang of armed men under the command of a man called Haroon visited [N]'s father and courted her. [N]'s father, while apologizing, had stated that [N] was already engaged and belonged to another man. They got angry and the suitor threatened to kill the family if his proposal was not accepted. He expresses *(sic)* his wish to have an urban wife in addition to his two rural wives. He pointed out that the girl must accept his offer of marriage.

[N]'s father realized that this gang was dangerous, so he arranged the wedding ceremony in a couple of days to get rid of the armed suitor. [N] and her fiancé [T] got married on 27th of August 2006. The incident, however, got out of hand. A couple of days later, around midnight, when the couple were visiting the bride's father, a gang of 10 armed men attacked the house of [N]'s father located in [K], the district 8 of Kabol and tried to kill [N]'s husband and take her with them. But [N]'s father resisted against their wish and made a great effort to break their plan. The parties became involved in punching and kicking, during which [N]'s father was shot and seriously injured in the left arm. Upon hearing the sound of the gun shot, neighbors *(sic)* came out of their homes and consequently the armed men fled.

After several minutes, the police officers arrived...

After further investigation, it was found that the armed men were under the command of one of the local war lords in the region of "Kuhband Darreh Pashei", who is also supported by a number of other local war lords.

The...war lord has threatened the family that they will attack again to kill the young couple.

Consequently, the young couple have left Kabul since the night of the attack and fled to an unknown place. ...[N]'s father was hospitalized for three months and then left Kabol after being discharged.

Yours Sincerely".

[6] The applicants also produced a letter, which purported to be signed by five persons and a local solicitor, stating (in translation):

"We, the residents of... [K] region, district 8 of Kabul, certify that around midnight on September 5, 2006, three armed men entered our neighbor's *(sic)* house...by force in order to kill his son-in-law [T] and abduct his bride [N]. A fight broke out between the armed men and [N]'s father during which his left arm was seriously injured. The armed men fled from the fight scene. The police officers arrived at the fight scene several minutes later and took the injured man to the hospital. In the morning, we learned that the young couple, whom the armed men aimed to kill, had left Kabol right after the incident while it was dark".

[7] The expert report contained a graphic account of Toofan as "one of the most powerful warlords in Kabul with more than 2,000 troops at his disposal". However, the report quoted an Afghanistan News Centre description of him in 2004 as one of many militia commanders who had been recognised by the UN backed Disarmament Demobilisation and Reintegration (DDR) Programme for disbanding his militia and reforming. He was said to be:

> "lying on a soft Afghan carpet and traditional pillows in the garden of his formidable fortress-like house on the outskirts of Kabul, surrounded by flowers and imported singing birds...working on a plan to get rich".

The plan to get rich involved obtaining UN money to set up a paper factory (*sic*). He had retained a personal militia and had considerable power, influence and wealth.

[8] The background material also included a report from Human Rights Watch dated 29 July 2003 covering Human Rights Abuses in Southeast Afghanistan. It referred to Toofan being a military commander in Kabul province, loyal to Abdul Rabb al-Rasul Sayyaf, a former Northern Alliance official, and close to the governor of the province. It gave an account of West Kabul being a particularly dangerous area plagued by robberies carried out by the local police and soldiers under the command of Sayyaf. But the report continued with an anecdote from a local resident that: "We stop them robbing by raising the alarm and shouting.... They are armed men... former mujahidin". Robberies in 2003 in this area were attributed to Toofan. The report also published the comments of a farmer in a neighbouring country area, where the militia were based, to the effect that he kept a dog which barked if the militia arrived. He could then raise the alarm and secure assistance from neighbours.

[9] The DIJ commenced her determination by stating (para 78) that the appeals hinged on credibility and that she did not believe the applicants' account as a generality. She analysed matters as follows:

"81. We have seen objective evidence on Commander Toofan. He is a violent man, he is powerful, he has 2,000 militia working for him. He told [NR]'s father that he was called Haroon and was a good man with a good reputation and he wanted to ask for his daughter's hand in marriage. When he was refused he went away making threats. In the meantime the two [applicants] got married but after that he came with fourteen armed men and attacked the...family home, shooting the...father in the hand. When neighbours appeared to see what the shooting was about, he ran away with his men. [NR] stated...that powerful men, if they see a woman walking along the street that they like the look of will stalk them and do everything in their power to get them. No satisfactory explanation has been given as to why Commander Toofan did not just go into the...home, tell them who he was and insist on taking [NR]'s hand in marriage. This is not the type of man who would bother lying and saying that he is of good character and of good family. Based on the objective evidence this is a man who will use violence when he wants something and will get that something regardless. If he is so well known why was he not recognised when he said his name was Haroon?

82. The evidence is that he did not want the family to know who he was because of his bad reputation but again it is clear from the objective evidence that this is a man who is proud of his bad reputation. None of this is believable. The men who supposedly attacked on 5th September 2006 wore masks and yet [NR]'s father recognised Haroon. This is not credible.

83. There is a discrepancy in [TR]'s evidence as to where [NR]'s family was when he was interviewed in February 2007... When this was pointed out to him he [said] that his father in law did not go to Iran until after the interview.... This is 5 months after the supposed attack. [NR] said that at the end on January they received an e-mail from her father in Iran. That is another contradiction. This attack is the crux of the account and one of the reasons that I do not believe it happened is because of these discrepancies.

84. The background does state that if there are attacks by warlords neighbours can ward off these attacks. In this case there were armed masked men and I find that it is not credible that neighbours coming on the scene would have chased them away.

...

86. With regard to the letter by the Commander...I have been told that the uncle who reported the attack gave the information to this Commander. The attack supposedly took place on 5th September 2006 but the letter is dated 27 January 2007. The style of the letter throws doubt as to its validity. No satisfactory explanation has been given as to why it is dated 4 months after the supposed incident. I do not believe that this letter is genuine and I am giving it little weight. I am also giving little weight to the self serving letters from the neighbours. I find that the core of the account is untrue and that these documents are therefore unreliable.

87. Considering the objective evidence on Commander Toofan, I have noted that he is now working for the UN and is supporting the coalition forces. It is not credible that a man in his position would put this in jeopardy because he

> liked the look of [NR] who is now married. He did not even know her and this happened two years ago. I do not believe either of the [applicants] will be at real risk if they are returned to Afghanistan today. If someone called Haroon did want to marry [NR] and tried to take revenge because he was unable to do so, that could perhaps be believable... I do not believe that this man, if he exists, is really Commander Toofan. The [applicants] state that they are afraid to return because they fear Toofan. I do not believe that Toofan has had any interaction with these [applicants]. I find that the whole account is fabrication.
> ...
> 89. With regard to the expert report... [The expert] has believed what he has been told about the [applicants] and their account. As I do not find the account to be credible I find that I can give little weight to his report. He has based his report on the [applicants] being targeted by Commander Toofan. As I do not believe that Toofan was involved I find that his report is based on untruths and I cannot give it weight. [NR] has said that Toofan tracked her to Jalalabad. This was not mentioned in her original evidence. She is trying to bolster her account. This goes against credibility.
> ...
> 91. I find that there is no continuing threat to the two [applicants] in Afghanistan. ...Credibility is an issue and section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 is engaged as they could have claimed asylum in France but instead they came to the United Kingdom. ...No satisfactory reason had been given as to why [the applicants] came to the United Kingdom, apart from the fact that [TR] speaks good English. This is not a reason for claiming international protection in the UK. He stated that he preferred to come to the United Kingdom. This is not the statement of a genuine asylum seeker".

Submissions

[10] The applicants and respondent lodged written submissions, which were amplified in oral argument. The detail of the submissions is contained in the written versions. Only a summary is given here.

APPLICANTS

[11] The general proposition was that the DIJ had erred in law in finding the applicants' account of the behaviour of Commander Toofan to be incredible. When the Court was looking at fundamental human rights, it ought not to overlook even minor flaws in an IJ's reasoning (*R* v *Ministry of Defence, ex parte Smith* [1996] QB 517, Simon Brown LJ at pp 537-8). There were three points to be made. First, the

DIJ's reasons for finding that Toofan would not have behaved as claimed were inconsistent with each other. Thus, in paragraph 81 (*supra*) the DIJ had described Toofan as a violent man who would simply have seized NR but in paragraph 87 *(supra)* she referred to him as a person would not do something to jeopardise his reputation in the eyes of the United Nations. Secondly, the DIJ had erred in failing to engage in "rational speculation" in favour of the applicants (Symes & Jorro: Asylum Law and Practice, para 2.46). The assessment of credibility required to be handled with great care and sensitivity. A lack of credibility on peripheral, or even major, matters was not to be made an easy excuse for dismissing a claim by an applicant coming from a state in which persecution was an established fact of life (*Asif* v *Secretary of State for the Home Department* 2002 SLT 307, Lord Coulsfield delivering the Opinion of the Court at 311-2; and see generally *HA* v *Secretary of State for the Home Department* 2008 SC 58, Lord Macfadyen delivering the Opinion of the Court at para [17]). The DIJ ought to have speculated that Toofan's behaviour prior to the attack might have been because of his desire to protect his reputation. The DIJ had failed to use due care in scrutinising Toofan's conduct to see whether it was truly discrepant. Thirdly the DIJ had erred in that her findings about how Toofan would have behaved were based on personal conjecture of a type to be cautioned against (see Bingham: "The Judge as Jury: The Judicial Determination of Factual Issues (1985) 38 CLP 1, p 14). The DIJ had rejected the applicants' account because she had considered that Toofan would behave like a reasonable man.

[12] The DIJ had also erred in finding that the applicants' account of the attack was incredible. She had fallen into the same error, when assessing credibility, as the AIT had identified in the reasoning of the original IJ, who had failed to explain how she had taken the background material into account; notably the ability of neighbours to

ward off attacks. There was thus an inconsistency in the two determinations; the decision to order reconsideration and that reconsideration (*DK (Serbia)* v *Secretary of State for the Home Department* [2008] 1 WLR 1246, Latham LJ at 1259). The DIJ had failed to give adequate reasons for finding that the background objective material did not support the applicants' account. The DIJ had erred in rejecting the applicants' account that the attack had been warded off by the neighbours. The DIJ had applied her own concepts of how an Afghanistan warlord might act and that was not legitimate (Bingham (*supra*), p 14; Symes & Jorro (*supra*) para 2.31; *Del Valle* v *Immigration and Naturalization Service* (1985) 776 F 2d 1407; *Lopez-Reyes Immigration and Naturalization Service* (1996) 79 F 3d 908; *Wani* v *Secretary of State for the Home Department* 2005 SLT 875, Lord Brodie at 883).

[13] The DIJ had further erred in rejecting the letter from the Commander of Region 8. She had relied upon the date of the letter and its style to do that. However, the date was explicable as being shortly after the applicants had claimed asylum, when they would have been gathering information in support of it. In the absence of evidence of the normal style of such letters, the DIJ had erred in applying her own concepts to it (*Singh* v *Secretary of State for the Home Department* 1998 SLT 1370, Lord Macfadyen at 1377). If the DIJ had special knowledge of the style of such letters then she should have disclosed that and allowed the applicants to comment upon it. The DIJ had also erred in rejecting the letter from the neighbours as "self serving" (*Meadows* v *Minister for Immigration & Multicultural Affairs* [1998] FCA 1706, Einfield J). Finally, the DIJ had failed to consider the evidence "in the round" (*Tanveer Ahmed* v *Secretary of State for the Home Department* [2002] Imm AR 318). She had rejected the evidence in the letters and the expert report because she had

found the applicants not to be credible, rather than taking these documents into account in making her assessment.

RESPONDENT

[14] The applicants' challenges to the DIJ's determination all related to credibility; a question of fact for the DIJ to answer (*HA* v *Secretary of State for the Home Department* (*supra*). No error of law had been identified. Rather, the submissions amounted only to a disagreement with the facts found by the DIJ. In relation to the attack on the house, the DIJ had not fallen into the same error as the IJ. She had taken into account the background material. That material related to the fending off of militia engaged in thieving and robbery and not to the type of account given by the applicants. In relation to Commander Toofan, in paragraphs 81 and 87 the DIJ was talking about different points in time; the first being the time of the attack and the second being the present. The applicants had undertaken a microscopic linguistic analysis of the determination, but there was still no error of law apparent. There was no irrational speculation on how Toofan would have behaved. NR herself had given evidence about this (para 81). The criticisms of the letter from the Commander of Region 8 were merited. The letter was obtained specifically in support of the applications for asylum, as were the letters from the neighbours. The style of the letter from the Commander was an informal one and the DIJ was entitled to take that into account. These matters had all been raised with the applicants in cross examination. The DIJ had looked at all of the material in the round. She had to set out in print her reasons for dealing with particular bits of evidence. That had to be done in some kind of sequence rather than being presented in the form of a "mind map". The DIJ had given adequate reasons for her decision in terms of *Wordie Property Co* v *Secretary of State for Scotland* 1984 SLT 345.

Decision

[15] No error of law is evident from the determination of the DIJ. The criticisms of her decision by the applicants, which analyse the determination in great detail, amount to no more than disagreements about her decisions on the facts. The test to be applied in an application of this type is set out clearly in *HA* v *Secretary of State for the Home Department* (*supra*):

> "[17] ...The credibility of an asylum-seeker's account is primarily a question of fact, and the determination of that question of fact has been entrusted by Parliament to the immigration judge (*Esen* [v *Secretary of State for the Home Department* (*supra*)], para 21). This court may not interfere with the immigration judge's decision on a matter of credibility simply because on the evidence it would, if it had been the fact-finder, have come to a different conclusion (*Reid* [v *Secretary of State for Scotland* 1999 SC (HL) 17], per Lord Clyde, p 41H). ...If a decision on credibility is one which depends for its validity on the acceptance of other contradictory facts or inference from such facts, it will be erroneous in point of law if the contradictory position is not supported by any, or sufficient, evidence, or is based on conjecture or speculation (*Wani v Secretary of State for the Home Department* (*supra*), para 24 quoted with approval in *HK* [v *Secretary of State for the Home Department* [2006] EWCA Civ 1037], para 30). A bare assertion of incredibility or implausibility may disclose error of law; an immigration judge must give reasons for his decisions on credibility and plausibility (*Esen*, para 21). In reaching conclusions on credibility and plausibility an immigration judge may draw on his common sense and his ability, as a practical and informed person, to identify what is, and what is not, plausible (*Wani*, p 883L, quoted with approval in *HK*, para 30, and in *Esen*, para 21). Credibility, however, is an issue to be handled with great care and sensitivity to cultural differences (*Esen*, para 21), and reliance on inherent improbability may be dangerous or inappropriate where the conduct in question has taken place in a society whose culture and customs are very different from those in the United Kingdom (*HK*, para 29). There will be cases where actions which may appear implausible if judged by domestic standards may not merit rejection on that ground when considered within the context of the asylum-seeker's social and cultural background (*Wani*, p 883I, quoted with approval in *HK*, para 30). An immigration judge's decision on credibility or implausibility may... disclose an error of law if, on examination of the reasons given for his decision, it appears either that he has failed to take into account the relevant consideration that the probability of the asylum-seeker's narrative may be affected by its cultural context, or has failed to explain the part played in his decision by consideration of that context, or has based his conclusion on speculation or conjecture".

It has been stressed that the assessment of credibility in asylum cases has to take into account the context of the asylum seeker's social and cultural background. Although it is hardly necessary to add further platitudes on the subject of the assessment of credibility, it is worth commenting that this task is little different from the exercise performed in many litigations where the backgrounds of the litigants and witnesses may be, and very often are, markedly different to that of the judge. But it is part of a judge's duty to inform himself accordingly; he ought to ensure that he is indeed a "practical and informed" person capable of making sound assessments on the credibility and reliability of testimony from whatever source.

[16] Parliament has given the task of examining the accounts of asylum seekers to a specialist tribunal. The Court can assume, in the absence of indicators to the contrary, that the AIT does have expertise in this field and is used to considering the accounts emerging from the relatively few countries producing asylum claimants. The Court can assume, again in the absence of contrary information, that the AIT is accustomed to perusing the types of documents which regularly accompany both genuine and doubtful claims from citizens of these countries. The AIT is tasked with making decisions in what may well be anxious cases involving the issue of whether an account may be fact or is fiction. But it requires to carry out that task to the best of its ability and cannot shrink from it simply because it may be difficult.

[17] The DIJ has given a clear reason for her decision. She did not regard the applicants' account as credible. It is apparent from her determination that the DIJ reached her decision having considered all the evidence and weighed it appropriately. It is true that she dealt with particular pieces of evidence in separate paragraphs, giving separate reasons for rejecting those pieces. However, that treatment is

inevitable if reasons for a decision are to be adequately stated. Thus, for example, it is correct to say that the DIJ rejected the letter from the Commander of Region 8 as unreliable because she ultimately disbelieved the account given by the applicants. Since that account was reflected in the terms of the letter, that was an inevitable consequence of the decision on credibility. But that is not to say that the DIJ did not take into account the existence and content of the letter, and the prospect that it might be genuine, in reaching the decision to disbelieve the applicants' account in the first place. On the contrary, it is clear that she did do this, although, when carrying out that exercise, she placed little weight upon the letter because of its date and content. Similar considerations apply to the letter from neighbours and the expert report.

[18] The DIJ's findings at paragraphs 81 and 87 are not inconsistent. They are dealing with different points in time. In the first, the IJ is talking about the position at the time of the attack on the house. She rejects that account as implausible because, amongst other things, she did not consider that a well known, powerful and violent warlord would pretend to be someone else and subsequently carry out a bungled attack with fourteen armed militia, which was then thwarted by the chance arrival of neighbours. That is not an unreasonable conclusion. No matter how remote the world of the DIJ may be from that of an Afghanistan warlord, she was still entitled to reach the view that the applicants' somewhat romantic account must be fiction. In the second, the DIJ is assessing the risk to the applicants on a return to Afghanistan. She looks at the objective evidence on Commander Toofan and decides that there is no risk for a number of reasons. The ultimate, and material, one was that she did not believe that the applicants had any connection with Toofan. But this was prefaced by a remark presupposing that the attack had occurred. The remark was that the DIJ did not think that somebody now working with the UN would, two years after the attack, jeopardise

his position for a woman, now married, whom he did not even know other than is his capacity as a form of stalker. There is some force in the contention that the DIJ has expressed herself in a way which might suggest that she had wrongly assumed from the background material that Toofan's involvement with the UN had only occurred after the attack. However, in all the circumstances, even if that assumption was made, the error was not a material one.

[19] The DIJ did take into account the background material, including the Human Rights Watch and the expert reports. But she considered that the information in the Human Rights Watch report, relating to the warding off of thieving and robbing militia, was different from the situation described by the applicants. That was a reasonable conclusion to reach. It is one thing to have a vigilante service operating in a neighbourhood to watch out for robbers. It is a different thing for an armed attack to have occurred, without prior discovery, and then for it to be thwarted by neighbours who chanced to hear a gunshot and appeared on the scene. A conclusion that it is implausible that a powerful and violent warlord with a personal militia would have failed in his objective in this way is also a reasonable one.

[20] The letter from the Commander of Region 8 is a peculiar one. It does not appear in the form of an official report of an incident. According to the applicants' account, the police arrived on the scene shortly after the incident. An uncle reported what had happened, but only the next day. The letter does not confine itself to the type of material which the police, in at least most parts of the world, might be expected to be interested or involved in. Rather it dwells upon peripheral background information, such as the attitude of [N]'s father at various stages, and on the departure of the applicants after the attack. The DIJ was entitled to the view that the style of this letter was such as would prompt a degree of caution. It was, like the letter from the

neighbours, not a contemporaneous report but one prepared for the purposes of the application. That does not mean that it may not be both genuine and truthful, and the DIJ did not reject either out of hand. But the DIJ was again entitled to take those factors into account when assessing the weight to be given to the documents when considering all the evidence. The DIJ also took the expert report into account but, because it essentially proceeded upon an acceptance of the applicants' account, she did not find that it assisted. Once more, that was an approach open to her.

[21] In reaching her determination on credibility, the DIJ took a number of other factors into account, including the discrepancies in TR's accounts and the applicants' failure to claim asylum in France. It does not appear from her determination that the DIJ failed to take any relevant material into account or took any irrelevant material into account. She appears to have carried out a careful balancing exercise and reached a decision which was open to a reasonable DIJ. The determination makes clear to the informed reader the basis for the decision; notably the lack of credibility of the applicants as demonstrated by, amongst other matters, the inherent implausibility of the account. In these circumstances there is no error of law apparent and no real prospect of the AIT reaching a different decision upon a reconsideration. The applications for leave to appeal is therefore refused.